The Second Session

Syllabus

SUPREME COURT OF THE UNITED STATES

347 U.S. 483

UNITED STATES V, LOPEZ

No. 93-1260 Argued: November 8, 1994

After respondent, then a 12th-grade student, carried a concealed handgun into his high school, he was charged with violating the Gun-Free School Zones Act of 1990, which forbids "any individual knowingly to possess a firearm at a place that [he] knows . . . is a school zone," 18 U.S.C. § 922(q)(1)(A). The District Court denied his motion to dismiss the indictment, concluding that § 922(q) is a constitutional exercise of Congress' power to regulate activities in and affecting commerce. **In reversing, the Court of Appeals held that...§ 922(q) is invalid as beyond Congress' power under the Commerce Clause.**

Held: The Act exceeds Congress' Commerce Clause authority. First, ... the possession of a gun in a local school zone is in no sense an economic activity that might...have such a substantial effect on interstate commerce. Section 922(q) is a criminal statute that, by its terms, has nothing to do with "commerce" or any sort of economic enterprise, however broadly those terms are defined. Nor is it an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. **It cannot, therefore, be sustained under the Court's cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce...**Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce. To uphold the Government's contention that § 922(q) is justified because firearms possession in a local school zone does indeed substantially affect interstate commerce would require this Court to pile inference upon

inference in a manner that would bid fair to convert congressional Commerce Clause authority to a **general police power** of the sort held only by the States.

REHNQUIST, C.J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined... STEVENS, J., and SOUTER, J., filed dissenting opinions. BREYER, J., filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG, JJ., joined.

United States v. Lopez

JUSTICE STEVENS, dissenting.

The welfare of our future "Commerce with foreign Nations, and among the several States," U.S.Const., Art. I, § 8, cl. 3, is vitally dependent on the character of the education of our children. I therefore agree entirely with JUSTICE BREYER's explanation of why Congress has ample power to prohibit the possession of firearms in or near schools -- just as it may protect the school environment from harms posed by controlled substances such as asbestos or alcohol. **I also agree with JUSTICE SOUTER's exposition of the radical character of the Court's holding and its kinship with the discredited, pre-Depression version of substantive due process...** I believe, however, that the Court's extraordinary decision merits this additional comment.

Guns are both articles of commerce and articles that can be used to restrain commerce. Their possession is the consequence, either directly or indirectly, of commercial activity. **In my judgment, Congress' power to regulate commerce in firearms includes the power to prohibit possession of guns at any location because of their potentially harmful use;** it necessarily follows that Congress may also prohibit their possession in particular markets. **The market for the possession of handguns by school-age children is, distressingly, substantial. [*] Whether or not the national interest in eliminating that market would have justified federal legislation in 1789, it surely does today.**

Syllabus

SUPREME COURT OF THE UNITED STATES

347 U.S. 483

Shelby County, Alabama v. Holder

Argued: February 27, 2013-Decided June 25, 2013

The Voting Rights Act of 1965 was enacted to address entrenched racial discrimination in voting, "an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution."..Section 4 of the Act provides the "coverage formula," defining the "covered jurisdictions" as States or political subdivisions that maintained tests or devices as prerequisites to voting, and had low voter registration or turnout, in the 1960s and early 1970s. §1973b(b). **In those covered jurisdictions, §5 of the Act provides that no change in voting procedures can take effect until approved by specified federal authorities in Washington, D. C. §1973c(a). Such approval is known as "preclearance."**

The coverage formula and preclearance requirement were initially set to expire after five years, but the Act has been reauthorized several times. In 2006, the Act was reauthorized for an additional 25 years, but the coverage formula was not changed...Petitioner Shelby County, in the covered jurisdiction of Alabama, sued the Attorney General in Federal District Court in Washington, seeking a declaratory judgment that sections 4(b) and 5 are facially unconstitutional, as well as a permanent injunction against their enforcement. **The District Court upheld the Act, finding that the evidence before Congress in 2006 was sufficient to justify reauthorizing §5 and continuing §4(b)'s coverage formula. The D. C. Circuit affirmed..**.that court accepted Congress's conclusion that §2 litigation remained inadequate in the covered jurisdictions to protect the rights of minority voters, that §5 was therefore still necessary, and that the coverage formula continued to pass constitutional muster.

***Held*: Section 4 of the Voting Rights Act is unconstitutional; its formula can no longer be used as a basis for subjecting jurisdictions to preclearance. Pp. 9–25.** State legislation may not contravene federal law. States retain broad autonomy, however, in structuring their governments and pursuing legislative objectives. Indeed, the Tenth Amendment reserves to the States all powers not specifically granted to the Federal Government, including "the power to regulate elections." **There is also a "fundamental principle of equal sovereignty" among the States, which is highly pertinent in assessing disparate treatment of States.**

The Voting Rights Act sharply departs from these basic principles. It requires States to beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute on their own. And despite the tradition of equal sovereignty, the Act applies to only nine States (and additional counties)... In 1966, these departures were justified....**Nearly 50 years later, things have changed**

dramatically. Largely because of the Voting Rights Act, "[V]oter turnout and registration rates" in covered jurisdictions "now approach parity. Blatantly discriminatory evasions of federal decrees are rare.

SHELBY COUNTY, ALABAMA *v.* HOLDER

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

In the Court's view, the very success of §5 of the Voting Rights Act demands its dormancy. Congress was of another mind. Recognizing that large progress has been made, Congress determined, based on a voluminous record, that the scourge of discrimination was not yet extirpated. The question this case presents is who decides whether, as currently operative, §5 remains justifiable,[1] this Court, or a Congress charged with the obligation to enforce the post-Civil War Amendments "by appropriate legislation." With overwhelming support in both Houses, Congress concluded that, for two prime reasons, §5 should continue in force, unabated. First, continuance would facilitate completion of the impressive gains thus far made; and second, continuance would guard against back- sliding. Those assessments were well within Congress' province to make and should elicit this Court's unstinting approbation...

The grand aim of the Act is to secure to all in our polity equal citizenship stature, a voice in our democracy undiluted by race. As the record for the 2006 reauthorization makes abundantly clear, second-generation barriers to minority voting rights have emerged in the covered jurisdictions...

The sad irony of today's decision lies in its utter failure to grasp why the VRA has proven effective...In truth, the evolution of voting discrimination into more subtle second-generation barriers is powerful evidence that a remedy as effective as preclearance remains vital to protect minority voting rights and prevent backsliding.

Beyond question, the VRA is no ordinary legislation. It is extraordinary because Congress embarked on a mission long delayed and of extraordinary importance: to realize the purpose and promise of the Fifteenth Amendment. For a half century, a concerted effort has been made to end racial discrimination in

voting. Thanks to the Voting Rights Act, progress once the subject of a dream has been achieved and continues to be made.

The record supporting the 2006 reauthorization of the VRA is also extraordinary. It was described by the Chairman of the House Judiciary Committee as "one of the most extensive considerations of any piece of legislation that the United States Congress has dealt with in the 27½ years" he had served in the House... After exhaustive evidence-gathering and deliberative process, Congress reauthorized the VRA, including the coverage provision, with overwhelming bipartisan support. **It was the judgment of Congress that "40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution."** 2006 Reauthorization §2(b)(7), 120 Stat. 577. **That determination of the body empowered to enforce the Civil War Amendments "by appropriate legislation" merits this Court's utmost respect. In my judgment, the Court errs egregiously by overriding Congress' decision.**

For the reasons stated, I would affirm the judgment of the Court of Appeals.

The Oath 88-93

Seattle and Louisville, on opposite ends of the country, different in spirit, history, and orientation, confronted a similar problem. In both cities, kids generally went to public schools near where they lived, and neighborhoods tended to be highly segregated by race. The school boards in both cities wanted to nudge enrollment in a more integrated direction... Very few students, probably less than five hundred in each city, were affected by the second part of the formula .

So if the two cases only affected a handful of students, why did they matter so much? There was the simple historical resonance of public school integration at the Court. **More importantly, the Seattle and Louisville lawsuits represented the first time the Roberts Court addressed the legacy of *Brown.* Was *Brown* essentially a libertarian decision, which simply forbade all recognition of race by the government? Or did *Brown* mandate, or allow, government to take steps to foster integration?** When can the government consider your race in assigning you to a school-or hiring you for a job, or assigning you to a congressional district? Can government consider race at all?

In the most important opinion of her career, O 'Connor had answered a version of these questions in 2003. In *Grutter v. Bollinger,* she spoke for a narrow majority of the Court in approving the admissions policy of the University of Michigan Law School. Under that policy, the law school considered race as one of many factors, including grades and test scores, in deciding whom to admit...

In the lead case, which was known as *Parents Involved in Community Schools v. Seattle School District No. 1,* Roberts took the opportunity to display what had been, at that point, something of a secret weapon in his arsenal. The quality of writing in Supreme Court opinions generally ranges from serviceable to opaque, and the justices' attempts at eloquence often fall flat... Scalia put a gift for invective on display in dissents but wrote with less verve, and interest, for the Court. Kennedy had a weakness for bloviation.

Chief Justice Roberts, it soon became evident, was a brilliant writer-clear, epigrammatic, eloquent without being verbose. The peroration of his decision in *Parents Involved* made his case with characteristic force. **"For schools that never segregated on the basis of race, such as Seattle, or that have removed the vestiges of past segregation, such as Jefferson County, the way to achieve a system of determining admission to the public schools on a nonracial basis is to stop assigning students on a racial basis," he wrote. "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."**

The way to stop discrimination on the basis of race is to stop discriminating on the basis of race. Who could disagree with that?

The four dissenters did not just disagree-they were enraged. Stevens assigned the main dissenting opinion to Breyer, but he could not resist adding a short,

incredulous dissent of his own, not least because the legacy of *Brown* was at stake. "There is a cruel irony in The Chief Justice 's reliance on our decision in *Brown* v. *Board of Education,"* Stevens wrote. **"The first sentence in the concluding paragraph of his opinion states: 'Before *Brown,* schoolchildren were told where they could and could not go to school based on the color of their skin.' This sentence reminds me of Anatole France's observation: 'The majestic equality of the law, forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal their bread.'** The Chief Justice fails to note that it was only black schoolchildren who were so ordered; indeed, the history books do not tell stories of white children struggling to attend black schools. In this and other ways, The Chief Justice rewrites the history of one of this Court's most important decisions."...

"The Court has changed significantly," Stevens wrote in his *Parents Involved* dissent. It was once "more faithful to *Brown* and more respectful of our precedent than it is today. It is my firm conviction that no Member of the Court that I joined in 1975 would have agreed with today's decision."

Breyer followed, reading from a dissent that he noted was more than twice as long as any he had written . School boards, like the one to which his father had devoted his life, had done their best in Seattle and Louisville. "They began with racially segregated schools," Breyer said. **"They sought remedies. They tried forced busing. They feared or experienced white flight. They faced concerns about de facto re-segregation, and they ended up with plans that end forced busing, that rely heavily upon student choice.** In both cities all the students choose. The majority, indeed almost all of them, received their first-choice school." And to Breyer, there was nothing wrong, indeed everything right, with what the school boards had done.

To Breyer, the efforts of these cities honored *Brown* rather than defied it. ***"Brown* held out a promise, it was a promise embodied in three Amendments designed to make citizens of former slaves," he said. "It was the promise of true racial equality, not as a matter of fine words on paper, but as a matter of everyday life of the Nation's citizens and schools.** It was about the nature of democracy that must work for all Americans." Democracy that *worked-this* was always Breyer's goal.

But Breyer's dissent was not just about *Parents Involved,* or *Brown,* or even civil rights. It was about what had happened to the Court in this one short year-on abortion, and women's rights, and civil procedure, and freedom of speech, and

antitrust, and the death penalty, and on and on. Breyer departed from the text of his dissenting opinion to offer an introduction to the real Roberts Court.

"It is not often in the law," he said, "that so few have so quickly changed so much."

The New Yorker, May 3, 2004

DID BROWN MATTER?

On the fiftieth anniversary of the fabled desegregation case, not everyone is celebrating.

By Cass Sunstein

On May 17, 1954, the Supreme Court announced its decision in the case of Brown v. Board of Education. "Separate educational facilities are inherently unequal," the Court ruled unanimously, declaring that they violated the equal-protection clause of the Fourteenth Amendment. It thus overturned the doctrine of "separate but equal," which had been the law of the land since 1896, when Plessy v. Ferguson was decided. The Brown ruling—the culmination of a decades-long effort by the N.A.A.C.P.—has today acquired an aura of inevitability. But it didn't seem inevitable at the time. And the fact that it was unanimous was little short of miraculous.

When the school-segregation cases first came before the Court, in 1952, the justices, all Roosevelt and Truman appointees, were split over the constitutional questions. Only four of them (William O. Douglas, Hugo L. Black, Harold H. Burton, and Sherman Minton) were solidly in favor of overturning Plessy. Though there is no official record of the Court's internal deliberations, scholars of the decision—notably Michael J. Klarman, a professor of law and history at the University of Virginia—have been able to reconstruct what went on through the justices' conference notes and draft opinions. Chief Justice Fred M. Vinson, a Truman appointee from Kentucky, argued that Plessy should be permitted to stand. "Congress has not declared there should be no segregation," Vinson observed, and surely, he went on, the Court must be responsive to "the long-continued interpretation of Congress ever since the Amendments." Justice Stanley F. Reed, also a Kentuckian, was even more skeptical of overturning segregation. "Negroes have not thoroughly assimilated," he said; segregation was "for the benefit of both" blacks and whites, and "states should be left to work out the problem for themselves." The notes for Justice Tom C. Clark, a Texan, indicate

greater uncertainty, but he was clearly willing to entertain the position that "we had led the states on to think segregation is OK and we should let them work it out."

Justices Felix Frankfurter and Robert H. Jackson, though staunchly opposed to segregation, were troubled by the legal propriety of overturning a well-established precedent. "However passionately any of us may hold egalitarian views**," Frankfurter, an apostle of judicial restraint,** wrote in a memorandum, "he travels outside his judicious authority if for this private reason alone he declares unconstitutional the policy of segregation." During the justices' deliberations, **Frankfurter pronounced that, considered solely on the basis of history and precedent, "Plessy is right." Jackson...acknowledged that the Court's decision "would be simple if our personal opinion that school segregation is morally, economically and politically indefensible made it legally so." But, he asked, "how is it that the Constitution this morning forbids what for three-quarters of a century it has tolerated or approved?"** Both Frankfurter and Jackson had been deeply affected by the New Deal era, during which a right-wing Supreme Court had struck down progressive legislation approved by their beloved Franklin Delano Roosevelt, including regulations establishing minimum wages.

Frankfurter and Jackson believed in democracy and abhorred judicial activism. They also worried that the judiciary would be unable to enforce a ban on segregation, and that an unenforceable decree would undermine the legitimacy of the federal courts. **And so the justices were at odds. In September of 1953, just before Brown was to be reargued, Vinson died of a heart attack, and everything changed.** "This is the first indication that I have ever had that there is a God," Frankfurter told a former law clerk. **President Eisenhower replaced Vinson with Earl Warren, then the governor of California, who had extraordinary political skills and personal warmth, along with a deep commitment to social justice...**

That's how Brown looked fifty years ago. Not everyone thinks that it has aged well...Certainly, Brown has disappointed those who hoped that it would give black Americans equal educational opportunities... The experience of the past half century suggests that the Court cannot produce social reform on its own, and that judges are unlikely to challenge an established social consensus. But experience has also underlined Brown's enduring importance...

Real desegregation began only when the democratic process demanded it—through the 1964 Civil Rights Act and aggressive enforcement by the Department of Justice, which threatened to deny federal funds to segregated school systems...

Given these complicated causal chains, how important to our civil-rights history, in the end, was Chief Justice Vinson's fatal heart attack? Not very, in Klarman's accounting: **"Deep background forces"—notably, the experience of the Second World War and the encounter with Nazi racial ideology—"ensured that the United States would experience a racial reform movement regardless of what the Supreme Court did or did not do."**

Charles J. Ogletree, Jr., a law professor at Harvard, contends that Brown did nothing "to address the social inequality that predominantly harms African-Americans." ... He points to a series of Supreme Court decisions, starting in the late nineteen-seventies, that sharply confined the scope of affirmative-action programs and that amounted to a "process of undoing Brown."...

Fifty years later, Brown does seem increasingly anomalous. Before the Warren Court, the justices were almost never a force for social reform, and they have rarely assumed that role in the past two decades. Most of the time, the judiciary has been an obstacle to racial equality....

Historically, there has rarely been a chasm between popular will and judicial rulings. A century ago, Finley Peter Dunne's fictional wiseacre Mr. Dooley remarked that "no matter whether th' constitution follows th' flag or not, th' supreme court follows th' iliction returns." The Court doesn't really do that, but its members live in society, and they are inevitably affected by the beliefs of society and its elected representatives. When, recently, the Court invalidated Texas's ban on same-sex sodomy, it relied on the fact that this ban was inconsistent with prevailing national values; most Americans just do not support criminal prosecutions for consensual sexual relations among adults. **Brown can be understood in similar terms: by 1954, segregated schools were perceived as an outrage by at least half of the nation's citizens. In fact, American Presidents—Roosevelt, Truman, and, to some extent, even Eisenhower—supported a strong judicial role in the protection of civil rights. Courts do not rule in a vacuum, and when they appear most aggressive they are likely to be responding to evolving social values.**

At the time of the first argument, in March 2009, it was not clear that *Citizens United* was going to be a blockbuster, so the case received a modest amount of attention. But everyone understood the stakes of the reargument... **More importantly, the political implications of *Citizens United* were immense**. **The conservative movement had been fighting for decades to dismantle campaign finance rules...** It was true that their side had some support from traditional liberal groups, like the American Civil Liberties Union (which takes an absolutist view on free speech issues) and some labor unions (which wanted to keep spending money in elections). Still, the ACLU was eccentric, and unions were losing power.

At its heart, *Citizens United* was a case about Republicans versus Democrats. Since the Progressive era, Republicans had been the party of moneyed interests in the United States. For more than a century, **Republicans had fought virtually every limitation on corporate or individual participation in elections. Democrats supported these restrictions. It was a defining difference between the parties. So, as the chief justice chose how broadly to change the law in this area, the real question for him was how much he wanted to help the Republican Party. Roberts's choice was: a lot.**

Roberts assigned the opinion in Citizens United to Anthony Kennedy. It was another brilliant strategic move by the chief. Alito's replacement of O'Connor in 2006 had locked the Court into a consistent 4-4 conservative-liberal split and left Kennedy the most powerful justice in decades. **On controversial issues-including abortion, affirmative action, civil rights, the death penalty, federal power, among others-Kennedy controlled the outcome of cases.** For the previous fifteen years or so, O'Connor had most often held the swing vote, though she never controlled as many cases as Kennedy did. There was a striking difference in the way that O'Connor and Kennedy handled their roles as the swing vote. O 'Connor was a gradualist, a compromiser, a politician who liked to make each side feel like it won something. When O'Connor was in the middle in a case, she would, in effect, give one side 51 percent and the other 49. In *Casey*, she saved abortion rights; in *Grutter*, she preserved racial preferences in admissions for the University of Michigan Law School; in *Hamdi*, she repudiated the Bush administration's lawless approach to the detainees held at Guantanamo Bay. In each of these cases, as the author of or contributor to the opinions, O'Connor split the difference. Yes to restrictions on abortion but no to outright bans; yes to affirmative action but no to quotas; yes to the right of detainees to go to court but no to the full constitutional rights of American citizens. In describing her judicial philosophy, O 'Connor liked to point to the sculpted turtles that formed

the base of the lampposts outside the Supreme Court. "We're like those turtles," she liked to say. "We're slow and steady. We don't move too fast in any direction."

Anthony Kennedy was no turtle. Unlike O'Connor, he tended to swing wildly in one way or the other. When he was with the liberals, he could be very liberal. His opinion in *Lawrence v. Texas*, the 2003 decision striking down laws against consensual sodomy, contains a lyrical celebration of the rights of gay people. Similarly, in *Boumediene v. Bush,* the 2008 case about the rights of accused terrorists, he excoriated the Bush administration and the Congress. "**To hold that the political branches may switch the constitution on or off at will would lead to a regime in which they, not this court, say 'what the law is,' " he wrote, quoting Chief Justice John Marshall's famous words from 1803 in *Marbury v. Madison*. No one relished saying "what the law is" more than Kennedy.**

But in his conservative mode, Kennedy could be shockingly dismissive of women's autonomy, as in *Gonzales v. Carhart*, the 2007 late-term abortion law case. He also wrote the most notorious sentence in the majority opinion in *Bush v. Gore,* acknowledging that the Court acted for the sole benefit of George W. Bush: "Our consideration is limited to the present circumstances, for the problem of equal protection in election processes generally presents many complexities." **Kennedy was not a moderate but an extremist of varied enthusiasms.**

All of the justices knew that Kennedy's views were most extreme when it came to the First Amendment... In the Roberts Court, there was a broad consensus about protecting freedom of speech,... though, the government had long been able to regulate speech in all kinds of ways. Copyright infringement was subject to civil and criminal remedies; extortion and other verbal crimes were routinely punished. **Campaign contributions, if they were considered "speech" at all, had been regulated for more than a century.**

But Kennedy had an almost Pavlovian receptivity to arguments that the government had unduly restricted freedom of speech- especially in the area of campaign finance. Throughout his long tenure, Kennedy had dissented, often in strident terms, when his colleagues upheld regulations in that area. And as the possessor of probably the biggest ego on the Court (always a hotly contested designation among the justices), Kennedy loved writing high-profile opinions.

Roberts knew just what he would get when he assigned Citizens United to Kennedy. After all, Kennedy had written an opinion for the Court after the case was argued the first time. During his confirmation hearing, Roberts made much of his judicial modesty, his respect for precedent, saying that he was just an umpire on the playing field of the law. If the chief had written *Citizens United*, he would have been criticized for hypocrisy. But by giving the opinion to Kennedy, Roberts sidestepped the attacks and still achieved the far-reaching result he wanted.

Kennedy did not disappoint him . "Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people," he wrote for the Court in his familiar rolling cadence. "The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it." These rhetorical flights were a long way from the gritty business of raising and spending campaign money.

Kennedy often saw First Amendment issues in terms of abstractions. At its core, Citizens United concerned a law that set aside a brief period of time (shortly before elections) when corporations could not fund political commercials. To Kennedy, this was nothing more than censorship:...

Citizens United was a simple case for Kennedy. "The Court has recognized that First Amendment protection extends to corporations," he wrote. This had been true since 1886, and speech, especially political speech, could never be impeded. "The censorship we now confront is vast in its reach," Kennedy continued. "The Government has muffled the voices that best represent the most significant segments of the economy. .."If the First Amendment has any force," Kennedy concluded, "it prohibits Congress from fining or jailing citizens, or associations of citizens-, for simply engaging in political speech."

McCain-Feingold and several Supreme Court precedents had to be overruled. The Constitution required that all corporations, for-profit and nonprofit alike, be allowed to spend as much as they wanted, any time they wanted, in support of the candidates of their choosing.

Syllabus

SUPREME COURT OF THE UNITED STATES

ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC *v*. BENNETT

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... Matching funds top out at two times the initial grant to the publicly financed candidate.**

Petitioners…challenged the constitutionality of the matching 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.** The matching funds provision imposes a substantial burden on the speech of privately financed candidates and independent expenditure groups...

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…. 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…

Arizona's matching funds provision is not " 'justified by a compelling state interest,' " 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…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…. 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....

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.

ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC v. BENNETT

Justice Kagan , with whom Justice Ginsburg, Justice Breyer , and Justice Sotomayor join, dissenting.

The First Amendment 's core purpose is to foster a healthy, vibrant political system full of robust discussion and debate. Nothing in Arizona's anti-corruption statute violates this constitutional protection. To the contrary, the Act promotes the values underlying both the First Amendment and our entire Constitution by enhancing the "opportunity for free political discussion to the end that government may be responsive to the will of the people." I therefore respectfully dissent…. To prevent both corruption and the appearance of corruption—and so to protect our democratic system of governance—citizens have implemented reforms designed to curb the power of special interests.

Among these measures, public financing of elections has emerged as a potentially potent mechanism to preserve elected officials' independence. President Theodore Roosevelt proposed the reform as early as 1907... The idea was—and remains—straightforward. Candidates who rely on public, rather than private, moneys are "beholden [to] no person and, if elected, should feel no post-election obligation toward any contributor." For this reason, public financing systems today dot the national landscape. Almost one-third of the States have adopted some form of public financing, and so too has the Federal Government for presidential elections….**We declared the presidential public financing system constitutional [and]gave state and municipal governments the green light to adopt public financing systems along the presidential model….**

The hallmark of Arizona's program is its inventive approach to the challenge that bedevils all public financing schemes: fixing the amount of the subsidy…. The majority contends that the matching funds provision "substantially burdens protected political

speech" and does not "serv[e] a compelling state interest." But the Court is wrong on both counts….The law has quite the opposite effect: It subsidizes and so produces *more* political speech. Except in a world gone topsy-turvy, additional campaign speech and electoral competition is not a First Amendment injury.

If an ordinary citizen, without the hindrance of a law degree, thought this result an upending of First Amendment values, he would be correct…. According to the Court, the special problem here lies in Arizona's matching funds mechanism, which the majority claims imposes a substantial burden on a privately funded candidate's speech…. [T]he very notion that additional speech constitutes a "burden" is odd and unsettling.

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

This case arose because Arizonans wanted their government to work on behalf of all the State's people. They wished, as many of their fellow Americans wish, to stop corrupt dealing—to ensure that their representatives serve the public, and not just the wealthy donors who helped put them in office…. The people of Arizona might have expected a decent respect for those objectives.

Today, they do not get it….Like citizens across this country, Arizonans deserve a government that represents and serves them all. And no less, Arizonans deserve the chance to reform their electoral system so as to attain that most American of goals.

Truly, democracy is not a game. I respectfully dissent.

The justices of the Supreme Court gather for an official group portrait to include new Associate Justice Neil Gorsuch, top row, far right, on June 1, 2017 at the Supreme Court Building in Washington. Seated, from left are Associate Justice Ruth Bader Ginsburg, Associate Justice Anthony Kennedy, Chief Justice John Roberts, Associate Justice Clarence Thomas, and Associate Justice Stephen Breyer. Standing, from left: Associate Justice Elena Kagan, Associate Justice Samuel Alito Jr., Associate Justice Sonia Sotomayor and Gorsuch.