Syllabus

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SUPREME COURT OF THE UNITED STATES

Syllabus

ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC ET AL. *v.* BENNETT, SECRETARY OF STATE OF ARIZONA, ET AL.

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

No. 10–238. Argued March 28, 2011—Decided June 27, 2011*

The Arizona Citizens Clean Elections Act created a public financing system to fund the primary and general election campaigns of candidates for state office. Candidates who opt to participate, and who accept certain campaign restrictions and obligations, are granted an initial outlay of public funds to conduct their campaign. They are also granted additional matching funds if 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 publicly financed candidate's initial state allotment. Once matching funds are triggered, a publicly financed candidate receives roughly one dollar for every dollar raised or spent by the privately financed candidate—including any money of his own that a privately financed candidate spends on his campaign—and for every dollar spent by independent groups that support the privately financed candidate. When there are multiple publicly financed candidates in a race, each one receives matching funds as a result of the spending of privately financed candidates and independent expenditure groups. Matching funds top out at two times the initial grant to the publicly financed candidate.

Petitioners, past and future Arizona candidates and two independent expenditure groups that spend money to support and oppose Arizona candidates, challenged the constitutionality of the matching

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*Together with No. 10–239, *McComish et al.* v. *Bennett, Secretary of State of Arizona, et al.,* also on certiorari to the same court.

funds provision, arguing that it unconstitutionally penalizes their speech and burdens their ability to fully exercise their First Amendment rights. The District Court entered a permanent injunction against the enforcement of the matching funds provision. The Ninth Circuit reversed, concluding that the provision imposed only a minimal burden and that the burden was justified by Arizona's interest in reducing *quid pro quo* political corruption.

Held: Arizona's matching funds scheme substantially burdens political speech and is not sufficiently justified by a compelling interest to survive First Amendment scrutiny. Pp. 8–30.

(a) The matching funds provision imposes a substantial burden on the speech of privately financed candidates and independent expenditure groups. Pp. 8–22.

(1) Petitioners contend that their political speech is substantially burdened in the same way that speech was burdened by the so-called "Millionaire's Amendment" of the Bipartisan Campaign Reform Act of 2002, which was invalidated in *Davis* v. *Federal Election Comm'n*, 554 U. S. 724. That law—which permitted the opponent of a candidate who spent over $350,000 of his personal funds to collect triple the normal contribution amount, while the candidate who spent the personal funds remained subject to the original contribution cap—unconstitutionally 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. This "unprecedented penalty" "impose[d] a substantial burden on the exercise of the First Amendment right to use personal funds for campaign speech" that was not justified by a compelling government interest. *Id.*, at 739–740. Pp. 8–10.

(2) The logic of *Davis* largely controls here. Once a privately financed candidate has raised or spent more than the State's initial grant to a publicly financed candidate, each personal dollar the privately financed candidate spends results in an award of almost one additional dollar to his opponent. The privately financed candidate must "shoulder a special and potentially significant burden" when choosing to exercise his First Amendment right to spend funds on his own candidacy. 554 U. S., at 739. If the law at issue in *Davis* imposed a burden on candidate speech, the Arizona law unquestionably does so as well.

The differences between the matching funds provision and the law struck down in *Davis* make the Arizona law *more* constitutionally problematic, not less. First, the penalty in *Davis* consisted of raising the contribution limits for one candidate, who would still have to raise the additional funds. Here, the direct and automatic release of public money to a publicly financed candidate imposes a far heavier

burden. Second, in elections where there are multiple publicly financed candidates—a frequent occurrence in Arizona—the matching funds provision can create a multiplier effect. Each dollar spent by the privately funded candidate results in an additional dollar of funding to each of that candidate's publicly financed opponents. Third, unlike the law in *Davis*, all of this is to some extent out of the privately financed candidate's hands. Spending by independent expenditure groups to promote a privately financed candidate's election triggers matching funds, regardless whether such support is welcome or helpful. Those funds go directly to the publicly funded candidate to use as he sees 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.

The burdens that matching funds impose on independent expenditure groups are akin to those imposed on the privately financed candidates themselves. The more money spent on behalf of a privately financed candidate or in opposition to a publicly funded candidate, the more money the publicly funded candidate receives from the State. The effect of a dollar spent on election speech is a guaranteed financial payout to the publicly funded candidate the group opposes, and spending one dollar can result in the flow of dollars to multiple candidates. In some ways, the burdens imposed on independent groups by matching funds are more severe than the burdens imposed on privately financed candidates. Independent groups, of course, are not eligible for public financing. As a result, those groups can only avoid matching funds by changing their message or choosing not to speak altogether. Presenting independent expenditure groups with such a choice—trigger matching funds, change your message, or do not speak—makes the matching funds provision particularly burdensome to those groups and 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. Pp. 10–14.

(3) The arguments of Arizona, the Clean Elections Institute, and *amicus* United States attempting to explain away the existence or significance of any burden imposed by matching funds are unpersuasive.

Arizona correctly points out that its law is different from the law invalidated in *Davis,* but there is no doubt that the burden on speech is significantly greater here than in *Davis.* Arizona argues that the provision actually creates more speech. But even if that were the case, only the speech of publicly financed candidates is increased by

the state law. And burdening the speech of some—here privately financed candidates and independent expenditure groups—to increase the speech of others is a concept "wholly foreign to the First Amendment," *Buckley* v. *Valeo*, 424 U. S. 1, 48–49; cf. *Miami Herald Publishing Co.* v. *Tornillo*, 418 U. S. 241, 244, 258. That no candidate or group is forced to express a particular message does not mean that the matching funds provision does not burden their speech, especially since the direct result of that speech is a state-provided monetary subsidy to a political rival. And precedents upholding government subsidies against First Amendment challenge provide no support for matching funds; none of the subsidies at issue in those cases were granted in response to the speech of another.

The burden on privately financed candidates and independent expenditure groups also cannot be analogized to the burden placed on speakers by the disclosure and disclaimer requirements upheld in *Citizens United* v. *Federal Election Comm'n*, 558 U. S. ___. 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 burden imposed by the matching funds provision is evident and inherent in the choice that confronts privately financed candidates and independent expenditure groups. Indeed every court to have considered the question after *Davis* has concluded that a candidate or independent group might not spend money if the direct result of that spending is additional funding to political adversaries. Arizona is correct that the candidates do not complain that providing a lump sum payment equivalent to the maximum state financing that a candidate could obtain through matching funds would be impermissible. But it is not the amount of funding that the State provides that is constitutionally problematic. 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. Pp. 14–22.

(b) Arizona's matching funds provision is not " 'justified by a compelling state interest,' " *Davis*, *supra,* at 740. Pp. 22–28.

(1) There is ample support for the argument that the purpose of the matching funds provision is to "level the playing field" in terms of candidate resources. The clearest evidence is that the provision operates to ensure that campaign funding is equal, up to three times the initial public funding allotment. The text of the Arizona Act confirms this purpose. The provision setting up the matching funds regime is titled "Equal funding of candidates," Ariz. Rev. Stat. Ann. §16–952; and the Act and regulations refer to the funds as "equalizing funds," *e.g.,* §16–952(C)(4). This Court has 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*, *supra,* at ___, and the burdens imposed by matching funds cannot be justified by the pursuit of such an interest. Pp. 22–25.

(2) Even if the 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, "reliance on personal funds *reduces* the threat of corruption." *Davis*, *supra*, at 740–741; see *Buckley*, *supra*, at 53. The burden on independent expenditures also cannot be supported by the anticorruption interest. Such expenditures are "political speech . . . not coordinated with a candidate." *Citizens United*, 558 U. S., at ___. That separation negates the possibility that the expenditures will result in the sort of *quid pro quo* corruption with which this Court's case law is concerned. See *e.g., id.,* at ___–___. Moreover, "[t]he interest in alleviating the corrupting influence of large contributions is served by . . . contribution limitations." *Buckley, supra,* at 55. Given Arizona's contribution limits, some of the most austere in the Nation, its 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.

The State and the Clean Elections Institute contend that even if the matching funds provision does not directly serve the anticorruption interest, it indirectly does so by ensuring that enough candidates participate in the State's public funding system, which in turn helps combat corruption. 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. The matching funds provision substantially burdens speech, to an even greater extent than the law invalidated in *Davis*. Those burdens cannot be justified by a desire to "level the playing field," and much of the speech burdened by the matching funds provision does not pose a danger of corruption. The fact that the State may feel that the matching funds provision is necessary to allow it to calibrate its public funding system 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 award publicly financed

candidates five dollars for every dollar spent by a privately financed candidate, 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 such participation, but would clearly suppress or unacceptably alter political speech. How the State chooses to encourage participation in its public funding system matters, and the Court has 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. Pp. 25–28.

(c) Evaluating the wisdom of public financing as a means of funding political candidacy is not the Court's business. But determining whether laws governing campaign finance violate the First Amendment is. The government "may engage in public financing of election campaigns," and doing so can further "significant governmental interest[s]." *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. 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. 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. Pp. 28–30.

611 F. 3d 510, reversed.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. KAGAN, J., filed a dissenting opinion, in which GINSBURG, BREYER, and SOTOMAYOR, JJ., joined.