Nos. 10-238 and 10-239

In The
Supreme Court of the United States

ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, et al.,

Petitioners,

v.

KEN BENNETT, et al.,

Respondents.

JOHN McCOMISH, et al.,

Petitioners,

v.

KEN BENNETT, et al.,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF SELF-FINANCING CANDIDATES CONGRESSMAN BILL FOSTER (RET.), CONGRESSMAN ALAN GRAYSON (RET.), CONGRESSMAN STEVE KAGEN (RET.), GOVERNOR ANGUS KING (RET.), NED LAMONT, CONGRESSMAN WALT MINNICK (RET.), CONGRESSMAN JARED POLIS, AND CONGRESSMAN JOHN YARMUTH AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI*

Amici are current and former Members of the United States Congress, a former Governor, and a former candidate for Senator and Governor, all of whom have at some time funded their own campaigns in significant part. *Amici* believe that a robust public financing system is vital for democracy, so that candidates' dependence on private funders does not render government beholden to those with the deepest pockets, so that a variety of voices may be heard by the public, and so that public service and participation in public debate do not become inaccessible for all but a privileged few. *Amici* range from individuals able to spend millions in a campaign to others able to self-fund only at relatively moderate levels. One *amicus* oversaw as Governor the implementation of a public financing system similar to the one challenged in Arizona. Another *amicus* triggered matching funds to opponents through his spending under a system like Arizona's; five *amici* triggered the asymmetrical contribution limits of the Millionaire's Amendment, before it was struck down. None was ever deterred in any measure from broadcasting his own speech by concern that his spending would increase the resources of his opponents.[1]

Congressman Bill Foster, a prize-winning research physicist and entrepreneur, represented

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[1] No counsel for a party authored this brief in whole or in part, and no person, other than amici and their counsel, made a monetary contribution to the preparation or submission of this brief. All parties have granted blanket consents to the filing of *amicus* briefs.

Illinois' 14th District in the U.S. House of Representatives from 2008 to 2011. He won office in a special election in March 2008, following a narrow primary victory in February, and was handily re-elected in November in a race attracting almost $2 million in outside expenditures. Congressman Foster contributed significantly to both his 2008 campaigns. His spending in the special election triggered the "Millionaire's Amendment," then still in effect, allowing his opponent to accept contributions up to triple the ordinary limit. His political spending was not deterred to any extent.

Congressman Alan Grayson represented Florida's 8th District in the House of Representatives from 2009 to 2011. He ran for the Democratic nomination for the same seat in 2006, contributing over $600,000 to his own campaign, triggering the Millionaire's Amendment, then in effect, without being deterred. After financing 80% of his own 2008 campaign, in 2010 he raised more funds from individual contributors than any other Democratic House candidate. Congressman Grayson is a distinguished attorney, and was the first president of a telecommunications company now among the Fortune 1000.

Congressman Steve Kagen, a prominent physician specializing in allergies, represented Wisconsin's 8th District in the House of Representatives from 2007 to 2011, championing transparency in government and in health care costs. Dr. Kagen contributed over $2 million to his 2006 election campaign. He was not deterred by the "Millionaire's Amendment" then in effect, which was

triggered by self-funding of over $350,000. Approximately $1.5 million was spent by outside groups in each of his races.

Governor Angus King, an attorney, alternative energy entrepreneur, and former television host, was elected as an Independent to two terms as Governor of Maine, one of only two governors in the nation at that time not affiliated with either major party. First elected in 1994 in a hotly contested four-way election, he won re-election in a landslide in 1998. Governor King contributed significantly to both his campaigns, funding slightly over 50% of the first. Maine's Clean Elections Act, which is very similar to Arizona's, including a matching provision similar to the one challenged here, was passed by referendum during his first term, going into effect during his second. Governor King initially had some concerns about taxpayer-funded public financing. However, having had a close-up view of its effectiveness, and having seen no chilling effect on political speech, he has come to believe that it is one of the most important ways to protect democracy from the power of special interests.

Ned Lamont, a successful telecommunications entrepreneur and executive, was the Democratic nominee for Senator from Connecticut in 2006, after upsetting the incumbent in a nationally watched primary election. Mr. Lamont ran for Governor of Connecticut in 2010, losing in a hotly contested primary to the eventual general election winner. Mr. Lamont's contributions to his 2010 gubernatorial campaign triggered the maximum available

matching public funds to his opponent (doubling the base grant) under the matching provision of Connecticut's Citizens Election Program, which works similarly to Arizona's. In 2006 his contributions to his Senate campaign triggered higher contribution limits for opponents under the Millionaire's Amendment. His principal opponent consequently raised over $20 million. In neither race was Mr. Lamont's spending deterred by the prospect of triggering increased funding for his opponent.

Congressman Walt Minnick represented Idaho's First District in the House of Representatives from 2009 to 2011. His voting record was labeled the most independent in Congress by the Washington Post. He served in the Nixon White House in the early 1970s, and later became a prominent leader of forestry and nursery businesses in Idaho. In 2008 Congressman Minnick contributed about $900,000 to his campaign, and raised twice that from other sources. He ran for Senate in 1996, and contributed a similar sum.

Congressman Jared Polis represents Colorado's Second District in the House of Representatives. A successful entrepreneur and philanthropist, Congressman Polis was first elected to Congress in 2008, after a closely contested three-way primary election. He previously served on the Colorado State Board of Education, defeating an incumbent in one of the closest elections in Colorado history. He has long been active in working to ensure integrity in government, having served as Co-Chair of Coloradans for Clean Government and

championed a state measure to ban gifts from lobbyists to government officials.

Congressman John Yarmuth is a third-term Member of Congress, representing Kentucky's Third District. A respected businessman and publisher, Congressman Yarmuth was first elected to Congress in 2006, after winning a three-way primary election and then defeating a five-term incumbent. In the 2006 primary and general elections, he contributed more than $700,000 to his campaign, undeterred by triggering the Millionaire's Amendment, and raised more than $1.5 million in private contributions. His general election opponent spent nearly $3.5 million. Since his election, Congressman Yarmuth has donated his post-tax congressional salary to various charities every year.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has long recognized that the increasing centrality of fundraising to an ever more expensive campaign system creates expanded opportunities for political corruption. *Buckley v. Valeo*, 424 U.S. 1, 26-27 (1976). The real or apparent indebtedness of elected leaders to those who have funded their campaigns fosters mistrust of government and the political process. *Id.* at 27. The Arizona Citizens Clean Elections Act, Ariz. Rev. Stat. §§ 16-940 *et seq.* [CCEA] serves to lessen the incentives for – and public perceptions of – political corruption, by offering candidates a viable alternative to dependence on private funding. *See Buckley*, 424 U.S. at 96 ("public financing as a means

of eliminating the improper influence of large private contributions furthers a significant governmental interest").

The provision challenged in this case, Ariz. Rev. Stat. § 16-952, which offers additional matching funding to publicly financed candidates when their opponents exceed designated spending or funding thresholds, is simply a further refinement of the public financing approach to addressing corruption. The fund-matching provision strikes a balance between, on the one hand, the political and fiscal reality that the funds available for public financing are not limitless and, on the other, the importance of minimizing the possibility that the speech of a publicly financed candidate will effectively be drowned out by that of an opponent with far greater resources. That possibility would otherwise be likely to deter many candidates from participating in the public financing system, thereby thwarting its purpose of lessening corruption and the appearance of corruption.

The fund-matching provision achieves this balance in a manner that promotes the First Amendment values of vigorous debate, without infringing the First Amendment rights of any individual or of the public. The increasing expense of the traditional campaign system, besides increasing opportunities for corruption, makes it harder for multiple perspectives to be heard. The fund-matching provision makes it possible for a variety of voices to be heard, thereby contributing to that robust exchange of ideas about issues of public

concern which the First Amendment was intended to protect.

The matching provision helps to promote wide-ranging public debate without violating the stricture that the government may not "restrict the speech of some elements of our society in order to enhance the relative voice of others." *Buckley v. Valeo*, 424 U.S. at 48-49. Rather than restricting any speech, the provision hews to the guidance of this Court that in cases where one-sided speech may be problematic, the constitutionally preferred remedy is "more speech, not less." *Citizens United v. Fed'l Elections Comm'n*, 130 S.Ct. 876, 911 (2010). It enables more speech without compelling any speech, and without favoring any content, viewpoint, or speaker.

Above all, the CCEA accomplishes its salutary purposes without chilling any speech. *Amici* can attest from their own experience to the robustness of political speech. Candidates are principally focused on getting their message out, to the exclusion of other concerns. And because it is critical for them to do so *before* their opponents can define the issues or the candidates, it would not make sense for them to refrain from or postpone broadcasting their message in order to make it harder for their opponents to respond later.

In any event, a candidate's decision to abstain from or postpone some campaign spending for tactical advantage does not resemble anything recognized by this Court as a "chill" on speech. An examination of this Court's decisions makes clear

that it is the threat of coercive non-speech retaliation that gives rise to a "chilling effect." The Arizona statute, by contrast, presents no danger of government or private reprisals, of legal or financial repercussions, or of any other sort of consequence that would remove the electoral contest from the sphere of debating ideas to the sphere of non-speech retaliation. The threat of rebuttal by another speaker (that is, of provoking more speech) is not the sort of consequence that chills speech in the Constitutional sense. While a candidate in a contested election may prefer that opposing views not be heard, that is not an interest protected by the First Amendment.

Finally, Arizona's matching provision is materially different from the so-called "Millionaire's Amendment" to the federal Bipartisan Campaign Reform Act of 2002, struck down by this Court in *Davis v. Fed'l Election Comm'n*, 554 U.S. 724 (2008). The Arizona statute is not subject to the strict scrutiny triggered by the Millionaire's Amendment, because it does not discriminate among similarly situated candidates or among members of the public who might wish to contribute to political campaigns. The Arizona statute is better situated to withstand the appropriate level of scrutiny, because it acts to lessen the danger of political corruption and the perception of corruption, interests repeatedly recognized by this Court as important, indeed compelling. And it does so in full concordance with the First Amendment.

ARGUMENT

I. THE ARIZONA STATUTE EMPLOYS CONSTITUTIONALLY PERMISSIBLE MEANS TO ENHANCE THE FREE EXCHANGE OF IDEAS.

By enhancing the public's ability to be informed by debate among a variety of speakers representing a variety of viewpoints, the CCEA in general, and the matching provision in particular, serve the purposes of the First Amendment. Unlike measures found unconstitutional by this Court, they do so without restricting any speech and without compelling any speakers to disseminate speech to which they are opposed.

A. The Exposure Of The Public To Various Points Of View Is A Primary First Amendment Value.

The premise of the First Amendment is that genuine democratic self-governance depends on an informed public exposed to various perspectives. By providing public financing to candidates who might otherwise have difficulty raising sufficient funds to mount a campaign, the CCEA makes it possible for a variety of voices to be heard. The matching provision makes an important contribution to the goal of wide-ranging debate, not only because the CCEA would promote debate less effectively if candidates did not participate for fear of being drastically outspent by their opponents, but also because debate is impeded when a few voices are able to drown out others.

The democratic promise of government by the people depends on vigorous debate. In a system of "political self-government," voters "must know what they are voting about. And this, in turn, requires that so far as time allows, all facts and interests relevant … shall be fully and fairly presented.… That is why freedom of discussion … may not be abridged." Alexander Meiklejohn, *Free Speech and Its Relation to Self-Government*, *in* Political Freedom 26 (1965). The First Amendment reflects this understanding. Because "[d]emocracy depends on a well-informed electorate," *Buckley*, 424 U.S. at 49, "[d]iscussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution." *Id.* at 14. *See also Rosenbloom v. Metromedia*, 403 U.S. 29, 41 (1971) (self-governance presupposes knowledge and debate). The First Amendment protects "such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens." *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936). The CCEA promotes just such "free and general discussion of public matters."

Underlying the foregoing understanding of the relation between democracy and free debate is the premise, championed famously by John Stuart Mill, that truth is most likely to emerge from vigorous debate. Mill, *On Liberty*, 86-120 (David Bromwich *et al.* eds. 2003). The First Amendment is based on this understanding. The "theory of our Constitution" is "that the best test of truth is the power of the thought to get itself accepted in the competition of

the market." *Abrams v. United States*, 250 U.S. 616, 630 (1919). "It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." *Red Lion Broad. Co. v. Fed'l Communications Comm'n*, 395 U.S. 367, 390 (1969). The First Amendment serves "to insure the ascertainment and publication of the truth about public affairs." *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968) (in context of political campaign publications). Freedom of discussion is "indispensable to the discovery and spread of political truth." *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring).

But for truth to emerge from debate it is important that a wide variety of voices be heard. "[O]nly through diversity of opinion is there … a chance of fair play to all sides of the truth." Mill, *supra*, at 90. This tenet too informs the First Amendment. "The First Amendment … presupposes that right conclusions are more likely to be gathered out of a multitude of tongues." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). *See also Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 151 (1967) (First Amendment protects "the stimulating benefit of varied ideas"); *Associated Press v. United States*, 326 U.S. 1, 20 (1945) (the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public"). For this reason, "A primary First Amendment policy has been to foster the widest possible debate … on matters of public importance." *Banzhaf v. Fed'l Communications Comm'n*, 405 F.2d 1082, 1102 (D.C. Cir. 1968) (Bazelon, J.). By providing funds for any

qualifying candidate to disseminate his views, the CCEA allows wider ranging political debate among a greater variety of voices than if effective political participation were limited to those who could afford to broadcast their views with private funds alone.

Most crucially, the public funding provided by the CCEA and the matching provision allow a variety of voices not only to speak, but also to be heard. For self-government, "the point of ultimate interest is … the minds of the hearers." Meiklejohn, *supra,* at 26. "It is the right of the public to receive suitable access to … political … and other ideas … which is crucial." *Red Lion*, 395 U.S. at 390 (discussing broadcast media). The "right to receive information and ideas … is fundamental to our free society." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969). Speech is protected for "its capacity for informing the public." *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 777 (1978).

The CCEA's matching provision not only makes Arizona's public financing system more inviting to candidates who might otherwise be deterred by the prospect of being drastically outspent, the matching provision itself makes a contribution to the goals undergirding the First Amendment. Vigorous debate among various viewpoints may actually be impeded when one voice is able to drown out others. This point has been recognized with respect to speech by the government itself. *See Warner Cable Communications v. Niceville*, 911 F.2d 634, 638 (11th Cir. 1990) ("the government may not speak so loudly as to make it impossible for other speakers to be heard by their

audience"); *accord R.J. Reynolds Tobacco Co. v Shewry*, 423 F.3d 906, 923 (9th Cir. 2005); *AMSAT Cable v. Cablevision Ltd. P'ship*, 6 F.3d 867, 872 (2d Cir. 1993).

In an age in which citizens get most of their information from expensive broadcast media, "a debate in which only one party has the financial resources … to purchase sustained access to the mass communications media is not a fair test of either an argument's truth or its innate popular appeal." *Banzhaf*, 405 F.2d at 1102. "[T]he public interest in providing access to the marketplace of 'ideas and experiences' would scarcely be served by a system … heavily weighted in favor of …those with access to wealth." *Columbia Broad Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94, 123 (1973). *See also id.* at 196 (Brennan, J., dissenting) ("in light of the current dominance of the electronic media as the most effective means of reaching the public," if only a few individuals can afford to broadcast their messages, this "renders even the concept of 'full and free discussion' practically meaningless").

The CCEA's matching provision makes "a significant contribution to freedom of expression by enhancing the ability of candidates to present, and the public to receive, information necessary for the effective operation of the democratic process." *CBS, Inc. v. Fed'l Communications Comm'n*, 453 U.S. 367, 396 (1981). By furthering the public's interest in being exposed to all sides of public debate, it helps to "ensure that competition among actors in the political arena is truly competition among ideas," *Fed'l Elections Comm'n v. Mass. Citizens for Life*,

479 U.S. 238, 259 (1986), rather than a melee in which "success … may go to the advocate who can shout loudest or most often." *Banzhaf*, 405 F.2d at 1102.

Petitioners view "the context of competitive electoral politics" as a zero-sum game, "in which one candidate's gain is another's loss." (McComish Petitioners' Merits Brief [McComish Br.] 57.) That description betrays a blinkered perspective that fails to consider "a primary First Amendment policy," *Banzhaf*, 405 F.2d at 1102: the public interest in a debate in which a variety of views may be heard.

B. The Arizona Statute Promotes The Public's Interest In Debate Among Multiple Viewpoints Through the Constitutionally Preferred Means Of "More Speech, Not Less."

Unlike constitutionally problematic efforts to foster increased public exposure to varied viewpoints, Arizona's approach recognizes that, even in service of that essential goal, government may not "restrict the speech of some elements of our society in order to enhance the relative voice of others." *Buckley*, 424 U.S. at 48-49.[2] Far from restricting or constraining any speech, the Arizona statute is crafted with an eye to the principle that "it is our law

[2] *But see* Meiklejohn, *supra*, at 24-26 (comparing free speech in democratic society to discussion at town meeting, whose rules regulate speech to make possible effective discussion, by allowing different views to be heard).

and our tradition that more speech, not less, is the governing rule." *Citizens United*, 130 S. Ct. at 911.

For many decades, when speech of some sort has been deemed problematic, this Court has counseled that "the remedy to be applied is more speech, not enforced silence." *Whitney*, 274 U.S. at 377 (Brandeis, J., concurring). Since Justice Brandeis first proposed this principle in the context of advocacy of violent revolution, it has been applied in striking down restrictions seeking to avert a variety of anticipated harms. *See Brown v. Hartlage*, 456 U.S. 45, 61 (1982) ("In a political campaign, a candidate's factual blunder is unlikely to escape … notice … and correction…. The preferred First Amendment remedy of 'more speech, not enforced silence' thus has special force"); *Rosenbloom v. Metromedia*, 403 U.S. 29, 47 (1971) (plurality opinion) (when liability for defamation might impede vigorous discussion, "the solution lies in the direction of ensuring [citizens'] ability to respond, rather than in stifling public discussion of matters of public concern"). *See also Texas v. Johnson*, 491 U.S. 397, 419 (1989) ("the way to preserve the flag's special role" is not to prohibit flag burning, but "to persuade [flag burners] that they are wrong"). The CCEA promotes wide-ranging debate precisely by funding "more speech," rather than by legislating "enforced silence."

When this Court has struck down limitations on speech as more extensive than necessary, it has often suggested more speech, representing a different point of view, as a less speech-restrictive remedy to the perceived problem. *See 44 Liquormart*

v. Rhode Island, 517 U.S. 484, 507 (1996) (plurality opinion) (instead of banning price advertising for alcohol, state could achieve "goal of promoting temperance" through "educational campaigns focused on the problems of … drinking"); *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 586 (2001) (Thomas, J., concurring) (instead of limiting tobacco advertising unduly, state "could seek to counteract that message with 'more speech'"). *See also Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557, 571 (1980) (instead of banning promotional advertising by electric utility, state could "further its policy of conservation" by "for example, requir[ing] that the advertisements include information about the relative efficiency and expense of the offered service"). More speech, rather than enforced silence, has likewise often been held to be the constitutionally preferred remedy for potentially misleading speech. *See Meese v. Keene*, 481 U.S. 465, 481 (1987) ("the best remedy for misleading or inaccurate speech contained within materials [labeled 'political propaganda'] is fair, truthful, and accurate speech"); *Bates v. State Bar,* 433 U.S. 350, 375 (1977) ("the preferred remedy [for potentially misleading speech] is more disclosure, rather than less").

The challenged provision of Arizona's Clean Elections Act accords with this directive. The state faced serious concerns about the potential for political corruption if candidates were deterred from participating in the public financing system for fear of being drowned out by their opponents' spending. It addressed those concerns without restricting any speech, but through the constitutionally preferred

remedy of "more speech." The state does not advocate any particular position on any issue, and does not weight the scales for or against the speech of any candidate. Thus, Arizona's remedy is an appropriate application of foundational First Amendment doctrine.

Thirty-five years ago this Court found that a federal public financing system was "a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people." *Buckley*, 424 U.S. at 92-93. Neither the matching funds trigger nor the passage of time has called that conclusion into question.

C. The Statute Enhances Debate Without Compelling Speech.

The matching provision of Arizona's public financing system does not compel speech any more than it suppresses it. To the contrary, in every way it respects the "individual freedom of mind" protected by the First Amendment. *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943).[3]

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[3] Besides violating the rights of the compelled individual, compelled speech does not further society's interest in open debate. It tends, rather, to inhibit it, both by preventing the speaker from presenting his actual views, and because viewpoints are fairly represented only when presented by "persons who actually believe in them; who defend them in earnest." Mill, *supra*, at 104.

Relying on the principle that compelled dissemination of speech one disfavors amounts to compelled speech, *Pacific Gas & Elect. Co. v. Pub. Utils. Comm'n*, 475 U.S. 1 (1986); *Miami Herald Publ. Co. v. Tornillo*, 418 U.S. 241 (1974), Petitioners argue that being required to report spending and fund-raising data, which will trigger matching funds to publicly financed opponents if certain thresholds are surpassed, is comparable to compelled dissemination of opponents' speech. (*E.g.* McComish Br. 54.) "[T]he financial reporting requirements of Arizona's system literally force [candidates] to press a button on their computer that will trigger the payment of subsidies to the very participating candidates they oppose," thereby compelling them "to help disseminate private political speech, which they abhor." (*Id.* at 24.)

The matching provision cannot plausibly be viewed as compelling dissemination of opponents' speech, even accepting Petitioners' questionable assertions that *Pacific Gas* and *Tornillo* govern scenarios not involving the conscription of private property, and that *Tornillo* applies to scenarios not implicating freedom of the press.[4] Essentially, Petitioners' complaint amounts to no more than that a candidate is required to perform an act (financial reporting) that may, if other conditions obtain (he has spent above the threshold, he has a publicly

[4] The Court explained that *Tornillo* was more specifically about "the principle that the State cannot tell a newspaper what it must print," for fear of "dampen[ing] the vigor and limit[ing] the variety of public debate." *Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 88 (1980).

financed opponent), constitute one link in a causal chain leading to matching funds being disbursed to his opponent.

A causal link of this sort cannot be sufficient to constitute dissemination. If it were, any candidate who agrees to participate in a debate in which his opponent gets equal time is voluntarily disseminating his opponent's speech. By Petitioners' reasoning, California's "civil Gideon" statute, providing publicly funded attorneys to low-income defendants in certain civil suits, Cal. Gov. Code § 68651 (operative July 1, 2011), compels plaintiffs in such cases to disseminate speech they oppose, in that it is plaintiffs' action that causes defense counsel's speech to be funded. Or if the Department of Health shuts down – or gives an unfavorable health rating to – a restaurant on the basis of reports the owner is required to file, and the Department publicizes that fact, then, on Petitioners' analysis, the restaurant owner was compelled to disseminate speech he disfavored. Indeed, there is no end to what could be considered compelled dissemination on Petititioners' reasoning. If a socialist worker in Indonesia taps the rubber that is used to manufacture the tires on trucks used to deliver the Wall Street Journal, the worker could complain that as a condition of employment he is compelled to help disseminate speech he abhors. Petitioners' contention that the Clean Elections Act compels high-spending privately funded candidates to disseminate their opponents' speech is no more plausible.

II. THE ARIZONA LAW DOES NOT CHILL SPEECH.

Petitioners' speculation that debate might somehow be chilled by a funding mechanism that makes it possible for more than one candidate to be heard has no support in observable fact, common sense, or the law.

A. Petitioners' First Amendment Concerns Are Based On An Unrealistic View Of Actual Campaign Behavior.

Petitioners' claims that speech is deterred or postponed by fear of triggering matching funds to an opponent, or that Arizona's public financing scheme discriminates against privately funded candidates, reflect a view divorced from the realities of actual campaign behavior.

1. Candidates Do Not Refrain From Speech to Avoid Triggering Matching Funds.

Petitioners' central complaint that candidates' speech is deterred by the prospect of triggering the release of matching funds is unsupported by evidence, and defies basic principles of campaigning for office. As made clear by the Court of Appeals, 611 F.3d 510, 523-24 (9th Cir. 2010), the record does not support any such claims, even with respect to Petitioners themselves. To the contrary, there is ample evidence that concerns about triggering matching funds played no part in Petitioners' strategizing. *Id.* (*See also* Clean Elections Institute Respondents' Merits Brief [Institute Br.] 6-7).

That evidence accords with what a modicum of familiarity with political campaigning would suggest. A candidate's top priority is almost invariably to get his message out. *See* Joseph Napolitan, *Napolitan's Rules: 112 Lessons Learned From a Career in Politics*, *in* Winning Elections 29 (Ronald Faucheux, ed. 2003). Particularly for candidates who are not already well known to voters, spending heavily is not a choice, but a necessity. Ruth Ann Weaver-Lariscy & Spencer Tinkham, *The Influence of Media Expenditure and Allocation Strategies in Congressional Advertising Campaigns*, 16 J. of Advertising No. 3, at 13 (1987). Moreover, according to generally accepted political campaign strategy, it is crucial for a candidate to get his message out first, so that he, and not his opponents, can frame the issues in the race, and define who the candidates are and what they stand for. *See* Denise Baer, *Contemporary Strategy and Agenda Setting, in* Congress and Elections American Style 55 (James Thurber ed. 1995); Joe Garecht, *5 More Secrets for Winning a Political Campaign*, *at* http://www.localvictory.com/strategy/secrets-for-winning-a-political-campaign.html. Consequently, it would be unusual – and likely self-defeating – for a candidate to refrain from spending to get his message out in order to prevent an opponent from getting her message out later.

Privately financed candidates cannot know in advance how much money they will raise. This fact makes it all the more implausible that they might somehow plan to raise the maximum amount possible while remaining just below the fundraising threshold that would trigger matching funding.

Presumably they opted for private financing because they thought doing so would be to their advantage, because they believed either (1) they could raise more funds than the maximum level matched under the CCEA, *see* Ariz. Rev. Stat. § 16-952(E), (2) they would be advantaged by having funds in hand earlier, or (3) they would benefit from a race in which both they and their opponents were able to spend more. It would defeat any of these strategies for privately financed candidates not to maximize their fundraising. And once the funds are in hand, there would be no incentive not to spend them, for raising the money is already enough to trigger the matching funds. § 16-952(B).

In general a candidate would not run for office if she did not believe that her message was superior to that of her opponents, and hence likely more appealing to voters. A candidate who believes this would have no reason to refrain from broadcasting her message in order to prevent her opponent from acquiring the means to broadcast his message to an equal extent.[5]

[5] Ironically, Petitioners argue that "[a]nyone who takes ideas seriously will be chilled by the prospect of being instrumental in funding the dissemination of ideas one opposes." (McComish Br. 41.) But a candidate who takes ideas seriously is precisely one who would not shrink from presenting his ideas simply because the cost was that his opponent could do the same. He would welcome the opportunity to debate.

2. Delayed Spending Is Neither Factually Nor Legally Likely to Constitute Evidence of a Chilling Effect on Speech.

Even less plausible is Petitioners' argument that the speech of privately financed candidates is chilled because the trigger provision allegedly provides an incentive for candidates to *delay* spending. (McComish Br. 36, 42, 56; Arizona Free Enterprise Club's Freedom Club PAC Petitioners' Merits Brief [AFEC Br.] 16-17, 34.) The only incentive for delay alleged by Petitioners is an attempt to thwart the law. Moreover, it is implausible that the law in fact causes candidates to defer spending, and it would not constitute a chilling effect if it did so.

Petitioners assert that the trigger provision causes candidates to delay political activity until close to the election "so that matching funds arrive too late to be used by the publicly financed candidate." (AFEC Br. 16.) This is a remarkable argument. The only incentive alleged for a privately financed candidate to postpone spending is as an effort to circumvent the public financing system, so that opponents will not receive the funds to which they are entitled under law. It is peculiar to regard such efforts to cheat the system as a burden imposed by the system. Even more remarkably, as Petitioners admit, (McComish Br. 36), such manipulations are illegal under the Clean Elections Act. Ariz. Rev. Stat. § 16-958(C) (prohibiting conspiracies to postpone campaign donations in order to postpone reporting that will trigger matching funds to opponents). Petitioners'

argument therefore amounts to a claim that the Clean Elections Act burdens candidates' speech by providing an incentive to defer spending in ways that the Act itself explicitly prohibits. That is not a coherent objection.

In any event, deferring spending to deprive opponents of matching funds would be self-defeating. First, as noted *supra*, *see* sec. II.A.1, it is critical to speak early, in order to define the issues and candidates in a campaign. Second, late spending is unproductive, because many voters will already have voted. In Arizona voting begins 33 days before Election Day,[6] Long Distance Voter, *Early Voting Rules*, *at* http://www.longdistancevoter.org/early_voting_rules#arizona, and many voters avail themselves. For example, of 315,879 total votes cast in Pima County in the 2010 gubernatorial general election, 200,158 ballots were submitted before Election Day. Election Summary Report, Pima County, *at* http://www.pima.gov/elections/results.htm. Consequently, "media needs to be up, and running heavy, when the ballots go out." Gary Nordlinger, *Early Voting: Impact on Campaign Strategies, Training, Budgets*, *in* Winning Elections, *supra*, at 124. Third, late spending is ineffective, because most voters choose their candidates well before Election Day. *Id.* at 122; *see also* Stuart Rothenberg, *Final Stretch Not as Important as You Think*, *available at* http://rothenbergpoliticalreport.com/news/article/final-stretch-not-as-important-as-

[6] Most states now offer early voting. Nat'l Conf. of State Legislatures, *Absentee and Early Voting*, *at* http://www.ncsl.org/default.aspx?tabid=16604.

you-think (2010). In reality, candidates try to spread their media advertising – their greatest expense, Judith Trent & Robert Friedenberg, *Political Campaign Communication* 372 (2008) – over as many weeks as they can afford while achieving a heavy enough media presence to make an impact. Tobe Berkovitz, *Political Media Buying* (1996), *at* http://www.hks.harvard.edu/case/3pt/berkovitz.html.

Even if the matching provision did on occasion affect the timing of a candidate's spending, it would be incorrect to conclude that the state is thereby chilling speech. After all, many decisions concerning when to spend campaign funds are influenced in some way by state action. For example, federal candidates regularly make a big fundraising push shortly before the end of an F.E.C. reporting period, in order to demonstrate momentum. *See* David Leventhal, *January Fund-Raising Mania* , *at* http://www.opensecrets.org/news/2011/01/ceo-1-31-11.html (Jan. 31, 2011). Candidates may avoid advertising on holiday weekends, when voters' attention is likely to be elsewhere; most holidays are scheduled by state action. The state action of allowing early voting influences the scheduling of campaign spending. In fact, Election Day itself is scheduled by the government. By Petitioners' reasoning, the fact that candidates are unlikely to spend heavily too far before Election Day – or for that matter, *after* Election Day – is equally an example of state action chilling political speech. It would be far-fetched to maintain that the scheduling of Election Day (or holidays or a deadline for disclosing funding) exerts a chilling effect on speech. It is equally far-fetched to maintain that the alleged

incentive to delay campaign spending provided by the matching provision exerts a chilling effect.

3. Neither Arizona's Public Financing System as a Whole Nor the Triggered Matching Funds Provision Discriminates Against Privately Financed Candidates.

There is equally little merit to Petitioners' complaints that the matching provision discriminates against privately financed candidates.

There is nothing discriminatory in the application of the Arizona statute to multi-candidate races. Petitioners object to the possibility that one candidate's high spending could trigger additional funds to more than one rival candidate, thereby allegedly weighting the scales unfairly against the high spending candidate. But it is plain that additional funding at an equal level all around does not in itself worsen the odds of any given candidate. In fact, candidates often benefit when voters opposed to them are split between more than one candidate. *See*, *e.g.*, Jon Walker, *NY-23: Dem Owens Catches a Lucky Break – Another Three-Way Race*, *at* http://elections.firedoglake.com/2010/09/23/ny-23-dem-owens-catches-a-lucky-break-another-three-way-race (Sept. 23, 2010). To avert just such a scenario, the national Republican Party refrained from funding the campaign of the Republican nominee in *amicus curiae* Ned Lamont's 2006 Senate race in Connecticut, for fear of splitting the anti-Democratic vote, after Mr. Lamont defeated incumbent Senator Joseph Lieberman in the

primary, and Sen. Lieberman sought re-election as an Independent. Anne Kornblut, *G.O.P. Deserts One of Its Own for Lieberman*, N.Y. Times, Aug. 19, 2006, http://www.nytimes.com/2006/08/19/nyregion/19conn.html.

Nor does the Clean Elections regime discriminate against privately financed candidates when it counts independent expenditures against a publicly financed candidate, as well as opponents' spending, for purposes of calculating matching funds. From the perspective of a candidate, as *amici* can attest, independent advertising against the candidate has the same impact as advertising by an opposing candidate. Given the proportion of election expenditures made by entities other than candidates, *see* GAO, *Campaign Finance Reform: Additional Information*, GAO-10-391SP 45 tbl.42, 47 tbl.44 (2010), *at* http://www.gao.gov/new.items/d10391sp.pdf ($2.2 million in independent expenditures reported in 2008 Arizona legislative elections compared to $2.1 million spent by privately financed candidates), candidates would be less likely to participate in a public financing system that did not provide funds to respond to adverse independent expenditures. The difficulty of verifying that nominally independent expenditures are truly independent only strengthens the case for counting them in the matching funds calculation.[7]

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[7] That difficulty is exacerbated by the lack of transparency surrounding the sources of funding for independent expenditures. *See* Lisa Rosenberg, *Impotent FEC Fails to Act on Disclosure Rules*, *at* http://sunlightfoundation.com/blog/taxonomy/term/

Finally, the obvious rejoinder to all of Petitioners' allegations of disadvantages to privately financed candidates is that many candidates continue to opt for private funding. *See id.* at 5 tbl.2 (51.2 % of Arizona legislative candidates chose private funding in 2000-2008). Candidates would not choose private funding unless they expected to benefit from doing so.

In sum, there is no evidence that the matching provision of the CCEA deters speech, discriminates against privately financed candidates, or in any other way infringes expressive rights.

B. The Fear Of Opposing Speech Does Not Constitute A "Chill" On Speech As That Term Is Understood Under The Constitution.

Even in an imaginary world in which the matching funds trigger provision deterred many privately financed candidates from broadcasting their messages as widely as they otherwise would, this would not constitute a "chilling effect" in the constitutional meaning of that phrase. An examination of the contexts in which this Court has found debate to be chilled reveals that it is non-speech retaliation (or threats or the possibility thereof) which give rise to a "chilling effect."

The crucial distinction is between two qualitatively different ways in which one may seek

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Transparency (Jan. 21, 2011) (only 41% of groups making independent expenditures in 2010 federal elections reported funding sources).

to "defeat" speech with which one disagrees: through persuasion or through coercion. One may seek to persuade by countering the speaker's ideas with other ideas, i.e., through the classic remedy of "more speech." Alternatively, one may take the disagreement out of the realm of words and ideas altogether and into the realm of coercion, through crude violence or, for example, through the possibility of "economic reprisal, loss of employment, threat of physical coercion." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958). It is the latter sort of response that chills debate, directly or incidentally. By contrast, the threat that speech will be responded to with speech in favor of another viewpoint – the only threat posed by the matching provision – does *not* chill debate. To the contrary, such a response *is* debate.

A survey of recognized chilling effects reveals that they all involve some degree of coercion, through the threat of some sort harm in the material world. The following situations have repeatedly been found to chill speech:[8]

[8] Other factors may chill speech insofar as they lead to the listed sorts of outcomes. Requirements to identify the author of a leaflet or to disclose membership lists, for example, may chill speech, or association for speech, when they could plausibly expose the author or member to government or community reprisals. *Talley v. California*, 362 U.S. 60, 64-65 (1960); *Patterson*, 357 U.S. at 462.

- Criminal penalties, or threats or the possibility of prosecution.[9] *Virginia v. Black*, 538 U.S. 343, 365 (2003) (plurality opinion); *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 244 (2002).

- Government or private threats, harassment, or reprisals. *Doe v. Reed*, 130 S. Ct. 2811, 2821 (2010) (citing *Buckley*, 424 U.S. at 74); *Hynes v. Oradell*, 425 U.S. 610, 626 (1976) (Brennan, J., concurring).

- Public hostility and threats of violence. *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 557 (1963); *Patterson*, 357 U.S. at 462.

- Loss of employment or professional status or threats thereof. *Sheet Metal Workers' Int'l Ass'n v. Lynn*, 488 U.S. 347, 355 (1989) (regarding statutory free speech rights); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

- Loss of money or forgone earnings. *United States v. Treasury Employees*, 513 U.S. 454, 468-69 (1995), *Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 592 (1983).

- State withholding of benefits. *Baird v. State Bar*, 401 U.S. 1, 7 (1971).

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[9] The doctrine that speech is chilled by laws that are vague, ambiguous, or difficult to understand, *Citizens United*, 130 S.Ct. at 889, 894-96; *NAACP v. Button*, 371 U.S. 415, 432-33, 437-38 (1963), or overbroad, *Virginia v. Hicks*, 539 U.S. 113, 119 (2003), is based on the attendant possibility of prosecution.

- Risk of civil litigation (including risk of liability and the costs and burdens of litigation itself). *Fed'l Elections Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 468 (2007); *Riley v. Nat'l Fed'n of Blind*, 487 U.S. 781, 794 (1988).

- Harm to reputation or community standing. *Denver Area Educ. Telcoms. Consortium v. Fed'l Communications Comm'n*, 518 U.S. 727, 754 (1996); *Lamont v. Postmaster General*, 381 U.S. 301, 307 (1965).

Unlike the foregoing examples, the "threat" alleged in this case – that opposing viewpoints will be aired in response to one's own – involves no coercion. It is wholly different in kind from anything that has ever been found to chill speech, and is not a threat of any legally cognizable harm.[10] A candidate has the right to shrink from such debate. But his speech is not being *chilled* in the constitutional sense when he does so. His interest in having his speech unanswered is not an interest protected by the First Amendment. *Cf. Red Lion*, 395 U.S. at 387 ("[t]he right of free speech … does not embrace a right to snuff out the free speech of others").

In sum, Petitioners' argument that § 16-952 chills speech is empirically unsupported – candidate

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[10] Indeed, given that the possibility of opposing speech does not threaten any legally cognizable harm to Petioners, there is some doubt whether they even have standing to bring this case. *See Laird v. Tatum*, 408 U.S. 1, 13-14 (1972) ("Allegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm").

speech is highly unlikely to be deterred. And it is incorrect as a matter of law – if the speech of some candidates were deterred by the prospect of opposing speech, that would not be a constitutionally cognizable chilling effect.

III. BECAUSE THE CCEA EMPLOYS NON-DISCRIMINATORY MEANS TO ACHIEVE IMPORTANT ENDS, *DAVIS* DOES NOT CONTROL THE OUTCOME OF THIS CASE.

The Arizona trigger provision fundamentally differs from the "Millionaire's Amendment," 2 U.S.C. § 441a-1(a), struck down in *Davis*, 554 U.S. 724, in both its ends and means, making Petitioners' reliance on *Davis* unavailing.

A. The Arizona Statute Calls For A Lower Level Of Scrutiny.

The strict scrutiny applied in *Davis* is inapplicable to this case, because the Arizona statute does not discriminate in any of the ways that made the Millionare's Amendment constitutionally suspect. This Court applied strict scrutiny in *Davis*, because "the activation of a scheme of discriminatory contribution limits … impose[d] a substantial burden on the exercise of the First Amendment right to use personal funds for campaign speech." 128 S.Ct. at 2772. Arizona's law imposes no comparable burden.

The scheme struck down in *Davis* was discriminatory in several significant ways. First, it imposed unequal contribution limits on different privately funded candidates seeking the same office. In this way it was unlike systems, such as Arizona's,

in which candidates may voluntarily agree to accept lower contribution limits – or to refrain from accepting contributions at all after qualifying – in exchange for other advantages. *See id.* at 2772 (citing *Buckley*, 424 U.S. at 57 n.65). Second, it discriminated even among high spending candidates in a way that served no legitimate government purpose: one candidate could spend any amount without triggering higher contribution limits for his opponent, as long as he spent funds raised from other contributors, while a self-funding candidate could trigger triple contribution limits for his opponent by spending that same amount. Such discrimination violated the precept that "speech cannot be limited based on a speaker's wealth." *Citizens United*, 130 S.Ct. at 905. Third, it discriminated among members of the public, allowing some to make political contributions three times as great as other were allowed to make, based solely on their political preferences. Such discrimination violated the constitutional demand that "each citizen have an equally effective voice in the election" of office holders. *Reynolds v. Sims*, 377 U.S. 533, 565 (1964).

By contrast, the public financing system at issue in this case is not discriminatory in this or any other way. As explained by Respondents, (Institute Br. 32-37), the CCEA does not discriminate according to speaker, content, or viewpoint.[11] Nor,

[11] To Respondents' discussion of the statute's viewpoint neutrality, *amici* wish only to add that just as Arizona will provide matching funds equally to "pro-life" and "pro-choice" candidates, (Institute Br. 34), so too will it provide funds equally to candidates who favor public financing

does the CCEA burden speech in any significant way, as explained in section II, *supra*. Therefore, it is not subject to strict scrutiny any more than was the public campaign financing system this Court upheld in *Buckley*. 424 U.S. at 90-108; *see also Regan v. Taxation with Representation*, 461 U.S. 540, 549 (1983) ("We rejected First Amendment … challenges to [the public financing provision in *Buckley*] without applying strict scrutiny").

Indeed, given that the Arizona statute does not impose *any* constitutionally recognized burden on speech whatsoever, *see supra,* at IIB, it is not clear that it should be subject even to intermediate scrutiny. The only point at which the *Buckley* Court indicated that any degree of heightened scrutiny of public financing might be in order was when considering an equal protection challenge to the denial of public financing to minor party candidates. 424 U.S. at 93-96. No such equal protection issues arise in the current case.

The CCEA does not impose even incidental burdens on speech like the ones potentially imposed by regulations to which the Court has applied intermediate scrutiny in the context of campaign finance regulation. Those regulations have been of two kinds: contribution limits, *Randall v. Sorrell*, 548 U.S. 230, 246-48 (2006); *Buckley*, 424 U.S. at 25, and disclosure requirements. *Citizens United*, 130 S. Ct. at 914; *Buckley*, 424 U.S. at 64-66. Contribution limits entail a "restriction upon the contributor's

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and those who don't. Candidates opposed to public financing may accept – and have accepted – public campaign funds. (*See* AFEC Br. 13-14.)

ability to engage in free communication," even if "only a marginal" one, *Buckley*, 424 U.S. at 20, and they constrain "one aspect of the contributor's freedom of political association." *Id.* at 21. The Arizona statute imposes no such restriction or constraint. Disclosure requirements "may burden the ability to speak" in some circumstances, such as when disclosing the identity of a speaker may lead to "threats, harassment, or reprisals" against the speaker. *Citizens United*, 130 S. Ct. at 914. The Arizona statute imposes no such potential burden.

It is not clear, therefore, that the Clean Elections Act implicates rights protected by the First Amendment in a way serious enough to warrant *any* form of heightened scrutiny. But two things at least are certain: first, the strict scrutiny exercised in *Davis* is inapplicable; and second, the Act readily withstands intermediate review.

B. The CCEA Serves Important State Interests.

1. The Statute Reduces Corruption and the Appearance of Corruption.

This Court has repeatedly recognized preventing corruption and the appearance thereof as not just important, but *compelling*, state interests in campaign finance regulation. *E.g., Fed'l Election Comm'n v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 496-497 (1985) ("preventing corruption or the appearance of corruption are the only … compelling government interests thus far identified for restricting campaign finances"); *accord Davis*, 128 S.Ct. at 2773. The Millionaire's

Amendment was found to *disserve* that interest, both because it discouraged use of personal funds, thereby increasing reliance on outside contributors, and because in some cases it raised contribution limits, thereby increasing contributors' potential influence. *Davis*, 128 S.Ct. at 2773. By contrast, the Arizona statute provides candidates an alternative to relying on private contributions. *Cf. Buckley*, 424 U.S. at 96 ("public financing as a means of eliminating the improper influence of large private contributions furthers a significant governmental interest"). The challenged matching provision makes it more attractive for candidates to take advantage of this alternative,[12] by assuring that they will be able to remain competitive even against highly funded opponents.

[12] Petitioners back-handedly concede this point in objecting that the provision provides *too much* incentive to participate, alleging that one Petitioner "was coerced into running as a publicly financed candidate." (McComish Br. 45.) The claim of coerciveness is far-fetched. In reality, as was found regarding Maine's nearly identical public financing system, the CCEA "provides incentives to candidates to make the public financing route attractive, but the incentives hardly are overwhelming or of an order that can be said to create profound disparities." *Daggett v. Webster*, 74 F. Supp. 2d 53, 57 (D. Me. 1999), *aff'd sub nom. Daggett v. Stearns*, 205 F.3d 445 (1st Cir. 2000).

2. That the Act May Also Serve the Purpose of Enhancing the Variety of Public Debate Does Not Render It Constitutionally Suspect.

Petitioners' argument that the *real* interest served by the Clean Elections Act is to "equalize electoral opportunities, resources, and influences" or "level[] the playing field," (*e.g.* McComish Br. 64), is a misleading distraction.

As the decision below makes clear, it can hardly be denied that the Arizona statute serves the anti-corruption purpose. 611 F.3d at 525-27. If it also serves another interest, that does not detract from the Act's principal purpose or somehow render it constitutionally suspect. When more than one interest is proffered by the state, it is sufficient that one of those interests is weighty enough to meet the requirements of heightened scrutiny, whether intermediate or strict scrutiny is applicable. *See Doe*, 130 S. Ct. at 2819 (because the State's interest in preserving the integrity of the electoral process was "undoubtedly important," there was no need "to address the State's 'informational' interest" in the Public Records Act) (intermediate scrutiny); *Washington State Grange v. Wash. State Republican Party*, 552 U.S. 442, 446 (2008) (after "reject[ing] as illegitimate three of the [state's] asserted interests" for California's blanket primary, proceeding to consider whether "the remaining interests … were … compelling") (strict scrutiny).

Moreover, notwithstanding Petitioners' objections to an "illegitimate" government interest at

play, (AFEC Br. 60), this Court has never indicated that the public's exposure to more wide-ranging political discourse – or expanded opportunities for political participation – are not worthy purposes. Rather, the Court has held that certain *means* of achieving those goals are illegitimate, in particular the means of "restrict[ing] the speech of some elements of our society in order to enhance the relative voice of others." *Buckley*, 424 U.S. at 48-49.

What Petitioners describe as an interest in equalizing electoral influences could more accurately be described as interest in assuring that a variety of voices is heard, a government interest recognized as important by this Court. *See supra*, at sec. I.A. *See also Turner Broad. Sys. v. Fed. Communications Comm'n*, 512 U.S. 622, 663 (1997) ("assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment").[13]

That interest underlies the First Amendment itself, and could be sufficient on its own to justify § 16-952. But it does not need to be, as the statute serves the important interest of lessening opportunities for – and perceptions of – corruption. If the statute is also motivated in part by an interest

[13] *Turner Broadcasting* concerned regulation of broadcast media, a context in which more government regulation may be appropriate than elsewhere. *Buckley*, 424 U.S. at 49. But assuring that a variety of voices is heard about issues of public concern remains an important interest, even if it does not, in non-broadcast contexts, justify measures that limit freedom of expression.

in promoting more wide-ranging debate, that in no way undermines its legitimacy.

CONCLUSION

Because the Arizona statute addresses the compelling problems of government corruption and the appearance thereof in a way that promotes the values of the First Amendment, without infringing any protected liberties, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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