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]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Under Arizona law, candidates for state office who accept public financing can receive additional money from the State in direct response to the campaign activities of privately financed candidates and independent expenditure groups. Once a set spending limit is exceeded, a publicly financed candidate receives roughly one dollar for every dollar spent by an opposing privately financed candidate. The publicly financed candidate also receives roughly one dollar for every dollar spent by independent expenditure groups to support the privately financed candidate, or to oppose the publicly financed candidate.

We hold that Arizona's matching funds scheme substantially burdens protected political speech without serving a compelling state interest and therefore violates the First Amendment.

I

A

The Arizona Citizens Clean Elections Act, passed by initiative in 1998, created a voluntary public financing system to fund the primary and general election campaigns of candidates for state office. See Ariz. Rev. Stat. Ann. §16–940 *et seq*. (West 2006 and Supp. 2010). All eligible candidates for Governor, secretary of state, attorney general, treasurer, superintendent of public instruction, the corporation commission, mine inspector, and the state legislature (both the House and Senate) may opt to receive public funding. §16–950(D) (West Supp. 2010). Eligibility is contingent on the collection of a specified number of five-dollar contributions from Arizona voters, §§16–946(B) (West 2006), 16–950 (West Supp. 2010),[1] and the acceptance of certain campaign restrictions and obligations. Publicly funded candidates must agree, among other things, to limit their expenditure of personal funds to $500, §16–941(A)(2) (West Supp. 2010); participate in at least one public debate, §16–956(A)(2); adhere to an overall expenditure cap, §16–941(A); and return all unspent public moneys to the State, §16–953.

In exchange for accepting these conditions, participating candidates are granted public funds to conduct their campaigns.[2] In many cases, this initial allotment may be the

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[1] The number of qualifying contributions ranges from 200 for a candidate for the state legislature to 4,000 for a candidate for Governor. Ariz. Rev. Stat. Ann. §16–950(D) (West Supp. 2010).

[2] Publicly financed candidates who run unopposed, or who run as the representative of a party that does not have a primary, may receive less funding than candidates running in contested elections. See §§16–

whole of the State's financial backing of a publicly funded candidate. But when certain conditions are met, publicly funded candidates are granted additional "equalizing" or matching funds. §§16–952(A), (B), and (C)(4)–(5) (providing for "[e]qual funding of candidates").

Matching funds are available in both primary and general elections. In a primary, matching funds are triggered when a privately financed candidate's expenditures, combined with the expenditures of independent groups made in support of the privately financed candidate or in opposition to a publicly financed candidate, exceed the primary election allotment of state funds to the publicly financed candidate. §§16–952(A), (C). During the general election, matching funds are triggered when the amount of money a privately financed candidate receives in contributions, combined with the expenditures of independent groups made in support of the privately financed candidate or in opposition to a publicly financed candidate, exceed the general election allotment of state funds to the publicly financed candidate. §16–952(B). A privately financed candidate's expenditures of his personal funds are counted as contributions for purposes of calculating matching funds during a general election. See *ibid.*; Citizens Clean Elections Commission, Ariz. Admin. Rule R2–20–113(B)(1)(f) (Sept. 2009).

Once matching funds are triggered, each additional dollar that a privately financed candidate spends during the primary results in one dollar in additional state funding to his publicly financed opponent (less a 6% reduction meant to account for fundraising expenses). §16–952(A). During a general election, every dollar that a candidate receives in contributions—which includes any money of his own that a candidate spends on his campaign—results in roughly one dollar in additional state funding to his

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951(A)(2)–(3) and (D) (West 2006).

publicly financed opponent. In an election where a privately funded candidate faces multiple publicly financed candidates, one dollar raised or spent by the privately financed candidate results in an almost one dollar increase in public funding to each of the publicly financed candidates.

Once the public financing cap is exceeded, additional expenditures by independent groups can result in dollar-for-dollar matching funds as well. Spending by independent groups on behalf of a privately funded candidate, or in opposition to a publicly funded candidate, results in matching funds. §16–952(C). Independent expenditures made in support of a publicly financed candidate can result in matching funds for other publicly financed candidates in a race. *Ibid*. The matching funds provision is not activated, however, when independent expenditures are made in opposition to a privately financed candidate. Matching funds top out at two times the initial authorized grant of public funding to the publicly financed candidate. §16–952(E).

Under Arizona law, a privately financed candidate may raise and spend unlimited funds, subject to state-imposed contribution limits and disclosure requirements. Contributions to candidates for statewide office are limited to $840 per contributor per election cycle and contributions to legislative candidates are limited to $410 per contributor per election cycle. See §§16–905(A)(1), 16–941(B)(1); Ariz. Dept. of State, Office of the Secretary of State, 2009–2010 Contribution Limits (rev. Aug. 14, 2009), http://www.azsos.gov/election/2010/Info/Campaign_Contribution_Limits_2010.htm (all Internet materials as visited June 24, 2011, and available in Clerk of Court's case file).

An example may help clarify how the Arizona matching funds provision operates. Arizona is divided into 30 districts for purposes of electing members to the State's House of Representatives. Each district elects two repre-

sentatives to the House biannually. In the last general election, the number of candidates competing for the two available seats in each district ranged from two to seven. See State of Arizona Official Canvass, 2010 General Election Report (compiled and issued by the Arizona secretary of state). Arizona's Fourth District had three candidates for its two available House seats. Two of those candidates opted to accept public funding; one candidate chose to operate his campaign with private funds.

In that election, if the total funds contributed to the privately funded candidate, added to that candidate's expenditure of personal funds and the expenditures of supportive independent groups, exceeded $21,479—the allocation of public funds for the general election in a contested State House race—the matching funds provision would be triggered. See Citizens Clean Elections Commission, Participating Candidate Guide 2010 Election Cycle 30 (Aug. 10, 2010). At that point, a number of different political activities could result in the distribution of matching funds. For example:

- If the privately funded candidate spent $1,000 of his own money to conduct a direct mailing, each of his publicly funded opponents would receive $940 ($1,000 less the 6% offset).
- If the privately funded candidate held a fundraiser that generated $1,000 in contributions, each of his publicly funded opponents would receive $940.
- If an independent expenditure group spent $1,000 on a brochure expressing its support for the privately financed candidate, each of the publicly financed candidates would receive $940 directly.
- If an independent expenditure group spent $1,000 on a brochure opposing one of the publicly financed candidates, but saying nothing about the privately

financed candidate, the publicly financed candidates would receive $940 directly.

- If an independent expenditure group spent $1,000 on a brochure supporting one of the publicly financed candidates, the other publicly financed candidate would receive $940 directly, but the privately financed candidate would receive nothing.
- If an independent expenditure group spent $1,000 on a brochure opposing the privately financed candidate, no matching funds would be issued.

A publicly financed candidate would continue to receive additional state money in response to fundraising and spending by the privately financed candidate and independent expenditure groups until that publicly financed candidate received a total of $64,437 in state funds (three times the initial allocation for a State House race).[3]

B

Petitioners in this case, plaintiffs below, are five past and future candidates for Arizona state office—four members of the House of Representatives and the Arizona state treasurer—and two independent groups that spend money to support and oppose Arizona candidates. They filed suit challenging the constitutionality of the matching funds provision. The candidates and independent expenditure groups argued that the matching funds provision uncon-

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[3]Maine and North Carolina have both passed matching funds statutes that resemble Arizona's law. See Me. Rev. Stat. Ann., Tit. 21–A, §§1125(8), (9) (2008); N. C. Gen. Stat. Ann. §163–278.67 (Lexis 2009). Minnesota, Connecticut, and Florida have also adopted matching funds provisions, but courts have enjoined the enforcement of those schemes after concluding that their operation violates the First Amendment. See *Day* v. *Holahan*, 34 F. 3d 1356, 1362 (CA8 1994); *Green Party of Conn.* v. *Garfield*, 616 F. 3d 213, 242 (CA2 2010); *Scott* v. *Roberts*, 612 F. 3d 1279, 1297–1298 (CA11 2010).

stitutionally penalized their speech and burdened their ability to fully exercise their First Amendment rights.

The District Court agreed that this provision "constitute[d] a substantial burden" on the speech of privately financed candidates because it "award[s] funds to a [privately financed] candidate's opponent" based on the privately financed candidate's speech. App. to Pet. for Cert. in No. 10–239, p. 69 (internal quotation marks omitted). That court further held that "no compelling interest [was] served by the" provision that might justify the burden imposed. *Id.,* at 69, 71. The District Court entered a permanent injunction against the enforcement of the matching funds provision, but stayed implementation of that injunction to allow the State to file an appeal. *Id.,* at 76–81.

The Court of Appeals for the Ninth Circuit stayed the District Court's injunction pending appeal. *Id.,* at 84–85.[4] After hearing the case on the merits, the Court of Appeals reversed the District Court. The Court of Appeals concluded that the matching funds provision "imposes only a minimal burden on First Amendment rights" because it "does not actually prevent anyone from speaking in the first place or cap campaign expenditures." 611 F. 3d 510, 513, 525 (2010). In that court's view, any burden imposed by the matching funds provision was justified because the provision "bears a substantial relation to the State's important interest in reducing *quid pro quo* political corruption." *Id.,* at 513.[5]

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[4] Judge Bea dissented from the stay of the District Court's injunction, stating that the Arizona public financing system unconstitutionally prefers publicly financed candidates and that under the matching funds scheme "it makes no more sense for [a privately financed candidate or independent expenditure group] to spend money now than for a poker player to make a bet if he knows the house is going to match his bet for his opponent." App. to Pet. for Cert. in No. 10–239, p. 87; see *id.*, at 89.

[5] One judge concurred, relying primarily on his view that "the Arizona

We stayed the Court of Appeals' decision, vacated the stay of the District Court's injunction, see 560 U. S. ___ (2010), and later granted certiorari, 562 U. S. ___ (2010).

II

"Discussion of public issues and debate on the qualifications of candidates are integral to the operation" of our system of government. *Buckley* v. *Valeo*, 424 U. S. 1, 14 (1976) (*per curiam*). As a result, the First Amendment "'has its fullest and most urgent application' to speech uttered during a campaign for political office." *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214, 223 (1989) (quoting *Monitor Patriot Co.* v. *Roy*, 401 U. S. 265, 272 (1971)). "Laws that burden political speech are" accordingly "subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Citizens United* v. *Federal Election Comm'n*, 558 U. S. ___, ___ (2010) (slip op., at 23) (internal quotation marks omitted); see *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238, 256 (1986).

Applying these principles, we have invalidated government-imposed restrictions on campaign expenditures, *Buckley*, *supra,* at 52–54, restraints on independent expenditures applied to express advocacy groups, *Massachusetts Citizens for Life*, *supra*, at 256–265, limits on uncoordinated political party expenditures, *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604, 608 (1996) (opinion of BREYER, J.) (*Colorado I*), and regulations barring unions, nonprofit and other associations, and corporations from making independent expenditures for electioneering communication, *Citizens*

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public financing scheme imposes no limitations whatsoever on a candidate's speech." 611 F. 3d, at 527 (Kleinfeld, J.).

United, *supra,* at ___ (slip op., at 57).

At the same time, we have subjected strictures on campaign-related speech that we have found less onerous to a lower level of scrutiny and upheld those restrictions. For example, after finding that the restriction at issue was "closely drawn" to serve a "sufficiently important interest," see, *e.g., McConnell* v. *Federal Election Comm'n*, 540 U. S. 93, 136 (2003) (internal quotation marks omitted); *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 387–388 (2000) (internal quotation marks omitted), we have upheld government-imposed limits on contributions to candidates, *Buckley*, *supra,* at 23–35, caps on coordinated party expenditures, *Federal Election Comm'n* v. *Colorado Republican Federal Campaign Comm.*, 533 U. S. 431, 437 (2001) (*Colorado II*), and requirements that political funding sources disclose their identities, *Citizens United*, *supra,* at ___–___ (slip op., at 55–56).

Although the speech of the candidates and independent expenditure groups that brought this suit is not directly capped by Arizona's matching funds provision, those parties contend that their political speech is substantially burdened by the state law in the same way that speech was burdened by the law we recently found invalid in *Davis* v. *Federal Election Comm'n*, 554 U. S. 724 (2008). In *Davis*, we considered a First Amendment challenge to the so-called "Millionaire's Amendment" of the Bipartisan Campaign Reform Act of 2002, 2 U. S. C. §441a–1(a). Under that Amendment, if a candidate for the United States House of Representatives spent more than $350,000 of his personal funds, "a new, asymmetrical regulatory scheme [came] into play." 554 U. S., at 729. The opponent of the candidate who exceeded that limit was permitted to collect individual contributions up to $6,900 per contributor—three times the normal contribution limit of $2,300. See *ibid.* The candidate who spent more than the personal funds limit remained subject to

the original contribution cap. Davis argued that this scheme "burden[ed] his exercise of his First Amendment right to make unlimited expenditures of his personal funds because" doing so had "the effect of enabling his opponent to raise more money and to use that money to finance speech that counteract[ed] and thus diminishe[d] the effectiveness of Davis' own speech." *Id.,* at 736.

In addressing the constitutionality of the Millionaire's Amendment, we acknowledged that the provision did not impose an outright cap on a candidate's personal expenditures. *Id.,* at 738–739. We nonetheless concluded that the Amendment was unconstitutional because it forced a candidate "to choose between the First Amendment right to engage in unfettered political speech and subjection to discriminatory fundraising limitations." *Id.,* at 739. Any candidate who chose to spend more than $350,000 of his own money was forced to "shoulder a special and potentially significant burden" because that choice gave fundraising advantages to the candidate's adversary. *Ibid.* We determined that this constituted an "unprecedented penalty" and "impose[d] a substantial burden on the exercise of the First Amendment right to use personal funds for campaign speech," and concluded that the Government had failed to advance any compelling interest that would justify such a burden. *Id.*, at 739–740.

A

1

The logic of *Davis* largely controls our approach to this case. Much like the burden placed on speech in *Davis*, the matching funds provision "imposes an unprecedented penalty on any candidate who robustly exercises [his] First Amendment right[s]." *Id.*, at 739. Under that provision, "the vigorous exercise of the right to use personal funds to finance campaign speech" leads to "advantages for opponents in the competitive context of electoral poli-

tics." *Ibid.*

Once a privately financed candidate has raised or spent more than the State's initial grant to a publicly financed candidate, each personal dollar spent by the privately financed candidate results in an award of almost one additional dollar to his opponent. That plainly forces the privately financed candidate to "shoulder a special and potentially significant burden" when choosing to exercise his First Amendment right to spend funds on behalf of his candidacy. *Ibid.* If the law at issue in *Davis* imposed a burden on candidate speech, the Arizona law unquestionably does so as well.

The penalty imposed by Arizona's matching funds provision is different in some respects from the penalty imposed by the law we struck down in *Davis*. But those differences make the Arizona law *more* constitutionally problematic, not less. See *Green Party of Conn.* v. *Garfield*, 616 F. 3d 213, 244–245 (CA2 2010). First, the penalty in *Davis* consisted of raising the contribution limits for one of the candidates. The candidate who benefited from the increased limits still had to go out and raise the funds. He may or may not have been able to do so. The other candidate, therefore, faced merely the possibility that his opponent would be able to raise additional funds, through contribution limits that remained subject to a cap. And still the Court held that this was an "unprecedented penalty," a "special and potentially significant burden" that had to be justified by a compelling state interest—a rigorous First Amendment hurdle. 554 U. S., at 739–740. Here the benefit to the publicly financed candidate is the direct and automatic release of public money. That is a far heavier burden than in *Davis*.

Second, depending on the specifics of the election at issue, the matching funds provision can create a multiplier effect. In the Arizona Fourth District House election previously discussed, see *supra,* at 4–6, if the spending cap

were exceeded, each dollar spent by the privately funded candidate would result in an additional dollar of campaign funding to each of that candidate's publicly financed opponents. In such a situation, the matching funds provision forces privately funded candidates to fight a political hydra of sorts. Each dollar they spend generates two adversarial dollars in response. Again, a markedly more significant burden than in *Davis*.

Third, unlike the law at issue in *Davis*, all of this is to some extent out of the privately financed candidate's hands. Even if that candidate opted to spend less than the initial public financing cap, any spending by independent expenditure groups to promote the privately financed candidate's election—regardless whether such support was welcome or helpful—could trigger matching funds. What is more, that state money would go directly to the publicly funded candidate to use as he saw fit. That disparity in control—giving money directly to a publicly financed candidate, in response to independent expenditures that cannot be coordinated with the privately funded candidate—is a substantial advantage for the publicly funded candidate. That candidate can allocate the money according to his own campaign strategy, which the privately financed candidate could not do with the independent group expenditures that triggered the matching funds. Cf. *Citizens United*, 558 U. S., at ___ (slip op., at 41) ("'The absence of prearrangement and coordination of an expenditure with the candidate or his agent . . . undermines the value of the expenditure to the candidate'" (quoting *Buckley*, 424 U. S., at 47)).

The burdens that this regime places on independent expenditure groups are akin to those imposed on the privately financed candidates themselves. Just as with the candidate the independent group supports, the more money spent on that candidate's behalf or in opposition to a publicly funded candidate, the more money the publicly

funded candidate receives from the State. And just as with the privately financed candidate, the effect of a dollar spent on election speech is a guaranteed financial payout to the publicly funded candidate the group opposes. Moreover, spending one dollar can result in the flow of dollars to multiple candidates the group disapproves of, dollars directly controlled by the publicly funded candidate or candidates.

In some ways, the burden the Arizona law imposes on independent expenditure groups is worse than the burden it imposes on privately financed candidates, and thus substantially worse than the burden we found constitutionally impermissible in *Davis*. If a candidate contemplating an electoral run in Arizona surveys the campaign landscape and decides that the burdens imposed by the matching funds regime make a privately funded campaign unattractive, he at least has the option of taking public financing. Independent expenditure groups, of course, do not.

Once the spending cap is reached, an independent expenditure group that wants to support a particular candidate—because of that candidate's stand on an issue of concern to the group—can only avoid triggering matching funds in one of two ways. The group can either opt to change its message from one addressing the merits of the candidates to one addressing the merits of an issue, or refrain from speaking altogether. Presenting independent expenditure groups with such a choice makes the matching funds provision particularly burdensome to those groups. And forcing that choice—trigger matching funds, change your message, or do not speak—certainly contravenes "the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message." *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557, 573 (1995); cf. *Citizens United*, *supra*, at ___ (slip op.,

at 24) ("the First Amendment stands against attempts to disfavor certain subjects or viewpoints"); *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449, 477, n. 9 (2007) (opinion of ROBERTS, C. J.) (the argument that speakers can avoid the burdens of a law "by changing what they say" does not mean the law complies with the First Amendment).[6]

2

Arizona, the Clean Elections Institute, and the United States offer several arguments attempting to explain away the existence or significance of any burden imposed by matching funds. None is persuasive.

Arizona contends that the matching funds provision is distinguishable from the law we invalidated in *Davis*. The State correctly points out that our decision in *Davis* focused on the asymmetrical contribution limits imposed by the Millionaire's Amendment. See 554 U. S., at 729. But that is not because—as the State asserts—the reach of that opinion is limited to asymmetrical contribution limits. Brief for State Respondents 26–32. It is because that was the particular burden on candidate speech we faced in *Davis*. And whatever the significance of the distinction in general, there can be no doubt that the burden on speech is significantly greater in this case than in *Davis*: That means that the law here—like the one in *Davis*—must be justified by a compelling state interest.

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[6]The dissent sees "*chutzpah*" in candidates exercising their right not to participate in the public financing scheme, while objecting that the system violates their First Amendment rights. See *post*, at 12 (opinion of KAGAN, J.). The charge is unjustified, but, in any event, it certainly cannot be leveled against the independent expenditure groups. The dissent barely mentions such groups in its analysis, and fails to address not only the distinctive burdens imposed on these groups—as set forth above—but also the way in which privately financed candidates are particularly burdened when matching funds are triggered by independent group speech.

The State argues that the matching funds provision actually results in more speech by "increas[ing] debate about issues of public concern" in Arizona elections and "promot[ing] the free and open debate that the First Amendment was intended to foster." Brief for State Respondents 41; see Brief for Respondent Clean Elections Institute 55. In the State's view, this promotion of First Amendment ideals offsets any burden the law might impose on some speakers.

Not so. Any increase in speech resulting from the Arizona law is of one kind and one kind only—that of publicly financed candidates. The burden imposed on privately financed candidates and independent expenditure groups reduces their speech; "restriction[s] on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression." *Buckley,* 424 U. S., at 19. Thus, even if the matching funds provision did result in more speech by publicly financed candidates and more speech in general, it would do so at the expense of impermissibly burdening (and thus reducing) the speech of privately financed candidates and independent expenditure groups. This sort of "beggar thy neighbor" approach to free speech—"restrict[ing] the speech of some elements of our society in order to enhance the relative voice of others"—is "wholly foreign to the First Amendment." *Id.,* at 48–49.[7]

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[7] The dissent also repeatedly argues that the Arizona matching funds regime results in "*more* political speech," *post*, at 9 (emphasis in original); see *post*, at 2, 10, 13, 16, 32, but—given the logic of the dissent's position—that is only as a step to *less* speech. If the matching funds provision achieves its professed goal and causes candidates to switch to public financing, *post*, at 25, 30, there will be less speech: no spending above the initial state-set amount by formerly privately financed candidates, and no associated matching funds for anyone. Not only that, the level of speech will depend on the State's judgment of the desirable amount, an amount tethered to available (and often scarce) state resources.

We have rejected government efforts to increase the speech of some at the expense of others outside the campaign finance context. In *Miami Herald Publishing Co.* v. *Tornillo*, 418 U. S. 241, 244, 258 (1974), we held unconstitutional a Florida law that required any newspaper assailing a political candidate's character to allow that candidate to print a reply. We have explained that while the statute in that case "purported to advance free discussion, . . . its effect was to deter newspapers from speaking out in the first instance" because it "penalized the newspaper's own expression." *Pacific Gas & Elec. Co.* v. *Public Util. Comm'n of Cal.*, 475 U. S. 1, 10 (1986) (plurality opinion). Such a penalty, we concluded, could not survive First Amendment scrutiny. The Arizona law imposes a similar penalty: The State grants funds to publicly financed candidates as a direct result of the speech of privately financed candidates and independent expenditure groups. The argument that this sort of burden promotes free and robust discussion is no more persuasive here than it was in *Tornillo*.[8]

Arizona asserts that no "candidate or independent expenditure group is 'obliged personally to express a message he disagrees with'" or "'required by the government to subsidize a message he disagrees with.'" Brief for State

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[8]Along the same lines, we have invalidated government mandates that a speaker "help disseminate hostile views" opposing that speaker's message. *Pacific Gas & Elec. Co.* v. *Public Util. Comm'n of Cal.*, 475 U. S. 1, 14 (1986) (plurality opinion). In *Pacific Gas*, we found a public utility commission order forcing a utility company to disseminate in its billing envelopes views that the company opposed ran afoul of the First Amendment. That case is of course distinguishable from the instant case on its facts, but the central concern—that an individual should not be compelled to "help disseminate hostile views"—is implicated here as well. *Ibid.* If a candidate uses his own money to engage in speech above the initial public funding threshold, he is forced to "help disseminate hostile views" in a most direct way—his own speech triggers the release of state money to his opponent.

Respondents 32 (quoting *Johanns* v. *Livestock Marketing Assn.*, 544 U. S. 550, 557 (2005)). True enough. But that does not mean that the matching funds provision does not burden speech. The direct result of the speech of privately financed candidates and independent expenditure groups is a state-provided monetary subsidy to a political rival. That cash subsidy, conferred in response to political speech, penalizes speech to a greater extent and more directly than the Millionaire's Amendment in *Davis*. The fact that this may result in more speech by the other candidates is no more adequate a justification here than it was in *Davis*. See 554 U. S., at 741–742.

In disagreeing with our conclusion, the dissent relies on cases in which we have upheld government subsidies against First Amendment challenge, and asserts that "[w]e have never, not once, understood a viewpoint-neutral subsidy given to one speaker to constitute a First Amendment burden on another." *Post*, at 16. But none of those cases—not one—involved a subsidy given in direct response to the political speech of another, to allow the recipient to counter that speech. And nothing in the analysis we employed in those cases suggests that the challenged subsidies would have survived First Amendment scrutiny if they were triggered by someone else's political speech.[9]

The State also argues, and the Court of Appeals concluded, that any burden on privately financed candidates and independent expenditure groups is more analogous to

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[9]The dissent cites *Buckley* in response, see *post*, at 12, n. 3, but the funding in *Buckley* was of course not triggered by the speech of a publicly funded candidate's political opponent, or the speech of anyone else for that matter. See 424 U. S., at 91–95. Whether Arizona's matching funds provision comports with the First Amendment is not simply a question of whether the State can give a subsidy to a candidate to fund that candidate's election, but whether that subsidy can be triggered by the speech of another candidate or independent group.

the burden placed on speakers by the disclosure and disclaimer requirements we recently upheld in *Citizens United* than to direct restrictions on candidate and independent expenditures. See 611 F. 3d, at 525; Brief for State Respondents 21, 35; Brief for Respondent Clean Elections Institute 16–17. This analogy is not even close. A political candidate's disclosure of his funding resources does not result in a cash windfall to his opponent, or affect their respective disclosure obligations.

The State and the Clean Elections Institute assert that the candidates and independent expenditure groups have failed to "cite specific instances in which they decided not to raise or spend funds," Brief for State Respondents 11; see *id.*, at 11–12, and have "failed to present any reliable evidence that Arizona's triggered matching funds deter their speech," Brief for Respondent Clean Elections Institute 6; see *id.*, at 6–8. The record in this case, which we must review in its entirety, does not support those assertions. See *Bose Corp.* v. *Consumers Union of United States, Inc.*, 466 U. S. 485, 499 (1984).

That record contains examples of specific candidates curtailing fundraising efforts, and actively discouraging supportive independent expenditures, to avoid triggering matching funds. See, *e.g.,* App. 567 (Rick Murphy), 578 (Dean Martin); App. to Pet. for Cert. in No. 10–239, at 329 (John McComish), 300 (Tony Bouie). The record also includes examples of independent expenditure groups deciding not to speak in opposition to a candidate, App. 569 (Arizona Taxpayers Action Committee), or in support of a candidate, *id.*, at 290 (Club for Growth), to avoid triggering matching funds. In addition, Dr. David Primo, an expert involved in the case, "found that privately financed candidates facing the prospect of triggering matching funds changed the timing of their fundraising activities, the timing of their expenditures, and, thus, their overall campaign strategy." Reply Brief for Petitioner

Arizona Free Enterprise Club's (AFEC) Freedom Club PAC et al. 12; see also *id.*, at 11–17 (listing additional sources of evidence detailing the burdens imposed by the matching funds provision); Brief for Petitioner AFEC's Freedom Club PAC et al. 14–21 (AFEC Brief) (same); Brief for Petitioner McComish et al. 30–37 (same).

The State contends that if the matching funds provision truly burdened the speech of privately financed candidates and independent expenditure groups, spending on behalf of privately financed candidates would cluster just below the triggering level, but no such phenomenon has been observed. Brief for State Respondents 39; Brief for Respondent Clean Elections Institute 18–19. That should come as no surprise. The hypothesis presupposes a privately funded candidate who would spend his own money just up to the matching funds threshold, when he could have simply taken matching funds in the first place.

Furthermore, the Arizona law takes into account all manner of uncoordinated political activity in awarding matching funds. If a privately funded candidate wanted to hover just below the triggering level, he would have to make guesses about how much he will receive in the form of contributions and supportive independent expenditures. He might well guess wrong.

In addition, some candidates may be willing to bear the burden of spending above the cap. That a candidate is willing to do so does not make the law any less burdensome. See *Davis*, 554 U. S., at 739 (that candidates may choose to make "personal expenditures to support their campaigns" despite the burdens imposed by the Millionaire's Amendment does not change the fact that "they must shoulder a special and potentially significant burden if they make that choice"). If the State made privately funded candidates pay a $500 fine to run as such, the fact that candidates might choose to pay it does not make the fine any less burdensome.

While there is evidence to support the contention of the candidates and independent expenditure groups that the matching funds provision burdens their speech, "it is never easy to prove a negative"—here, that candidates and groups did not speak or limited their speech because of the Arizona law. *Elkins* v. *United States*, 364 U. S. 206, 218 (1960). In any event, the burden imposed by the matching funds provision is evident and inherent in the choice that confronts privately financed candidates and independent expenditure groups. Cf. *Davis*, 554 U. S., at 738–740. Indeed even candidates who sign up for public funding recognize the burden matching funds impose on private speech, stating that they participate in the program because "matching funds . . . discourage[] opponents, special interest groups, and lobbyists from campaigning against" them. GAO, Campaign Finance Reform: Experiences of Two States that Offered Full Public Funding for Political Candidates 27 (GAO–10–390, 2010). As in *Davis*, we do not need empirical evidence to determine that the law at issue is burdensome. See 554 U. S., at 738–740 (requiring no evidence of a burden whatsoever).

It is clear not only to us but to every other court to have considered the question after *Davis* that a candidate or independent group might not spend money if the direct result of that spending is additional funding to political adversaries. See, *e.g., Green Party of Conn.*, 616 F. 3d, at 242 (matching funds impose "a substantial burden on the exercise of First Amendment rights" (internal quotation marks omitted)); *McComish* v. *Bennett*, 611 F. 3d, at 524 (matching funds create "potential chilling effects" and "impose some First Amendment burden"); *Scott* v. *Roberts*, 612 F. 3d 1279, 1290 (CA11 2010) ("we think it is obvious that the [matching funds] subsidy imposes a burden on [privately financed] candidates"); *id.,* at 1291 ("we know of no court that doubts that a [matching funds] subsidy like the one at issue here burdens" the speech of privately

financed candidates); see also *Day* v. *Holahan*, 34 F. 3d 1356, 1360 (CA8 1994) (it is "clear" that matching funds provisions infringe on "protected speech because of the chilling effect" they have "on the political speech of the person or group making the [triggering] expenditure" (cited in *Davis*, *supra,* at 739)). The dissent's disagreement is little more than disagreement with *Davis*.

The State correctly asserts that the candidates and independent expenditure groups "do not . . . claim that a single lump sum payment to publicly funded candidates," equivalent to the maximum amount of state financing that a candidate can obtain through matching funds, would impermissibly burden their speech. Brief for State Respondents 56; see Tr. of Oral Arg. 5. The State reasons that if providing all the money up front would not burden speech, providing it piecemeal does not do so either. And the State further argues that such incremental administration is necessary to ensure that public funding is not under- or over-distributed. See Brief for State Respondents 56–57.

These arguments miss the point. It is not the amount of funding that the State provides to publicly financed candidates that is constitutionally problematic in this case. It is the manner in which that funding is provided—in direct response to the political speech of privately financed candidates and independent expenditure groups. And the fact that the State's matching mechanism may be more efficient than other alternatives—that it may help the State in "finding the sweet-spot" or "fine-tuning" its financing system to avoid a drain on public resources, *post*, at 26 (KAGAN, J., dissenting)—is of no moment; "the First Amendment does not permit the State to sacrifice speech for efficiency." *Riley* v. *National Federation of Blind of N. C., Inc.*, 487 U. S. 781, 795 (1988).

The United States as *amicus* contends that "[p]roviding additional funds to petitioners' opponents does not make

petitioners' own speech any less effective" and thus does not substantially burden speech. Brief for United States 27. Of course it does. One does not have to subscribe to the view that electoral debate is zero sum, see AFEC Brief 30, to see the flaws in the United States' perspective. All else being equal, an advertisement supporting the election of a candidate that goes without a response is often more effective than an advertisement that is directly controverted. And even if the publicly funded candidate decides to use his new money to address a different issue altogether, the end goal of that spending is to claim electoral victory over the opponent that triggered the additional state funding. See *Davis*, 554 U. S., at 736.

B

Because the Arizona matching funds provision imposes a substantial burden on the speech of privately financed candidates and independent expenditure groups, "that provision cannot stand unless it is 'justified by a compelling state interest,'" *id.*, at 740 (quoting *Massachusetts Citizens for Life*, 479 U. S., at 256).

There is a debate between the parties in this case as to what state interest is served by the matching funds provision. The privately financed candidates and independent expenditure groups contend that the provision works to "level[] electoral opportunities" by equalizing candidate "resources and influence." Brief for Petitioner McComish et al. 64; see AFEC Brief 23. The State and the Clean Elections Institute counter that the provision "furthers Arizona's interest in preventing corruption and the appearance of corruption." Brief for State Respondents 42; Brief for Respondent Clean Elections Institute 47.

1

There is ample support for the argument that the matching funds provision seeks to "level the playing field"

in terms of candidate resources. The clearest evidence is of course the very operation of the provision: It ensures that campaign funding is equal, up to three times the initial public funding allotment. The text of the Citizens Clean Elections Act itself confirms this purpose. The statutory provision setting up the matching funds regime is titled "Equal funding of candidates." Ariz. Rev. Stat. Ann. §16–952 (West Supp. 2010). The Act refers to the funds doled out after the Act's matching mechanism is triggered as "equalizing funds." See §§16–952(C)(4), (5). And the regulations implementing the matching funds provision refer to those funds as "equalizing funds" as well. See Citizens Clean Elections Commission, Ariz. Admin. Rule R2–20–113.

Other features of the Arizona law reinforce this understanding of the matching funds provision. If the Citizens Clean Election Commission cannot provide publicly financed candidates with the moneys that the matching funds provision envisions because of a shortage of funds, the statute allows a publicly financed candidate to "accept private contributions to bring the total monies received by the candidate" up to the matching funds amount. Ariz. Rev. Stat. Ann. §16–954(F) (West 2006). Limiting contributions, of course, is the primary means we have upheld to combat corruption. *Buckley*, 424 U. S., at 23–35, 46–47. Indeed the State argues that one of the principal ways that the matching funds provision combats corruption is by eliminating the possibility of any *quid pro quo* between private interests and publicly funded candidates by eliminating contributions to those candidates altogether. See Brief for State Respondents 45–46. But when confronted with a choice between fighting corruption and equalizing speech, the drafters of the matching funds provision chose the latter. That significantly undermines any notion that the "Equal funding of candidates" provision is meant to serve some interest other than an interest in equalizing

funds.[10]

We have repeatedly rejected the argument that the government has a compelling state interest in "leveling the playing field" that can justify undue burdens on political speech. See, *e.g., Citizens United*, 558 U. S., at ___ (slip op., at 34). In *Davis*, we stated that discriminatory contribution limits meant to "level electoral opportunities for candidates of different personal wealth" did not serve "a legitimate government objective," let alone a compelling one. 554 U. S., at 741 (internal quotation marks omitted). And in *Buckley*, we held that limits on overall campaign expenditures could not be justified by a purported government "interest in equalizing the financial resources of candidates." 424 U. S., at 56; see *id.*, at 56–57. After all, equalizing campaign resources "might serve not to equalize the opportunities of all candidates, but to handicap a candidate who lacked substantial name recognition or exposure of his views before the start of the campaign." *Id.*, at 57.

"Leveling electoral opportunities means making and implementing judgments about which strengths should be permitted to contribute to the outcome of an election," *Davis*, *supra*, at 742—a dangerous enterprise and one that cannot justify burdening protected speech. The dissent essentially dismisses this concern, see *post*, at 27–29, but it needs to be taken seriously; we have, as noted, held that it is not legitimate for the government to attempt to equalize electoral opportunities in this manner. And such basic

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[10] Prior to oral argument in this case, the Citizens Clean Elections Commission's Web site stated that "'The Citizens Clean Elections Act was passed by the people of Arizona in 1998 to level the playing field when it comes to running for office.'" AFEC Brief 10, n. 3 (quoting http://www.azcleanelections.gov/about-us/get-involved.aspx); Tr. of Oral Arg. 48. The Web site now says that "The Citizens Clean Elections Act was passed by the people of Arizona in 1998 to restore citizen participation and confidence in our political system."

intrusion by the government into the debate over who should govern goes to the heart of First Amendment values.

"Leveling the playing field" can sound like a good thing. But in a democracy, campaigning for office is not a game. It is a critically important form of speech. The First Amendment embodies our choice as a Nation that, when it comes to such speech, the guiding principle is freedom—the "unfettered interchange of ideas"—not whatever the State may view as fair. *Buckley*, *supra*, at 14 (internal quotation marks omitted).

2

As already noted, the State and the Clean Elections Institute disavow any interest in "leveling the playing field." They instead assert that the "Equal funding of candidates" provision, Ariz. Rev. Stat. Ann. §16–952 (West Supp. 2010), serves the State's compelling interest in combating corruption and the appearance of corruption. See, *e.g., Davis*, *supra*, at 740; *Wisconsin Right to Life*, 551 U. S., at 478–479 (opinion of ROBERTS, C. J.). But even if the ultimate objective of the matching funds provision is to combat corruption—and not "level the playing field"—the burdens that the matching funds provision imposes on protected political speech are not justified.

Burdening a candidate's expenditure of his own funds on his own campaign does not further the State's anticorruption interest. Indeed, we have said that "reliance on personal funds *reduces* the threat of corruption" and that "discouraging [the] use of personal funds[] disserves the anticorruption interest." *Davis*, *supra*, at 740–741. That is because "the use of personal funds reduces the candidate's dependence on outside contributions and thereby counteracts the coercive pressures and attendant risks of abuse" of money in politics. *Buckley*, *supra*, at 53. The matching funds provision counts a candidate's expendi-

tures of his own money on his own campaign as contributions, and to that extent cannot be supported by any anticorruption interest.

We have also held that "independent expenditures . . . do not give rise to corruption or the appearance of corruption." *Citizens United*, 558 U. S., at ___ (slip op., at 42). "By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate." *Id.,* at ___ (slip op., at 44). The candidate-funding circuit is broken. The separation between candidates and independent expenditure groups negates the possibility that independent expenditures will result in the sort of *quid pro quo* corruption with which our case law is concerned. See *id.,* at ___–___ (slip op., at 42–45); cf. *Buckley*, 424 U. S., at 46. Including independent expenditures in the matching funds provision cannot be supported by any anticorruption interest.

We have observed in the past that "[t]he interest in alleviating the corrupting influence of large contributions is served by . . . contribution limitations." *Id.*, at 55. Arizona already has some of the most austere contribution limits in the United States. See *Randall* v. *Sorrell*, 548 U. S. 230, 250–251 (2006) (plurality opinion). Contributions to statewide candidates are limited to $840 per contributor per election cycle and contributions to legislative candidates are limited to $410 per contributor per election cycle. See Ariz. Rev. Stat. Ann. §§16–905(A)(1), 941(B)(1); Ariz. Dept. of State, Office of the Secretary of State, 2009–2010 Contribution Limits, see *supra*, at 4. Arizona also has stringent fundraising disclosure requirements. In the face of such ascetic contribution limits, strict disclosure requirements, and the general availability of public funding, it is hard to imagine what marginal corruption deterrence could be generated by the matching funds provision.

Perhaps recognizing that the burdens the matching

funds provision places on speech cannot be justified in and of themselves, either as a means of leveling the playing field or directly fighting corruption, the State and the Clean Elections Institute offer another argument: They contend that the provision indirectly serves the anticorruption interest, by ensuring that enough candidates participate in the State's public funding system, which in turn helps combat corruption.[11] See Brief for State Respondents 46–47; Brief for Respondent Clean Elections Institute 47–49. We have said that a voluntary system of "public financing as a means of eliminating the improper influence of large private contributions furthers a significant governmental interest." *Buckley*, *supra,* at 96. But the fact that burdening constitutionally protected speech might indirectly serve the State's anticorruption interest, by encouraging candidates to take public financing, does not establish the constitutionality of the matching funds provision.

We have explained that the matching funds provision substantially burdens the speech of privately financed candidates and independent groups. It does so to an even greater extent than the law we invalidated in *Davis*. We have explained that those burdens cannot be justified by a desire to "level the playing field." We have also explained that much of the speech burdened by the matching funds provision does not, under our precedents, pose a danger of corruption. In light of the foregoing analysis, the fact that the State may feel that the matching funds provision is

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[11] The State claims that the Citizens Clean Elections Act was passed in response to rampant corruption in Arizona politics—elected officials "literally taking duffle bags full of cash in exchange for sponsoring legislation." Brief for State Respondents 45. That may be. But, as the candidates and independent expenditure groups point out, the corruption that plagued Arizona politics is largely unaddressed by the matching funds regime. AFEC Brief 11, n. 4. Public financing does nothing to prevent politicians from accepting bribes in exchange for their votes.

necessary to allow it to "find[] the sweet-spot" and "fine-tun[e]" its public funding system, *post*, at 26 (KAGAN, J., dissenting), to achieve its desired level of participation without an undue drain on public resources, is not a sufficient justification for the burden.

The flaw in the State's argument is apparent in what its reasoning would allow. By the State's logic it could grant a publicly funded candidate five dollars in matching funds for every dollar his privately financed opponent spent, or force candidates who wish to run on private funds to pay a $10,000 fine in order to encourage participation in the public funding regime. Such measures might well promote participation in public financing, but would clearly suppress or unacceptably alter political speech. How the State chooses to encourage participation in its public funding system matters, and we have never held that a State may burden political speech—to the extent the matching funds provision does—to ensure adequate participation in a public funding system. Here the State's chosen method is unduly burdensome and not sufficiently justified to survive First Amendment scrutiny.

III

We do not today call into question the wisdom of public financing as a means of funding political candidacy. That is not our business. But determining whether laws governing campaign finance violate the First Amendment is very much our business. In carrying out that responsibility over the past 35 years, we have upheld some restrictions on speech and struck down others. See, *e.g., Buckley*, *supra,* at 35–38, 51–54 (upholding contribution limits and striking down expenditure limits); *Colorado I*, 518 U. S., at 608 (opinion of BREYER, J.) (invalidating ban on independent expenditures for electioneering communication); *Colorado II*, 533 U. S., at 437 (upholding caps on coordinated party expenditures); *Davis*, 554 U. S., at 736 (in-

validating asymmetrical contribution limits triggered by candidate spending).

We have said that governments "may engage in public financing of election campaigns" and that doing so can further "significant governmental interest[s]," such as the state interest in preventing corruption. *Buckley*, 424 U. S., at 57, n. 65, 92–93, 96. But the goal of creating a viable public financing scheme can only be pursued in a manner consistent with the First Amendment. The dissent criticizes the Court for standing in the way of what the people of Arizona want. *Post*, at 2–3, 31–32. But the whole point of the First Amendment is to protect speakers against unjustified government restrictions on speech, even when those restrictions reflect the will of the majority. When it comes to protected speech, the speaker is sovereign.

Arizona's program gives money to a candidate in direct response to the campaign speech of an opposing candidate or an independent group. It does this when the opposing candidate has chosen not to accept public financing, and has engaged in political speech above a level set by the State. The professed purpose of the state law is to cause a sufficient number of candidates to sign up for public financing, see *post*, at 5, which subjects them to the various restrictions on speech that go along with that program. This goes too far; Arizona's matching funds provision substantially burdens the speech of privately financed candidates and independent expenditure groups without serving a compelling state interest.

"[T]here is practically universal agreement that a major purpose of" the First Amendment "was to protect the free discussion of governmental affairs," "includ[ing] discussions of candidates." *Buckley*, 424 U. S., at 14 (internal quotation marks omitted; second alteration in original). That agreement "reflects our 'profound national commitment to the principle that debate on public issues should

be uninhibited, robust, and wide-open.'" *Ibid.* (quoting *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 270 (1964)). True when we said it and true today. Laws like Arizona's matching funds provision that inhibit robust and wide-open political debate without sufficient justification cannot stand.

The judgment of the Court of Appeals for the Ninth Circuit is reversed.

It is so ordered.