

The Supreme Court continues to dismantle campaign finance laws.
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In 1991, almost 10% of Arizona's legislators were caught exchanging legislative favors for political donations or bribes. The "AzScam" scandal resulted in the 1998 enactment of the Arizona Citizens Clean Elections Act, which established a voluntary public financing system for candidates running for state offices. In order to encourage candidates to accept public financing and forego the private financing that produced the rampant corruption, the Act granted publicly-funded candidates additional funds whenever certain spending thresholds were crossed by their privately-funded opponents or by independent groups supporting those opponents. Last week, the Supreme Court invalidated this campaign finance measure in a 5-4 decision, calling it "an unprecedented penalty" on political speech.

This was a "penalty," said the Court, because: 1) the availability of matching funds for publicly-financed candidates may deter privately-financed candidates and their supporters from spending on campaign speech, for fear of their opponents' increased funding, and 2) if they do spend, the matching funds make their spending "less effective."

The claim that the matching funds deterred spending was hotly disputed by the litigants, and was dismissed by the Court of Appeals (whose decision the Supreme Court reversed) as utterly unsubstantiated. In fact, the provision seemed to *increase* campaign speech by providing publicly-financed candidates more money with which to respond to their opponents' ads. Indeed statistics showed that since the statute was enacted, campaign expenditures by candidates and their supporters increased exponentially. The Majority responded to all this by stating: "we do not need empirical evidence to determine that the law at issue is burdensome..."

At any rate, calling the matching funds a "penalty" was a little bizarre. After all, the privately-financed candidate was free to speak to his heart's content; the provision simply allowed his publicly-funded opponent to respond. In other words, as the Dissent pointed out, what we had here was a subsidy for speech, not a penalty; and such subsidies are, in principle, perfectly constitutional. Moreover, this matching-funds subsidy was crucial for the success of the Act: candidates who use public financing agree to forego private financing; and they are not likely to do so if they fear that their opponents would have far bigger war chests than them.

What about the claim that the matching funds provision made the privately-financed candidate's speech "less effective"? That lesser effectiveness would result, of course, from the increased ability of their opponents to speak ("an advertisement...that goes without a response," declared the Majority, "is often more effective than an advertisement that is directly controverted"). But since when does the First Amendment, which forbids the government from "abridging the freedom of speech," prohibit such contest of ideas? How can the Freedom of Speech forbid publicly-funded candidates

from responding in kind to their opponents' increased campaign spending? Well it does now!

The five conservative Justices of the Supreme Court are continuing to dismantle campaign finance regulations in pursuit of a vision of democracy that elevates the slogan "Money Talks" to the status of a constitutional right. Their decisions grant financial supporters a constitutionally protected right to influence political outcomes in accordance with their financial prowess, free from government efforts to curb or mitigate or equalize that influence. And given last year's *Citizens United* decision (by the same five-Justice majority), corporations and unions, with their huge money troves, are now free to join in. What a frightening constitutional vision! This is a vision of a plutocracy, not a democracy.

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