2015 Update Memo to

The American First Amendment in the Twenty-First Century,

Cases and Materials, 5th

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To be added at page 101 following Republican *Party v. White*:

Williams-Yulee v. Florida Bar
135 S.Ct. 1656 (2015)

Chief Justice ROBERTS delivered the opinion of the Court, except as to Part II.

Our Founders vested authority to appoint federal judges in the President, with the advice and consent of the Senate, and entrusted those judges to hold their offices during good behavior. The Constitution permits States to make a different choice, and most of them have done so. In 39 States, voters elect trial or appellate judges at the polls. In an effort to preserve public confidence in the integrity of their judiciaries, many of those States prohibit judges and judicial candidates from personally soliciting funds for their campaigns. We must decide whether the First Amendment permits such restrictions on speech.

We hold that it does. Judges are not politicians, even when they come to the bench by way of the ballot. And a State's decision to elect its judiciary does not compel it to treat judicial candidates like campaigners for political office. A State may assure its people that judges will apply the law without fear or favor—and without having personally asked anyone for money. We affirm the judgment of the Florida Supreme Court.

I
A

When Florida entered the Union in 1845, its Constitution provided for trial and appellate judges to be elected by the General Assembly. Florida soon followed more than a dozen of its sister States in transferring authority to elect judges to the voting public. See J. Shugerman, The People's Courts: Pursuing Judicial Independence in America 103–122 (2012). The experiment did not last long in the Sunshine State. The war came, and Florida's 1868 Constitution returned judicial selection to the political branches. Over time, however, the people reclaimed the power to elect the state bench: Supreme Court justices in 1885 and trial court judges in 1942. See Little, An Overview of the Historical Development of the Judicial Article of the Florida Constitution, 19 Stetson L.Rev. 1, 40 (1989).

In the early 1970s, four Florida Supreme Court justices resigned from office following corruption scandals. Florida voters responded by amending their Constitution again. Under the system now in place, appellate judges are appointed by the Governor from a list of candidates proposed by a nominating committee—a process known as "merit selection." Then, every six years, voters decide whether to retain incumbent appellate judges for another term. Trial judges are still elected by popular vote, unless the local jurisdiction opts instead for merit selection. Fla. Const., Art. V, § 10; Hawkins, Perspective on Judicial Merit Retention in Florida, 64 Fla. L.Rev. 1421, 1423–1428 (2012).

Amid the corruption scandals of the 1970s, the Florida Supreme Court adopted a new Code of Judicial Conduct. 281 So.2d 21 (1973). In its present form, the first sentence of Canon 1 reads, "An independent and honorable judiciary is indispensable to justice in our society." Code of Judicial Conduct for the State of Florida 6 (2014). Canon 1 instructs judges to observe "high standards of conduct" so that "the integrity and independence of the judiciary may be preserved." Ibid. Canon 2

directs that a judge "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Id., at 7. Other provisions prohibit judges from lending the prestige of their offices to private interests, engaging in certain business transactions, and *1663 personally participating in soliciting funds for nonprofit organizations. Canons 2B, 5C(3)(b)(i), 5D; id., at 7, 23, 24.

Canon 7C(1) governs fundraising in judicial elections. The Canon, which is based on a provision in the American Bar Association's Model Code of Judicial Conduct, provides:
"A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates shall not personally solicit campaign funds, or solicit attorneys for publicly stated support, but may establish committees of responsible persons to secure and manage the expenditure of funds for the candidate's campaign and to obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from any person or corporation authorized by law." Id., at 38.

Florida statutes impose additional restrictions on campaign fundraising in judicial elections. Contributors may not donate more than $1,000 per election to a trial court candidate or more than $3,000 per retention election to a Supreme Court justice. Fla. Stat. § 106.08(1)(a) (2014). Campaign committee treasurers must file periodic reports disclosing the names of contributors and the amount of each contribution. § 106.07.

Judicial candidates can seek guidance about campaign ethics rules from the Florida Judicial Ethics Advisory Committee. The Committee has interpreted Canon 7 to allow a judicial candidate to serve as treasurer of his own campaign committee, learn the identity of campaign contributors, and send thank you notes to donors. An Aid to Understanding Canon 7, pp. 51–58 (2014).

Like Florida, most other States prohibit judicial candidates from soliciting campaign funds personally, but allow them to raise money through committees. According to the American Bar Association, 30 of the 39 States that elect trial or appellate judges have adopted restrictions similar to Canon 7C(1). Brief for American Bar Association as Amicus Curiae 4.

B

Lanell Williams–Yulee, who refers to herself as Yulee, has practiced law in Florida since 1991. In September 2009, she decided to run for a seat on the county court for Hillsborough County, a jurisdiction of about 1.3 million people that includes the city of Tampa. Shortly after filing paperwork to enter the race, Yulee drafted a letter announcing her candidacy. The letter described her experience and desire to "bring fresh ideas and positive solutions to the Judicial bench." App. to Pet. for Cert. 31a. The letter then stated:

> "An early contribution of $25, $50, $100, $250, or $500, made payable to 'Lanell Williams–Yulee Campaign for County Judge', will help raise the initial funds needed to launch the campaign and get our message out to the public. I ask for your support [i]n meeting the primary election fund raiser goals. Thank you in advance for your support." Id., at 32a.

Yulee signed the letter and mailed it to local voters. She also posted the letter on her campaign Web site.

Yulee's bid for the bench did not unfold as she had hoped. She lost the primary to the incumbent judge. Then the Florida Bar filed a complaint against her. As relevant here, the Bar charged her with violating Rule 4–8.2(b) of the Rules Regulating the Florida Bar. That Rule requires judicial candidates to comply with applicable provisions of Florida's Code of Judicial Conduct, including the ban on personal solicitation of campaign funds in Canon 7C(1).

Yulee admitted that she had signed and sent the fundraising letter. But she argued that the Bar could not discipline her for that conduct because the First Amendment protects a judicial candidate's right to solicit campaign funds in an election. The Florida Supreme Court appointed a referee, who held a hearing and recommended a finding of guilt. As a sanction, the referee recommended that Yulee be publicly reprimanded and ordered to pay the costs of the proceeding ($1,860). App. to Pet. for Cert. 19a–25a.

The Florida Supreme Court adopted the referee's recommendations. 138 So.3d 379 (2014). The court explained that Canon 7C(1) "clearly restricts a judicial candidate's speech" and therefore must be "narrowly tailored to serve a compelling state interest." Id., at 384. The court held that the Canon satisfies that demanding inquiry. First, the court reasoned, prohibiting judicial candidates from personally soliciting funds furthers Florida's compelling interest in "preserving the integrity of [its] judiciary and maintaining the public's confidence in an impartial judiciary." Ibid. (internal quotation marks omitted; alteration in original). In the court's view, "personal solicitation of campaign funds, even by mass mailing, raises an appearance of impropriety and calls into question, in the public's mind, the judge's impartiality." Id., at 385. Second, the court concluded that Canon 7C(1) is narrowly tailored to serve that compelling interest because it " 'insulate[s] judicial candidates from the solicitation and receipt of funds while leaving open, ample alternative means for candidates to raise the resources necessary to run their campaigns.' " Id., at 387 (quoting Simes v. Arkansas Judicial Discipline & Disability Comm'n, 368 Ark. 577, 588, 247 S.W.3d 876, 883 (2007)).

The Florida Supreme Court acknowledged that some Federal Courts of Appeals—"whose judges have lifetime appointments and thus do not have to engage in fundraising"—had invalidated restrictions similar to Canon 7C(1). 138 So.3d, at 386, n. 3. But the court found it persuasive that every State Supreme Court that had considered similar fundraising provisions—along with several Federal Courts of Appeals—had upheld the laws against First Amendment challenges. Id., at 386. Florida's chief justice and one associate justice dissented. Id., at 389. We granted certiorari. 573 U.S. ——, 135 S.Ct. 44, 189 L.Ed.2d 896 (2014).

II

The First Amendment provides that Congress "shall make no law ... abridging the freedom of speech." The Fourteenth Amendment makes that prohibition applicable to the States. Stromberg v. California, 283 U.S. 359, 368, 51 S.Ct. 532, 75 L.Ed. 1117 (1931). The parties agree that Canon 7C(1) restricts Yulee's speech on the basis of its content by prohibiting her from soliciting contributions to her election campaign. The parties disagree, however, about the level of scrutiny that should govern our review.

We have applied exacting scrutiny to laws restricting the solicitation of contributions to charity, upholding the speech limitations only if they are narrowly tailored to serve a compelling interest. See Riley v. National Federation of Blind of N.C., Inc., 487 U.S. 781, 798, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988); id., at 810, 108 S.Ct. 2667 (Rehnquist, C.J., dissenting). As we have explained,

noncommercial solicitation "is characteristically intertwined with informative and perhaps persuasive speech." Id., at 796, 108 S.Ct. 2667 (majority opinion) (quoting Schaumburg v. Citizens for Better Environment, 444 U.S. 620, 632, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980)). Applying a lesser standard of scrutiny to such speech would threaten "the exercise of rights so vital to the maintenance of democratic institutions." Schneider v. State (Town of Irvington), 308 U.S. 147, 161, 60 S.Ct. 146, 84 L.Ed. 155 (1939).

The principles underlying these charitable solicitation cases apply with even greater force here. Before asking for money in her fundraising letter, Yulee explained her fitness for the bench and expressed her vision for the judiciary. Her stated purpose for the solicitation was to get her "message out to the public." App. to Pet. for Cert. 32a. As we have long recognized, speech about public issues and the qualifications of candidates for elected office commands the highest level of First Amendment protection. See Eu v. San Francisco County Democratic Central Comm., 489 U.S. 214, 223, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989). Indeed, in our only prior case concerning speech restrictions on a candidate for judicial office, this Court and both parties assumed that strict scrutiny applied. Republican Party of Minn. v. White, 536 U.S. 765, 774, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002).

Although the Florida Supreme Court upheld Canon 7C(1) under strict scrutiny, the Florida Bar and several amici contend that we should subject the Canon to a more permissive standard: that it be "closely drawn" to match a "sufficiently important interest." Buckley v. Valeo, 424 U.S. 1, 25, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (per curiam). The "closely drawn" standard is a poor fit for this case. The Court adopted that test in Buckley to address a claim that campaign contribution limits violated a contributor's "freedom of political association." Id., at 24–25, 96 S.Ct. 612. Here, Yulee does not claim that Canon 7C(1) violates her right to free association; she argues that it violates her right to free speech. And the Florida Bar can hardly dispute that the Canon infringes Yulee's freedom to discuss candidates and public issues—namely, herself and her qualifications to be a judge. The Bar's call to import the "closely drawn" test from the contribution limit context into a case about solicitation therefore has little avail.

As several of the Bar's amici note, we applied the "closely drawn" test to solicitation restrictions in McConnell v. Federal Election Comm'n, 540 U.S. 93, 136, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003), overruled in part by Citizens United v. Federal Election Comm'n, 558 U.S. 310, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010). But the Court in that case determined that the solicitation restrictions operated primarily to prevent circumvention of the contribution limits, which were the subject of the "closely drawn" test in the first place. 540 U.S., at 138–139, 124 S.Ct. 619. McConnell offers no help to the Bar here, because Florida did not adopt Canon 7C(1) as an anticircumvention measure.

In sum, we hold today what we assumed in White : A State may restrict the speech of a judicial candidate only if the restriction is narrowly tailored to serve a compelling interest.

III

The Florida Bar faces a demanding task in defending Canon 7C(1) against Yulee's First Amendment challenge. We have emphasized that "it is the rare case" in which a State demonstrates that a speech restriction is narrowly tailored to serve a compelling interest. Burson v. Freeman, 504 U.S. 191, 211, 112 S.Ct. 1846, 119 L.Ed.2d 5 (1992) (plurality opinion). But those cases do arise. See ibid.; Holder v. Humanitarian Law Project, 561 U.S. 1, 25–39, 130 S.Ct. 2705, 177 L.Ed.2d 355 (2010); McConnell, 540 U.S., at 314, 124 S.Ct. 619 (opinion of KENNEDY, J.); cf. Adarand

Constructors, Inc. v. Pena, 515 U.S. 200, 237, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995) ("we wish to dispel the notion that strict scrutiny is 'strict in theory, but fatal in fact' "). Here, Canon 7C(1) advances the State's compelling interest in preserving public confidence in the integrity of the judiciary, and it does so through means narrowly tailored to avoid unnecessarily abridging speech. This is therefore one of the rare cases in which a speech restriction withstands strict scrutiny.

A

The Florida Supreme Court adopted Canon 7C(1) to promote the State's interests in "protecting the integrity of the judiciary" and "maintaining the public's confidence in an impartial judiciary." 138 So.3d, at 385. The way the Canon advances those interests is intuitive: Judges, charged with exercising strict neutrality and independence, cannot supplicate campaign donors without diminishing public confidence in judicial integrity. This principle dates back at least eight centuries to Magna Carta, which proclaimed, "To no one will we sell, to no one will we refuse or delay, right or justice." Cl. 40 (1215), in W. McKechnie, Magna Carta, A Commentary on the Great Charter of King John 395 (2d ed. 1914). The same concept underlies the common law judicial oath, which binds a judge to "do right to all manner of people ... without fear or favour, affection or ill-will," 10 Encyclopaedia of the Laws of England 105 (2d ed. 1908), and the oath that each of us took to "administer justice without respect to persons, and do equal right to the poor and to the rich," 28 U.S.C. § 453. Simply put, Florida and most other States have concluded that the public may lack confidence in a judge's ability to administer justice without fear or favor if he comes to office by asking for favors.

The interest served by Canon 7C(1) has firm support in our precedents. We have recognized the "vital state interest" in safeguarding "public confidence in the fairness and integrity of the nation's elected judges." Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 889, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009) (internal quotation marks omitted). The importance of public confidence in the integrity of judges stems from the place of the judiciary in the government. Unlike the executive or the legislature, the judiciary "has no influence over either the sword or the purse; ... neither force nor will but merely judgment." The Federalist No. 78, p. 465 (C. Rossiter ed. 1961) (A. Hamilton) (capitalization altered). The judiciary's authority therefore depends in large measure on the public's willingness to respect and follow its decisions. As Justice Frankfurter once put it for the Court, "justice must satisfy the appearance of justice." Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 99 L.Ed. 11 (1954). It follows that public perception of judicial integrity is "a state interest of the highest order." Caperton, 556 U.S., at 889, 129 S.Ct. 2252 (quoting White, 536 U.S., at 793, 122 S.Ct. 2528 (KENNEDY, J., concurring)).

The principal dissent observes that bans on judicial candidate solicitation lack a lengthy historical pedigree. Post, at 1676 (opinion of SCALIA, J.). We do not dispute that fact, but it has no relevance here. As the precedent cited by the principal dissent demonstrates, a history and tradition of regulation are important factors in determining whether to recognize "new categories of unprotected speech." Brown v. Entertainment Merchants Assn., 564 U.S. ——, ——, 131 S.Ct. 2729, 2734, 180 L.Ed.2d 708 (2011); see post, at 1676. But nobody argues that solicitation of campaign funds by judicial candidates is a category of unprotected speech. As explained above, the First Amendment fully applies to Yulee's speech. The question is instead whether that Amendment permits the particular regulation of speech at issue here.

The parties devote considerable attention to our cases analyzing campaign finance restrictions in political elections. But a State's interest in preserving public confidence in the integrity of its

judiciary extends beyond its interest in preventing the appearance of corruption in legislative and executive elections. As we explained in White, States may regulate judicial elections differently than they regulate political elections, because the role of judges differs from the role of politicians. 536 U.S., at 783, 122 S.Ct. 2528; id., at 805, 122 S.Ct. 2528 (GINSBURG, J., dissenting). Politicians are expected to be appropriately responsive to the preferences of their supporters. Indeed, such "responsiveness is key to the very concept of self-governance through elected officials." McCutcheon v. Federal Election Comm'n, 572 U.S. ——, ——, 134 S.Ct. 1434, 1462, 188 L.Ed.2d 468 (2014) (plurality opinion). The same is not true of judges. In deciding cases, a judge is not to follow the preferences of his supporters, or provide any special consideration to his campaign donors. A judge instead must "observe the utmost fairness," striving to be "perfectly and completely independent, with nothing to influence or controul him but God and his conscience." Address of John Marshall, in Proceedings and Debates of the Virginia State Convention of 1829–1830, p. 616 (1830). As in White, therefore, our precedents applying the First Amendment to political elections have little bearing on the issues here.

The vast majority of elected judges in States that allow personal solicitation serve with fairness and honor. But "[e]ven if judges were able to refrain from favoring donors, the mere possibility that judges' decisions may be motivated by the desire to repay campaign contributions is likely to undermine the public's confidence in the judiciary." White, 536 U.S., at 790, 122 S.Ct. 2528 (O'Connor, J., concurring). In the eyes of the public, a judge's personal solicitation could result (even unknowingly) in "a possible temptation ... which might lead him not to hold the balance nice, clear and true." Tumey v. Ohio, 273 U.S. 510, 532, 47 S.Ct. 437, 71 L.Ed. 749 (1927). That risk is especially pronounced because most donors are lawyers and litigants who may appear before the judge they are supporting. See A. Bannon, E. Velasco, L. Casey, & L. Reagan, The New Politics of Judicial Elections: 2011–12, p. 15 (2013).

The concept of public confidence in judicial integrity does not easily reduce to precise definition, nor does it lend itself to proof by documentary record. But no one denies that it is genuine and compelling. In short, it is the regrettable but unavoidable appearance that judges who personally ask for money may diminish their integrity that prompted the Supreme Court of Florida and most other States to sever the direct link between judicial candidates and campaign contributors. As the Supreme Court of Oregon explained, "the spectacle of lawyers or potential litigants directly handing over money to judicial candidates should be avoided if the public is to have faith in the impartiality of its judiciary." In re Fadeley, 310 Ore. 548, 565, 802 P.2d 31, 41 (1990). Moreover, personal solicitation by a judicial candidate "inevitably places the solicited individuals in a position to fear retaliation if they fail to financially support that candidate." Simes, 368 Ark., at 585, 247 S.W.3d, at 882. Potential litigants then fear that "the integrity of the judicial system has been compromised, forcing them to search for an attorney in part based upon the criteria of which attorneys have made the obligatory contributions." Ibid. A State's decision to elect its judges does not require it to tolerate these risks. The Florida Bar's interest is compelling.

B

Yulee acknowledges the State's compelling interest in judicial integrity. She argues, however, that the Canon's failure to restrict other speech equally damaging to judicial integrity and its appearance undercuts the Bar's position. In particular, she notes that Canon 7C(1) allows a judge's campaign committee to solicit money, which arguably reduces public confidence in the integrity of the judiciary just as much as a judge's personal solicitation. Yulee also points out that Florida permits

judicial candidates to write thank you notes to campaign donors, which ensures that candidates know who contributes and who does not.

It is always somewhat counterintuitive to argue that a law violates the First Amendment by abridging too little speech. We have recognized, however, that underinclusiveness can raise "doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." Brown, 564 U.S., at ——, 131 S.Ct., at 2740. In a textbook illustration of that principle, we invalidated a city's ban on ritual animal sacrifices because the city failed to regulate vast swaths of conduct that similarly diminished its asserted interests in public health and animal welfare. Church of Lukumi Babalu Aye, Inc. v. Hialeah, 508 U.S. 520, 543–547, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993).

Underinclusiveness can also reveal that a law does not actually advance a compelling interest. For example, a State's decision to prohibit newspapers, but not electronic media, from releasing the names of juvenile defendants suggested that the law did not advance its stated purpose of protecting youth privacy. Smith v. Daily Mail Publishing Co., 443 U.S. 97, 104–105, 99 S.Ct. 2667, 61 L.Ed.2d 399 (1979).

Although a law's underinclusivity raises a red flag, the First Amendment imposes no freestanding "underinclusiveness limitation." R.A.V. v. St. Paul, 505 U.S. 377, 387, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992) (internal quotation marks omitted). A State need not address all aspects of a problem in one fell swoop; policymakers may focus on their most pressing concerns. We have accordingly upheld laws—even under strict scrutiny—that conceivably could have restricted even greater amounts of speech in service of their stated interests. Burson, 504 U.S., at 207, 112 S.Ct. 1846; see McConnell, 540 U.S., at 207–208, 124 S.Ct. 619; Metromedia, Inc. v. San Diego, 453 U.S. 490, 511–512, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981) (plurality opinion); Buckley, 424 U.S., at 105, 96 S.Ct. 612.

Viewed in light of these principles, Canon 7C(1) raises no fatal underinclusivity concerns. The solicitation ban aims squarely at the conduct most likely to undermine public confidence in the integrity of the judiciary: personal requests for money by judges and judicial candidates. The Canon applies evenhandedly to all judges and judicial candidates, regardless of their viewpoint or chosen means of solicitation. And unlike some laws that we have found impermissibly underinclusive, Canon 7C(1) is not riddled with exceptions. See City of Ladue v. Gilleo, 512 U.S. 43, 52–53, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994). Indeed, the Canon contains zero exceptions to its ban on personal solicitation.

Yulee relies heavily on the provision of Canon 7C(1) that allows solicitation by a candidate's campaign committee. But Florida, along with most other States, has reasonably concluded that solicitation by the candidate personally creates a categorically different and more severe risk of undermining public confidence than does solicitation by a campaign committee. The identity of the solicitor matters, as anyone who has encountered a Girl Scout selling cookies outside a grocery store can attest. When the judicial candidate himself asks for money, the stakes are higher for all involved. The candidate has personally invested his time and effort in the fundraising appeal; he has placed his name and reputation behind the request. The solicited individual knows that, and also knows that the solicitor might be in a position to singlehandedly make decisions of great weight: The same person who signed the fundraising letter might one day sign the judgment. This dynamic inevitably creates pressure for the recipient to comply, and it does so in a way that solicitation by a third party does not. Just as

inevitably, the personal involvement of the candidate in the solicitation creates the public appearance that the candidate will remember who says yes, and who says no.

In short, personal solicitation by judicial candidates implicates a different problem than solicitation by campaign committees. However similar the two solicitations may be in substance, a State may conclude that they present markedly different appearances to the public. Florida's choice to allow solicitation by campaign committees does not undermine its decision to ban solicitation by judges.

Likewise, allowing judicial candidates to write thank you notes to campaign donors does not detract from the State's interest in preserving public confidence in the integrity of the judiciary. Yulee argues that permitting thank you notes heightens the likelihood of actual bias by ensuring that judicial candidates know who supported their campaigns, and ensuring that the supporter knows that the candidate knows. Maybe so. But the State's compelling interest is implicated most directly by the candidate's personal solicitation itself. A failure to ban thank you notes for contributions not solicited by the candidate does not undercut the Bar's rationale.

In addition, the State has a good reason for allowing candidates to write thank you notes and raise money through committees. These accommodations reflect Florida's effort to respect the First Amendment interests of candidates and their contributors—to resolve the "fundamental tension between the ideal character of the judicial office and the real world of electoral politics." Chisom v. Roemer, 501 U.S. 380, 400, 111 S.Ct. 2354, 115 L.Ed.2d 348 (1991). They belie the principal dissent's suggestion that Canon 7C(1) reflects general "hostility toward judicial campaigning" and has "nothing to do with the appearances created by judges' asking for money." Post, at 1681. Nothing?

The principal dissent also suggests that Canon 7C(1) is underinclusive because Florida does not ban judicial candidates from asking individuals for personal gifts or loans. Post, at 1680. But Florida law treats a personal "gift" or "loan" as a campaign contribution if the donor makes it "for the purpose of influencing the results of an election," Fla. Stat. § 106.011(5)(a), and Florida's Judicial Qualifications Commission has determined that a judicial candidate violates Canon 7C(1) by personally soliciting such a loan. See In re Turner, 76 So.3d 898, 901–902 (Fla.2011). In any event, Florida can ban personal solicitation of campaign funds by judicial candidates without making them obey a comprehensive code to leading an ethical life. Underinclusivity creates a First Amendment concern when the State regulates one aspect of a problem while declining to regulate a different aspect of the problem that affects its stated interest in a comparable way. See Florida Star v. B.J.F., 491 U.S. 524, 540, 109 S.Ct. 2603, 105 L.Ed.2d 443 (1989). The principal dissent offers no basis to conclude that judicial candidates are in the habit of soliciting personal loans, football tickets, or anything of the sort. Post, at 1680. Even under strict scrutiny, "[t]he First Amendment does not require States to regulate for problems that do not exist." Burson, 504 U.S., at 207, 112 S.Ct. 1846 (State's regulation of political solicitation around a polling place, but not charitable or commercial solicitation, was not fatally underinclusive under strict scrutiny).

Taken to its logical conclusion, the position advanced by Yulee and the principal dissent is that Florida may ban the solicitation of funds by judicial candidates only if the State bans all solicitation of funds in judicial elections. The First Amendment does not put a State to that all-or-nothing choice. We will not punish Florida for leaving open more, rather than fewer, avenues of expression, especially when there is no indication that the selective restriction of speech reflects a pretextual motive.

C

After arguing that Canon 7C(1) violates the First Amendment because it restricts too little speech, Yulee argues that the Canon violates the First Amendment because it restricts too much. In her view, the Canon is not narrowly tailored to advance the State's compelling interest through the least restrictive means. See United States v. Playboy Entertainment Group, Inc., 529 U.S. 803, 813, 120 S.Ct. 1878, 146 L.Ed.2d 865 (2000).

By any measure, Canon 7C(1) restricts a narrow slice of speech. A reader of Justice KENNEDY's dissent could be forgiven for concluding that the Court has just upheld a latter-day version of the Alien and Sedition Acts, approving "state censorship" that "locks the First Amendment out," imposes a "gag" on candidates, and inflicts "dead weight" on a "silenced" public debate. Post, at 1676 – 1677. But in reality, Canon 7C(1) leaves judicial candidates free to discuss any issue with any person at any time. Candidates can write letters, give speeches, and put up billboards. They can contact potential supporters in person, on the phone, or online. They can promote their campaigns on radio, television, or other media. They cannot say, "Please give me money." They can, however, direct their campaign committees to do so. Whatever else may be said of the Canon, it is surely not a "wildly disproportionate restriction upon speech." Post, at 1676 (SCALIA, J., dissenting).

Indeed, Yulee concedes—and the principal dissent seems to agree, post, at 1679—that Canon 7C(1) is valid in numerous applications. Yulee acknowledges that Florida can prohibit judges from soliciting money from lawyers and litigants appearing before them. Reply Brief 18. In addition, she says the State "might" be able to ban "direct one-to-one solicitation of lawyers and individuals or businesses that could reasonably appear in the court for which the individual is a candidate." Ibid. She also suggests that the Bar could forbid "in person" solicitation by judicial candidates. Tr. of Oral Arg. 7; cf. Ohralik v. *1671 Ohio State Bar Assn., 436 U.S. 447, 98 S.Ct. 1912, 56 L.Ed.2d 444 (1978) (permitting State to ban in person solicitation of clients by lawyers). But Yulee argues that the Canon cannot constitutionally be applied to her chosen form of solicitation: a letter posted online and distributed via mass mailing. No one, she contends, will lose confidence in the integrity of the judiciary based on personal solicitation to such a broad audience.

This argument misperceives the breadth of the compelling interest that underlies Canon 7C(1). Florida has reasonably determined that personal appeals for money by a judicial candidate inherently create an appearance of impropriety that may cause the public to lose confidence in the integrity of the judiciary. That interest may be implicated to varying degrees in particular contexts, but the interest remains whenever the public perceives the judge personally asking for money.

Moreover, the lines Yulee asks us to draw are unworkable. Even under her theory of the case, a mass mailing would create an appearance of impropriety if addressed to a list of all lawyers and litigants with pending cases. So would a speech soliciting contributions from the 100 most frequently appearing attorneys in the jurisdiction. Yulee says she might accept a ban on one-to-one solicitation, but is the public impression really any different if a judicial candidate tries to buttonhole not one prospective donor but two at a time? Ten? Yulee also agrees that in person solicitation creates a problem. But would the public's concern recede if the request for money came in a phone call or a text message?

We decline to wade into this swamp. The First Amendment requires that Canon 7C(1) be narrowly tailored, not that it be "perfectly tailored." Burson, 504 U.S., at 209, 112 S.Ct. 1846. The impossibility of perfect tailoring is especially apparent when the State's compelling interest is as

intangible as public confidence in the integrity of the judiciary. Yulee is of course correct that some personal solicitations raise greater concerns than others. A judge who passes the hat in the courthouse creates a more serious appearance of impropriety than does a judicial candidate who makes a tasteful plea for support on the radio. But most problems arise in greater and lesser gradations, and the First Amendment does not confine a State to addressing evils in their most acute form. See id., at 210, 112 S.Ct. 1846. Here, Florida has concluded that all personal solicitations by judicial candidates create a public appearance that undermines confidence in the integrity of the judiciary; banning all personal solicitations by judicial candidates is narrowly tailored to address that concern.

In considering Yulee's tailoring arguments, we are mindful that most States with elected judges have determined that drawing a line between personal solicitation by candidates and solicitation by committees is necessary to preserve public confidence in the integrity of the judiciary. These considered judgments deserve our respect, especially because they reflect sensitive choices by States in an area central to their own governance—how to select those who "sit as their judges." Gregory v. Ashcroft, 501 U.S. 452, 460, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991).

Finally, Yulee contends that Florida can accomplish its compelling interest through the less restrictive means of recusal rules and campaign contribution limits. We disagree. A rule requiring judges to recuse themselves from every case in which a lawyer or litigant made a campaign contribution would disable many jurisdictions. And a flood of postelection recusal motions could "erode public confidence in judicial impartiality" and thereby exacerbate the very appearance problem the State is trying to solve. Caperton, 556 U.S., at 891, 129 S.Ct. 2252 (ROBERTS, C.J., dissenting). Moreover, the rule that Yulee envisions could create a perverse incentive for litigants to make campaign contributions to judges solely as a means to trigger their later recusal—a form of peremptory strike against a judge that would enable transparent forum shopping.

As for campaign contribution limits, Florida already applies them to judicial elections. Fla. Stat. § 106.08(1)(a). A State may decide that the threat to public confidence created by personal solicitation exists apart from the amount of money that a judge or judicial candidate seeks. Even if Florida decreased its contribution limit, the appearance that judges who personally solicit funds might improperly favor their campaign donors would remain. Although the Court has held that contribution limits advance the interest in preventing quid pro quo corruption and its appearance in political elections, we have never held that adopting contribution limits precludes a State from pursuing its compelling interests through additional means. And in any event, a State has compelling interests in regulating judicial elections that extend beyond its interests in regulating political elections, because judges are not politicians.

In sum, because Canon 7C(1) is narrowly tailored to serve a compelling government interest, the First Amendment poses no obstacle to its enforcement in this case. As a result of our decision, Florida may continue to prohibit judicial candidates from personally soliciting campaign funds, while allowing them to raise money through committees and to otherwise communicate their electoral messages in practically any way. The principal dissent faults us for not answering a slew of broader questions, such as whether Florida may cap a judicial candidate's spending or ban independent expenditures by corporations. Post, at 1679 – 1680. Yulee has not asked these questions, and for good reason—they are far afield from the narrow regulation actually at issue in this case.

We likewise have no cause to consider whether the citizens of States that elect their judges have decided anything about the "oracular sanctity of judges" or whether judges are due "a hearty helping of

humble pie." Post, at 1682. The principal dissent could be right that the decision to adopt judicial elections "probably springs," at least in part, from a desire to make judges more accountable to the public, ibid., although the history on this matter is more complicated. See J. Shugerman, The People's Courts, at 5 (arguing that States adopted judicial elections to increase judicial independence). In any event, it is a long way from general notions of judicial accountability to the principal dissent's view, which evokes nothing so much as Delacroix's painting of Liberty leading a determined band of citoyens, this time against a robed aristocracy scurrying to shore up the ramparts of the judicial castle through disingenuous ethical rules. We claim no similar insight into the People's passions, hazard no assertions about ulterior motives of those who promulgated Canon 7C(1), and firmly reject the charge of a deceptive "pose of neutrality" on the part of those who uphold it. Post, at 1682.

* * *

The desirability of judicial elections is a question that has sparked disagreement for more than 200 years. Hamilton believed that appointing judges to positions with life tenure constituted "the best expedient which can be devised in any government to secure a steady, upright, and impartial administration of the laws." The Federalist No. 78, at 465. Jefferson thought that making judges "dependent on none but themselves" ran counter to the principle of "a government founded on the public will." 12 The Works of Thomas Jefferson 5 (P. Ford ed. 1905). The federal courts reflect the view of Hamilton; most States have sided with Jefferson. Both methods have given our Nation jurists of wisdom and rectitude who have devoted themselves to maintaining "the public's respect ... and a reserve of public goodwill, without becoming subservient to public opinion." Rehnquist, Judicial Independence, 38 U. Rich. L.Rev. 579, 596 (2004).

It is not our place to resolve this enduring debate. Our limited task is to apply the Constitution to the question presented in this case. Judicial candidates have a First Amendment right to speak in support of their campaigns. States have a compelling interest in preserving public confidence in their judiciaries. When the State adopts a narrowly tailored restriction like the one at issue here, those principles do not conflict. A State's decision to elect judges does not compel it to compromise public confidence in their integrity.

The judgment of the Florida Supreme Court is

Affirmed.

Justice BREYER, concurring.

As I have previously said, I view this Court's doctrine referring to tiers of scrutiny as guidelines informing our approach to the case at hand, not tests to be mechanically applied. On that understanding, I join the Court's opinion.

Justice GINSBURG, with whom Justice BREYER joins as to Part II, concurring in part and concurring in the judgment.

I

I join the Court's opinion save for Part II. As explained in my dissenting opinion in Republican Party of Minnesota v. White, 536 U.S. 765, 803, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002), I would not

apply exacting scrutiny to a State's endeavor sensibly to "differentiate elections for political offices ..., from elections designed to select those whose office it is to administer justice without respect to persons," id., at 805, 122 S.Ct. 2528.

II

I write separately to reiterate the substantial latitude, in my view, States should possess to enact campaign-finance rules geared to judicial elections. "Judges," the Court rightly recognizes, "are not politicians," ante, at 1662, so "States may regulate judicial elections differently than they regulate political elections," ante, at 1667. And because "the role of judges differs from the role of politicians," ibid., this Court's "precedents applying the First Amendment to political elections [should] have little bearing" on elections to judicial office. Ante, at 1667.

The Court's recent campaign-finance decisions, trained on political actors, should not hold sway for judicial elections. In Citizens United v. Federal Election Comm'n, 558 U.S. 310, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010), the Court invalidated a campaign-finance restriction designed to check the outsized influence of monied interests in politics. Addressing the Government's asserted interest in preventing "influence over or access to elected officials," id., at 359, 130 S.Ct. 876 the Court observed that "[f]avoritism and influence" are inevitable "in representative politics." Ibid. (quoting McConnell v. Federal Election Comm'n, 540 U.S. 93, 297, 124 S.Ct. 619 (KENNEDY, J., concurring in judgment in part and dissenting in part); emphasis added). A plurality of the Court responded similarly in McCutcheon v. Federal Election Comm'n, 572 U.S. ——, 134 S.Ct. 1434, 188 L.Ed.2d 468 (2014), when it addressed the prospect that wealthy donors would have ready access to, and could therefore influence, elected policymakers. "[A] central feature of democracy," the plurality maintained, is "that constituents support candidates who share their beliefs and interests, and candidates who are elected can be expected to be responsive to those concerns." Id., at ——, 134 S.Ct., at 1441.

For reasons spelled out in the dissenting opinions in Citizens United and McCutcheon, I would have upheld the legislation there at issue. But even if one agrees with those judgments, they are geared to elections for representative posts, and should have "little bearing" on judicial elections. Ante, at 1667. "Favoritism," i.e., partiality, if inevitable in the political arena, is disqualifying in the judiciary's domain. See Marshall v. Jerrico, Inc., 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980) ("The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases."). Unlike politicians, judges are not "expected to be responsive to [the] concerns" of constituents. McCutcheon, 572 U.S., at ——, 134 S.Ct., at 1441 (plurality opinion). Instead, "it is the business of judges to be indifferent to popularity." Chisom v. Roemer, 501 U.S. 380, 401, n. 29, 111 S.Ct. 2354, 115 L.Ed.2d 348 (1991) (internal quotation marks omitted).

States may therefore impose different campaign-finance rules for judicial elections than for political elections. . . .

Justice SCALIA, with whom Justice THOMAS joins, dissenting.

An ethics canon adopted by the Florida Supreme Court bans a candidate in a judicial election from asking anyone, under any circumstances, for a contribution to his campaign. Faithful application of our precedents would have made short work of this wildly disproportionate restriction upon speech. Intent upon upholding the Canon, however, the Court flattens one settled First Amendment principle after another.

I

The first axiom of the First Amendment is this: As a general rule, the state has no power to ban speech on the basis of its content. One need not equate judges with politicians to see that this principle does not grow weaker merely because the censored speech is a judicial candidate's request for a campaign contribution. Our cases hold that speech enjoys the full protection of the First Amendment unless a widespread and longstanding tradition ratifies its regulation. Brown v. Entertainment Merchants Assn., 564 U.S. ——, ——, 131 S.Ct. 2729, 2733–2734, 180 L.Ed.2d 708 (2011). No such tradition looms here. Georgia became the first State to elect its judges in 1812, and judicial elections had spread to a large majority of the States by the time of the Civil War. Republican Party of Minn. v. White, 536 U.S. 765, 785, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002). Yet there appears to have been no regulation of judicial candidates' speech throughout the 19th and early 20th centuries. Ibid. The American Bar Association first proposed ethics rules concerning speech of judicial candidates in 1924, but these rules did not achieve widespread adoption until after the Second World War. Id., at 786, 122 S.Ct. 2528.

Rules against soliciting campaign contributions arrived more recently still. The ABA first proposed a canon advising against it in 1972, and a canon prohibiting it only in 1990. See Brief for American Bar Association as Amicus Curiae 2–4. Even now, 9 of the 39 States that elect judges allow judicial candidates to ask for campaign contributions. See id., at 4. In the absence of any long-settled custom about judicial candidates' speech in general or their solicitations in particular, we have no basis for relaxing the rules that normally apply to laws that suppress speech because of content.

One likewise need not equate judges with politicians to see that the electoral setting calls for all the more vigilance in ensuring observance of the First Amendment. When a candidate asks someone for a campaign contribution, he tends (as the principal opinion acknowledges) also to talk about his qualifications for office and his views on public issues. Ante, at 1664 – 1665 (plurality opinion). This expression lies at the heart of what the First Amendment is meant to protect. In addition, banning candidates from asking for money personally "favors some candidates over others—incumbent judges (who benefit from their current status) over non-judicial candidates, the well-to-do (who may not need to raise any money at all) over lower-income candidates, and the well-connected (who have an army of potential fundraisers) over outsiders." Carey v. Wolnitzek, 614 F.3d 189, 204 (C.A.6 2010). This danger of legislated (or judicially imposed) favoritism is the very reason the First Amendment exists.

Because Canon 7C(1) restricts fully protected speech on the basis of content, it presumptively violates the First Amendment. We may uphold it only if the State meets its burden of showing that the Canon survives strict scrutiny—that is to say, only if it shows that the Canon is narrowly tailored to serve a compelling interest. I do not for a moment question the Court's conclusion that States have different compelling interests when regulating judicial elections than when regulating political ones. Unlike a legislator, a judge must be impartial—without bias for or against any party or attorney who comes before him. I accept for the sake of argument that States have a compelling interest in ensuring that its judges are seen to be impartial. I will likewise assume that a judicial candidate's request to a litigant or attorney presents a danger of coercion that a political candidate's request to a constituent does not. But Canon 7C(1) does not narrowly target concerns about impartiality or its appearance; it applies even when the person asked for a financial contribution has no chance of ever appearing in the candidate's court. And Florida does not invoke concerns about coercion, presumably because the Canon bans solicitations regardless of whether their object is a lawyer, litigant, or other person vulnerable to judicial pressure. So Canon 7C(1) fails exacting scrutiny and infringes the First Amendment. This case should have been just that straightforward.

II

The Court concludes that Florida may prohibit personal solicitations by judicial candidates as a means of preserving "public confidence in the integrity of the judiciary." Ante, at 1666. It purports to reach this destination by applying strict scrutiny, but it would be more accurate to say that it does so by applying the appearance of strict scrutiny.

A

The first sign that mischief is afoot comes when the Court describes Florida's compelling interest. The State must first identify its objective with precision before one can tell whether that interest is compelling and whether the speech restriction narrowly targets it. In White, for example, the Court did not allow a State to invoke hazy concerns about judicial impartiality in justification of an ethics rule against judicial candidates' announcing their positions on legal issues. 536 U.S., at 775, 122 S.Ct. 2528. The Court instead separately analyzed the State's concerns about judges' bias against parties, preconceptions on legal issues, and openmindedness, and explained why each concern (and each for a different reason) did not suffice to sustain the rule. Id., at 775–780, 122 S.Ct. 2528.

In stark contrast to White, the Court today relies on Florida's invocation of an ill-defined interest in "public confidence in judicial integrity." The Court at first suggests that "judicial integrity" involves the "ability to administer justice without fear or favor." Ante, at 1666. As its opinion unfolds, however, today's concept of judicial integrity turns out to be "a mere thing of wax in the hands of the judiciary, which they may twist, and shape into any form they please." 12 The Works of Thomas Jefferson 137 (P. Ford ed. 1905). When the Court explains how solicitation undermines confidence in judicial integrity, integrity starts to sound like saintliness. It involves independence from any " 'possible temptation' " that " 'might lead' " the judge, "even unknowingly," to favor one party. Ante, at 1667 (emphasis added). When the Court turns to distinguishing in-person solicitation from solicitation by proxy, the any-possible-temptation standard no longer helps and thus drops out. The critical factors instead become the "pressure" a listener feels during a solicitation and the "appearance that the candidate will remember who says yes, and who says no." Ante, at 1669. But when it comes time to explain Florida's decision to allow candidates to write thank-you notes, the "appearance that the candidate ... remember[s] who says yes" gets nary a mention. Ante, at 1669. And when the Court confronts Florida's decision to prohibit mass-mailed solicitations, concern about pressure fades away. Ante, at 1671. More outrageous still, the Court at times molds the interest in the perception that judges have integrity into an interest in the perception that judges do not solicit—for example when it says, "all personal solicitations by judicial candidates create a public appearance that undermines confidence in the integrity of the judiciary; banning all personal solicitations by judicial candidates is narrowly tailored to address that concern." Ante, at 1671. This is not strict scrutiny; it is sleight of hand.

B

The Court's twistifications have not come to an end; indeed, they are just beginning. In order to uphold Canon 7C(1) under strict scrutiny, Florida must do more than point to a vital public objective brooding overhead. The State must also meet a difficult burden of demonstrating that the speech restriction substantially advances the claimed objective. The State "bears the risk of uncertainty," so "ambiguous proof will not suffice." Entertainment Merchants, 564 U.S., at ——, 131 S.Ct., at 2739. In an arresting illustration, this Court held that a law punishing lies about winning military decorations

like the Congressional Medal of Honor failed exacting scrutiny, because the Government could not satisfy its "heavy burden" of proving that "the public's general perception of military awards is diluted by false claims." United States v. Alvarez, 567 U.S. ——, ——, 132 S.Ct. 2537, 2549, 183 L.Ed.2d 574 (2012) (plurality opinion).

Now that we have a case about the public's perception of judicial honor rather than its perception of military honors, the Justices of this Court change the rules. The Court announces, on the basis of its "intuiti[on]," that allowing personal solicitations will make litigants worry that " 'judges' decisions may be motivated by the desire to repay campaign contributions.' " Ante, at 1667. But this case is not about whether Yulee has the right to receive campaign contributions. It is about whether she has the right to ask for campaign contributions that Florida's statutory law already allows her to receive. Florida bears the burden of showing that banning requests for lawful contributions will improve public confidence in judges—not just a little bit, but significantly, because "the Government does not have a compelling interest in each marginal percentage point by which its goals are advanced." Entertainment Merchants, supra, at ——, n. 9, 131 S.Ct., at 2741, n. 9.

Neither the Court nor the State identifies the slightest evidence that banning requests for contributions will substantially improve public trust in judges. Nor does common sense make this happy forecast obvious. The concept of judicial integrity "dates back at least eight centuries," ante, at 1666, and judicial elections in America date back more than two centuries, supra, at 1676—but rules against personal solicitations date back only to 1972, supra, at 1676. The peaceful coexistence of judicial elections and personal solicitations for most of our history calls into doubt any claim that allowing personal solicitations would imperil public faith in judges. Many States allow judicial candidates to ask for contributions even today, but nobody suggests that public confidence in judges fares worse in these jurisdictions than elsewhere. And in any event, if candidates' appeals for money are " 'characteristically intertwined' " with discussion of qualifications and views on public issues, ante, at 1665 (plurality opinion), how can the Court be so sure that the public will regard them as improprieties rather than as legitimate instances of campaigning? In the final analysis, Florida comes nowhere near making the convincing demonstration required by our cases that the speech restriction in this case substantially advances its objective.

C

But suppose we play along with the premise that prohibiting solicitations will significantly improve the public reputation of judges. Even then, Florida must show that the ban restricts no more speech than necessary to achieve the objective. See Sable Communications of Cal., Inc. v. FCC, 492 U.S. 115, 126, 109 S.Ct. 2829, 106 L.Ed.2d 93 (1989).

Canon 7C(1) falls miles short of satisfying this requirement. The Court seems to accept Florida's claim that solicitations erode public confidence by creating the perception that judges are selling justice to lawyers and litigants. Ante, at 1666. Yet the Canon prohibits candidates from asking for money from anybody—even from someone who is neither lawyer nor litigant, even from someone who (because of recusal rules) cannot possibly appear before the candidate as lawyer or litigant. Yulee thus may not call up an old friend, a cousin, or even her parents to ask for a donation to her campaign. The State has not come up with a plausible explanation of how soliciting someone who has no chance of appearing in the candidate's court will diminish public confidence in judges. . . .

Perhaps sensing the fragility of the initial claim that all solicitations threaten public confidence in judges, the Court argues that "the lines Yulee asks [it] to draw are unworkable." Ante, at 1671. That is a difficulty of the Court's own imagination. In reality, the Court could have chosen from a whole spectrum of workable rules. It could have held that States may regulate no more than solicitation of participants in pending cases, or solicitation of people who are likely to appear in the candidate's court, or even solicitation of any lawyer or litigant. And it could have ruled that candidates have the right to make fundraising appeals that are not directed to any particular listener (like requests in mass-mailed letters), or at least fundraising appeals plainly directed to the general public (like requests placed online). The Supreme Court of Florida has made similar accommodations in other settings. It allows sitting judges to solicit memberships in civic organizations if (among other things) the solicitee is not "likely ever to appear before the court on which the judge serves." Code of Judicial Conduct for the State of Florida 23 (2014) (Judicial Conduct Code). And it allows sitting judges to accept gifts if (among other things) "the donor is not a party or other person ... whose interests have come or are likely to come before the judge." Id., at 24. It is not too much to ask that the State show election speech similar consideration.

The Court's accusation of unworkability also suffers from a bit of a pot-kettle problem. Consider the many real-world questions left open by today's decision. Does the First Amendment permit restricting a candidate's appearing at an event where somebody else asks for campaign funds on his behalf? See Florida Judicial Ethics Advisory Committee Opinion No. 2012–14 (JEAC Op.). Does it permit prohibiting the candidate's family from making personal solicitations? See ibid. Does it allow prohibiting the candidate from participating in the creation of a Web site that solicits funds, even if the candidate's name does not appear next to the request? See JEAC Op. No. 2008–11. More broadly, could Florida ban thank-you notes to donors? Cap a candidate's campaign spending? Restrict independent spending by people other than the candidate? Ban independent spending by corporations? And how, by the way, are judges supposed to decide whether these measures promote public confidence in judicial integrity, when the Court does not even have a consistent theory about what it means by "judicial integrity"? For the Court to wring its hands about workability under these circumstances is more than one should have to bear.

D

Even if Florida could show that banning all personal appeals for campaign funds is necessary to protect public confidence in judicial integrity, the Court must overpower one last sentinel of free speech before it can uphold Canon 7C(1). Among its other functions, the First Amendment is a kind of Equal Protection Clause for ideas. The state ordinarily may not regulate one message because it harms a government interest yet refuse to regulate other messages that impair the interest in a comparable way. Applying this principle, we invalidated a law that prohibited picketing dwellings but made an exception for picketing about labor issues; the State could not show that labor picketing harmed its asserted interest in residential privacy any less than other kinds of picketing. Carey v. Brown, 447 U.S. 455, 464–465, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980). In another case, we set aside a ban on showing movies containing nudity in drive-in theaters, because the government did not demonstrate that movies with nude scenes would distract passing drivers any more than, say, movies with violent scenes. Erznoznik v. Jacksonville, 422 U.S. 205, 214–215, 95 S.Ct. 2268, 45 L.Ed.2d 125 (1975).

The Court's decision disregards these principles. The Court tells us that "all personal solicitations by judicial candidates create a public appearance that undermines confidence in the integrity of the judiciary." Ante, at 1671. But Canon 7C(1) does not restrict all personal solicitations; it

restricts only personal solicitations related to campaigns. The part of the Canon challenged here prohibits personal pleas for "campaign funds," and the Canon elsewhere prohibits personal appeals to attorneys for "publicly stated support." Judicial Conduct Code 38. So although Canon 7C(1) prevents Yulee from asking a lawyer for a few dollars to help her buy campaign pamphlets, it does not prevent her asking the same lawyer for a personal loan, access to his law firm's luxury suite at the local football stadium, or even a donation to help her fight the Florida Bar's charges. What could possibly justify these distinctions? Surely the Court does not believe that requests for campaign favors erode public confidence in a way that requests for favors unrelated to elections do not. Could anyone say with a straight face that it looks worse for a candidate to say "please give my campaign $25" than to say "please give me $25"?

Fumbling around for a fig-leaf, the Court says that "the First Amendment imposes no freestanding 'underinclusiveness limitation.' " Ante, at 1668. This analysis elides the distinction between selectivity on the basis of content and selectivity on other grounds. Because the First Amendment does not prohibit underinclusiveness as such, lawmakers may target a problem only at certain times or in certain places. Because the First Amendment does prohibit content discrimination as such, lawmakers may not target a problem only in certain messages. Explaining this distinction, we have said that the First Amendment would allow banning obscenity "only in certain media or markets" but would preclude banning "only that obscenity which includes offensive political messages." R.A.V. v. St. Paul, 505 U.S. 377, 387–388, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992) (emphasis deleted). This case involves selectivity on the basis of content. The Florida Supreme Court has decided to eliminate the appearances associated with "personal appeals for money," ante, at 1671, when the appeals seek money for a campaign but not when the appeals seek money for other purposes. That distinction violates the First Amendment. See Erznoznik, supra, at 215, 95 S.Ct. 2268.

Even on the Court's own terms, Canon 7C(1) cannot stand. The Court concedes that "underinclusiveness can raise 'doubts about whether the government is in fact pursuing the interest it invokes.' " Ante, at 1668. Canon 7C(1)'s scope suggests that it has nothing to do with the appearances created by judges' asking for money, and everything to do with hostility toward judicial campaigning. How else to explain the Florida Supreme Court's decision to ban all personal appeals for campaign funds (even when the solicitee could never appear before the candidate), but to tolerate appeals for other kinds of funds (even when the solicitee will surely appear before the candidate)? It should come as no surprise that the ABA, whose model rules the Florida Supreme Court followed when framing Canon 7C(1), opposes judicial elections—preferring instead a system in which (surprise!) a committee of lawyers proposes candidates from among whom the Governor must make his selection. See White, 536 U.S., at 787, 122 S.Ct. 2528.

The Court tries to strike a pose of neutrality between appointment and election of judges, but no one should be deceived. A Court that sees impropriety in a candidate's request for any contributions to his election campaign does not much like judicial selection by the people. One cannot have judicial elections without judicial campaigns, and judicial campaigns without funds for campaigning, and funds for campaigning without asking for them. When a society decides that its judges should be elected, it necessarily decides that selection by the people is more important than the oracular sanctity of judges, their immunity from the (shudder!) indignity of begging for funds, and their exemption from those shadows of impropriety that fall over the proletarian public officials who must run for office. A free society, accustomed to electing its rulers, does not much care whether the rulers operate through statute and executive order, or through judicial distortion of statute, executive order, and constitution. The prescription that judges be elected probably springs from the people's realization that their judges can

become their rulers—and (it must be said) from just a deep-down feeling that members of the Third Branch will profit from a hearty helping of humble pie, and from a severe reduction of their great remove from the (ugh!) People. (It should not be thought that I myself harbor such irreverent and revolutionary feelings; but I think it likely—and year by year more likely—that those who favor the election of judges do so.) In any case, hostility to campaigning by judges entitles the people of Florida to amend their Constitution to replace judicial elections with the selection of judges by lawyers' committees; it does not entitle the Florida Supreme Court to adopt, or this Court to endorse, a rule of judicial conduct that abridges candidates' speech in the judicial elections that the Florida Constitution prescribes.

* * *

This Court has not been shy to enforce the First Amendment in recent Terms—even in cases that do not involve election speech. It has accorded robust protection to depictions of animal torture, sale of violent video games to children, and lies about having won military medals. See United States v. Stevens, 559 U.S. 460, 130 S.Ct. 1577, 176 L.Ed.2d 435 (2010); Entertainment Merchants, 564 U.S. ——, 131 S.Ct. 2729, 180 L.Ed.2d 708; Alvarez, 567 U.S. ——, 132 S.Ct. 2537, 183 L.Ed.2d 574. Who would have thought that the same Court would today exert such heroic efforts to save so plain an abridgement of the freedom of speech? It is no great mystery what is going on here. The judges of this Court, like the judges of the Supreme Court of Florida who promulgated Canon 7C(1), evidently consider the preservation of public respect for the courts a policy objective of the highest order. So it is—but so too are preventing animal torture, protecting the innocence of children, and honoring valiant soldiers. The Court did not relax the Constitution's guarantee of freedom of speech when legislatures pursued those goals; it should not relax the guarantee when the Supreme Court of Florida pursues this one. The First Amendment is not abridged for the benefit of the Brotherhood of the Robe.

I respectfully dissent.

Justice KENNEDY, dissenting.

. . .

In addition to narrowing the First Amendment's reach, there is another flaw in the Court's analysis. That is its error in the application of strict scrutiny. The Court's evisceration of that judicial standard now risks long-term harm to what was once the Court's own preferred First Amendment test. As Justice SCALIA well explains, the state law at issue fails strict scrutiny for any number of reasons. The candidate who is not wealthy or well connected cannot ask even a close friend or relative for a bit of financial help, despite the lack of any increased risk of partiality and despite the fact that disclosure laws might be enacted to make the solicitation and support public. This law comes nowhere close to being narrowly tailored. And by saying that it survives that vital First Amendment requirement, the Court now writes what is literally a casebook guide to eviscerating strict scrutiny any time the Court encounters speech it dislikes. On these premises, and for the reasons explained in more detail by Justice SCALIA, it is necessary for me to file this respectful dissent.

Justice ALITO, dissenting.

I largely agree with what I view as the essential elements of the dissents filed by Justices SCALIA and KENNEDY. The Florida rule before us regulates speech that is part of the process of

selecting those who wield the power of the State. Such speech lies at the heart of the protection provided by the First Amendment. The Florida rule regulates that speech based on content and must therefore satisfy strict scrutiny. This means that it must be narrowly tailored to further a compelling state interest. Florida has a compelling interest in making sure that its courts decide cases impartially and in accordance with the law and that its citizens have no good reason to lack confidence that its courts are performing their proper role. But the Florida rule is not narrowly tailored to serve that interest.

Indeed, this rule is about as narrowly tailored as a burlap bag. It applies to all solicitations made in the name of a candidate for judicial office—including, as was the case here, a mass mailing. It even applies to an ad in a newspaper. It applies to requests for contributions in any amount, and it applies even if the person solicited is not a lawyer, has never had any interest at stake in any case in the court in question, and has no prospect of ever having any interest at stake in any litigation in that court. If this rule can be characterized as narrowly tailored, then narrow tailoring has no meaning, and strict scrutiny, which is essential to the protection of free speech, is seriously impaired.

When petitioner sent out a form letter requesting campaign contributions, she was well within her First Amendment rights. The Florida Supreme Court violated the Constitution when it imposed a financial penalty and stained her record with a finding that she had engaged in unethical conduct. I would reverse the judgment of the Florida Supreme Court.

To be added at page 333 following *Garcetti v. Ceballos*:

Lane v. Franks
13-483, 2014 WL 2765285 (U.S. June 19, 2014)
[*KL: change this cite]*

Justice SOTOMAYOR delivered the opinion of the Court.

Almost 50 years ago, this Court declared that citizens do not surrender their First Amendment rights by accepting public employment. Rather, the First Amendment protection of a public employee's speech depends on a careful balance "between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U.S. 563, 568, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968). In *Pickering,* the Court struck the balance in favor of the public employee, extending First Amendment protection to a teacher who was fired after writing a letter to the editor of a local newspaper criticizing the school board that employed him. Today, we consider whether the First Amendment similarly protects a public employee who provided truthful sworn testimony, compelled by subpoena, outside the course of his ordinary job responsibilities. We hold that it does.

I

In 2006, Central Alabama Community College (CACC) hired petitioner Edward Lane to be the Director of Community Intensive Training for Youth (CITY), a statewide program for underprivileged youth. CACC hired Lane on a probationary basis. In his capacity as Director, Lane was responsible for overseeing CITY's day-to-day operations, hiring and firing employees, and making decisions with respect to the program's finances.

At the time of Lane's appointment, CITY faced significant financial difficulties. That prompted Lane to conduct a comprehensive audit of the program's expenses. The audit revealed that Suzanne Schmitz, an Alabama State Representative on CITY's payroll, had not been reporting to her CITY office. After unfruitful discussions with Schmitz, Lane shared his finding with CACC's president and its attorney. They warned him that firing Schmitz could have negative repercussions for him and CACC.

Lane nonetheless contacted Schmitz again and instructed her to show up to the Huntsville office to serve as a counselor. Schmitz refused; she responded that she wished to " 'continue to serve the CITY program in the same manner as [she had] in the past.' " *Lane v. Central Ala. Community College,* 523 Fed.Appx. 709, 710 (C.A.11 2013) (*per curiam*). Lane fired her shortly thereafter. Schmitz told another CITY employee, Charles Foley, that she intended to " 'get [Lane] back' " for firing her. 2012 WL 5289412, *1 (N.D.Ala., Oct. 18, 2012). She also said that if Lane ever requested money from the state legislature for the program, she would tell him, " '[y]ou're fired.' " *Ibid.*

Schmitz' termination drew the attention of many, including agents of the Federal Bureau of Investigation, which initiated an investigation into Schmitz' employment with CITY. In November 2006, Lane testified before a federal grand jury about his reasons for firing Schmitz. In January 2008, the grand jury indicted Schmitz on four counts of mail fraud and four counts of theft concerning a program receiving federal funds. ***

Schmitz' trial, which garnered extensive press coverage,[1] commenced in August 2008. Lane testified, under subpoena, regarding the events that led to his terminating Schmitz. The jury failed to reach a verdict. Roughly six months later, federal prosecutors retried Schmitz, and Lane testified once again. This time, the jury convicted Schmitz on three counts of mail fraud and four counts of theft concerning a program receiving federal funds. The District Court sentenced her to 30 months in prison and ordered her to pay $177,251.82 in restitution and forfeiture.

Meanwhile, CITY continued to experience considerable budget shortfalls. In November 2008, Lane began reporting to respondent Steve Franks, who had become president of CACC in January 2008. Lane recommended that Franks consider layoffs to address the financial difficulties. In January 2009, Franks decided to terminate 29 probationary CITY employees, including Lane. Shortly thereafter, however, Franks rescinded all but 2 of the 29 terminations—those of Lane and one other employee—because of an "ambiguity in [those other employees'] probationary service." Brief for Respondent Franks 11. ***

In January 2011, Lane sued Franks in his individual and official capacities under Rev. Stat. § 1979, 42 U.S.C. § 1983, alleging that Franks had violated the First Amendment by firing him in retaliation for his testimony against Schmitz. Lane sought damages from Franks in his individual capacity and sought equitable relief, including reinstatement, from Franks in his official capacity.

The District Court granted Franks' motion for summary judgment. Although the court concluded that the record raised "genuine issues of material fact ... concerning [Franks'] true motivation for terminating [Lane's] employment," 2012 WL 5289412, *6, it held that Franks was entitled to qualified immunity as to the damages claims because "a reasonable government official in [Franks'] position would not have had reason to believe that the Constitution protected [Lane's] testimony," *id.*, *12. The District Court relied on *Garcetti v. Ceballos,* 547 U.S. 410, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006), which held that " 'when public employees make statements pursuant to their official duties, the

employees are not speaking as citizens for First Amendment purposes.' " 2012 WL 5289412, *10 (quoting *Garcetti*, 547 U.S., at 421, 126 S.Ct. 1951). The court found no violation of clearly established law because Lane had "learned of the information that he testified about while working as Director at [CITY]," such that his "speech [could] still be considered as part of his official job duties and not made as a citizen on a matter of public concern." 2012 WL 5289412, *10.

The Eleventh Circuit affirmed. 523 Fed.Appx., at 710. Like the District Court, it relied extensively on *Garcetti*. It reasoned that, "[e]ven if an employee was not required to make the speech as part of his official duties, he enjoys no First Amendment protection if his speech 'owes its existence to [the] employee's professional responsibilities' and is 'a product that the "employer himself has commissioned or created." ' " *Id.*, at 711 (quoting *Abdur–Rahman v. Walker*, 567 F.3d 1278, 1283 (C.A.11 2009)). ***

We granted certiorari, 571 U.S. ——, 134 S.Ct. 999, 187 L.Ed.2d 848 (2014), to resolve discord among the Courts of Appeals as to whether public employees may be fired—or suffer other adverse employment consequences—for providing truthful subpoenaed testimony outside the course of their ordinary job responsibilities. Compare 523 Fed.Appx., at 712 (case below), with, *e.g.*, *Reilly v. Atlantic City*, 532 F.3d 216, 231 (C.A.3 2008).

II

Speech by citizens on matters of public concern lies at the heart of the First Amendment, which "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people," *Roth v. United States*, 354 U.S. 476, 484, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957). This remains true when speech concerns information related to or learned through public employment. After all, public employees do not renounce their citizenship when they accept employment, and this Court has cautioned time and again that public employers may not condition employment on the relinquishment of constitutional rights. *** There is considerable value, moreover, in encouraging, rather than inhibiting, speech by public employees. For "[g]overnment employees are often in the best position to know what ails the agencies for which they work." *Waters v. Churchill*, 511 U.S. 661, 674, 114 S.Ct. 1878, 128 L.Ed.2d 686 (1994) (plurality opinion). ***

Our precedents have also acknowledged the government's countervailing interest in controlling the operation of its workplaces. See, *e.g.*, *Pickering*, 391 U.S., at 568, 88 S.Ct. 1731. "Government employers, like private employers, need a significant degree of control over their employees' words and actions; without it, there would be little chance for the efficient provision of public services." *Garcetti*, 547 U.S., at 418, 126 S.Ct. 1951.

Pickering provides the framework for analyzing whether the employee's interest or the government's interest should prevail in cases where the government seeks to curtail the speech of its employees. It requires "balanc[ing] ... the interests of the [public employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." 391 U.S., at 568, 88 S.Ct. 1731. ***

In *Garcetti*, we described a two-step inquiry into whether a public employee's speech is entitled to protection:

> "The first requires determining whether the employee spoke as a citizen on a matter of public concern. If the answer is no, the employee has no First Amendment cause of action based on his or her employer's reaction to the speech. If the answer is yes, then the possibility of a First Amendment claim arises. The question becomes whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public." 547 U.S., at 418, 126 S.Ct. 1951 (citations omitted).

In describing the first step in this inquiry, *Garcetti* distinguished between employee speech and citizen speech. Whereas speech as a citizen may trigger protection, the Court held that "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." *Id.,* at 421, 126 S.Ct. 1951. Applying that rule to the facts before it, the Court found that an internal memorandum prepared by a prosecutor in the course of his ordinary job responsibilities constituted unprotected employee speech. *Id.,* at 424, 126 S.Ct. 1951.

III

Against this backdrop, we turn to the question presented: whether the First Amendment protects a public employee who provides truthful sworn testimony, compelled by subpoena, outside the scope of his ordinary job responsibilities.[4] We hold that it does.

A

The first inquiry is whether the speech in question—Lane's testimony at Schmitz' trials—is speech as a citizen on a matter of public concern. It clearly is.

1

Truthful testimony under oath by a public employee outside the scope of his ordinary job duties is speech as a citizen for First Amendment purposes. That is so even when the testimony relates to his public employment or concerns information learned during that employment.

*** Sworn testimony in judicial proceedings is a quintessential example of speech as a citizen for a simple reason: Anyone who testifies in court bears an obligation, to the court and society at large, to tell the truth. When the person testifying is a public employee, he may bear separate obligations to his employer—for example, an obligation not to show up to court dressed in an unprofessional manner. But any such obligations as an employee are distinct and independent from the obligation, as a citizen, to speak the truth. *** That independent obligation renders sworn testimony speech as a citizen and sets it apart from speech made purely in the capacity of an employee.

In holding that Lane did not speak as a citizen when he testified, the Eleventh Circuit read *Garcetti* far too broadly. It reasoned that, because Lane learned of the subject matter of his testimony in the course of his employment with CITY, *Garcetti* requires that his testimony be treated as the speech of an employee rather than that of a citizen. See 523 Fed.Appx., at 712. It does not.

The sworn testimony in this case is far removed from the speech at issue in *Garcetti*—an internal memorandum prepared by a deputy district attorney for his supervisors recommending

dismissal of a particular prosecution. The *Garcetti* Court held that such speech was made pursuant to the employee's "official responsibilities" because "[w]hen [the employee] went to work and performed the tasks he was paid to perform, [he] acted as a government employee. The fact that his duties sometimes required him to speak or write does not mean that his supervisors were prohibited from evaluating his performance." 547 U.S., at 422, 424, 126 S.Ct. 1951.

But *Garcetti* said nothing about speech that simply relates to public employment or concerns information learned in the course of public employment. The *Garcetti* Court made explicit that its holding did not turn on the fact that the memo at issue "concerned the subject matter of [the prosecutor's] employment," because "[t]he First Amendment protects some expressions related to the speaker's job." *Id.,* at 421, 126 S.Ct. 1951. *** The critical question under *Garcetti* is whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties.

It bears emphasis that our precedents dating back to *Pickering* have recognized that speech by public employees on subject matter related to their employment holds special value precisely because those employees gain knowledge of matters of public concern through their employment. ***

The importance of public employee speech is especially evident in the context of this case: a public corruption scandal. *** It would be antithetical to our jurisprudence to conclude that the very kind of speech necessary to prosecute corruption by public officials—speech by public employees regarding information learned through their employment—may never form the basis for a First Amendment retaliation claim. Such a rule would place public employees who witness corruption in an impossible position, torn between the obligation to testify truthfully and the desire to avoid retaliation and keep their jobs.

Applying these principles, it is clear that Lane's sworn testimony is speech as a citizen.

2

Lane's testimony is also speech on a matter of public concern. Speech involves matters of public concern "when it can 'be fairly considered as relating to any matter of political, social, or other concern to the community,' or when it 'is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.' " *Snyder v. Phelps,* 562 U.S. ——, ——, 131 S.Ct. 1207, 1216, 179 L.Ed.2d 172 (2011) (citation omitted). The inquiry turns on the "content, form, and context" of the speech. *Connick,* 461 U.S., at 147–148, 103 S.Ct. 1684.

The content of Lane's testimony—corruption in a public program and misuse of state funds—obviously involves a matter of significant public concern. *** And the form and context of the speech—sworn testimony in a judicial proceeding—fortify that conclusion. "Unlike speech in other contexts, testimony under oath has the formality and gravity necessary to remind the witness that his or her statements will be the basis for official governmental action, action that often affects the rights and liberties of others." *United States v. Alvarez,* 567 U.S. ——, ——, 132 S.Ct. 2537, 2546, 183 L.Ed.2d 574 (2012) (plurality opinion).

We hold, then, that Lane's truthful sworn testimony at Schmitz' criminal trials is speech as a citizen on a matter of public concern.

B

This does not settle the matter, however. A public employee's sworn testimony is not categorically entitled to First Amendment protection simply because it is speech as a citizen on a matter of public concern. Under *Pickering*, if an employee speaks as a citizen on a matter of public concern, the next question is whether the government had "an adequate justification for treating the employee differently from any other member of the public" based on the government's needs as an employer. *Garcetti*, 547 U.S., at 418, 126 S.Ct. 1951.

As discussed previously, we have recognized that government employers often have legitimate "interest[s] in the effective and efficient fulfillment of [their] responsibilities to the public," including " 'promot[ing] efficiency and integrity in the discharge of official duties,' " and " 'maintain[ing] proper discipline in public service.' " *Connick*, 461 U.S., at 150–151, 103 S.Ct. 1684. We have also cautioned, however, that "a stronger showing [of government interests] may be necessary if the employee's speech more substantially involve[s] matters of public concern." *Id.*, at 152, 103 S.Ct. 1684.

Here, the employer's side of the *Pickering* scale is entirely empty: Respondents do not assert, and cannot demonstrate, any government interest that tips the balance in their favor. There is no evidence, for example, that Lane's testimony at Schmitz' trials was false or erroneous or that Lane unnecessarily disclosed any sensitive, confidential, or privileged information while testifying. In these circumstances, we conclude that Lane's speech is entitled to protection under the First Amendment. The Eleventh Circuit erred in holding otherwise and dismissing Lane's claim of retaliation on that basis.

***

V

Lane's speech is entitled to First Amendment protection, but because respondent Franks is entitled to qualified immunity, we affirm the judgment of the Eleventh Circuit as to the claims against Franks in his individual capacity. Our decision does not resolve, however, the claims against Burrow [Frank's replacement]—initially brought against Franks when he served as President of CACC—in her official capacity. *** We therefore reverse the judgment of the Eleventh Circuit as to those claims and remand for further proceedings.

For the foregoing reasons, the judgment of the United States Court of Appeals for the Eleventh Circuit is affirmed in part and reversed in part, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice THOMAS, with whom Justice SCALIA and Justice ALITO join, concurring.

*** We ... have no occasion to address the quite different question whether a public employee speaks "as a citizen" when he testifies in the course of his ordinary job responsibilities. For some public employees—such as police officers, crime scene technicians, and laboratory analysts—testifying is a routine and critical part of their employment duties. Others may be called to testify in the context of particular litigation as the designated representatives of their employers. See Fed. Rule Civ. Proc.

30(b)(6). The Court properly leaves the constitutional questions raised by these scenarios for another day.

To be added at page 389 following Ward v. Rock Against Racism:

Reed v. Town of Gilbert, Arizona
135 S.Ct. 2218 (2015)

Justice THOMAS delivered the opinion of the Court.

The town of Gilbert, Arizona (or Town), has adopted a comprehensive code governing the manner in which people may display outdoor signs. Gilbert, Ariz., Land Development Code (Sign Code or Code), ch. 1, § 4.402 (2005). The Sign Code identifies various categories of signs based on the type of information they convey, then subjects each category to different restrictions. One of the categories is "Temporary Directional Signs Relating to a Qualifying Event," loosely defined as signs directing the public to a meeting of a nonprofit group. § 4.402(P). The Code imposes more stringent restrictions on these signs than it does on signs conveying other messages. We hold that these provisions are content-based regulations of speech that cannot survive strict scrutiny.

I
A

The Sign Code prohibits the display of outdoor signs anywhere within the Town without a permit, but it then exempts 23 categories of signs from that requirement. These exemptions include everything from bazaar signs to flying banners. Three categories of exempt signs are particularly relevant here.

The first is "Ideological Sign[s]." This category includes any "sign communicating a message or ideas for noncommercial purposes that is not a Construction Sign, Directional Sign, Temporary Directional Sign Relating to a Qualifying Event, Political Sign, Garage Sale Sign, or a sign owned or required by a governmental agency." Sign Code, Glossary of General Terms (Glossary), p. 23 (emphasis deleted). Of the three categories discussed here, the Code treats ideological signs most favorably, allowing them to be up to 20 square feet in area and to be placed in all "zoning districts" without time limits. § 4.402(J).

The second category is "Political Sign[s]." This includes any "temporary sign designed to influence the outcome of an election called by a public body." Glossary 23. The Code treats these signs less favorably than ideological signs. The Code allows the placement of political signs up to 16 square feet on residential property and up to 32 square feet on nonresidential property, undeveloped municipal property, and "rights-of-way." § 4.402(I). These signs may be displayed up to 60 days before a primary election and up to 15 days following a general election. Ibid.

The third category is "Temporary Directional Signs Relating to a Qualifying Event." This includes any "Temporary Sign intended to direct pedestrians, motorists, and other passersby to a 'qualifying event.' " Glossary 25 (emphasis deleted). A "qualifying event" is defined as any "assembly, gathering, activity, or meeting sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar non-profit organization." Ibid. The Code treats temporary

directional signs even less favorably than political signs.(fn4) Temporary directional signs may be no larger than six square feet. § 4.402(P). They may be placed on private property or on a public right-of-way, but no more than four signs may be placed on a single property at any time. Ibid. And, they may be displayed no more than 12 hours before the "qualifying event" and no more than 1 hour afterward. Ibid.

> *Fn 4*: The Sign Code has been amended twice during the pendency of this case. When litigation began in 2007, the Code defined the signs at issue as "Religious Assembly Temporary Direction Signs." App. 75. The Code entirely prohibited placement of those signs in the public right-of-way, and it forbade posting them in any location for more than two hours before the religious assembly or more than one hour afterward. Id., at 75–76. In 2008, the Town redefined the category as "Temporary Directional Signs Related to a Qualifying Event," and it expanded the time limit to 12 hours before and 1 hour after the "qualifying event." Ibid. In 2011, the Town amended the Code to authorize placement of temporary directional signs in the public right-of-way. Id., at 89.

B

Petitioners Good News Community Church (Church) and its pastor, Clyde Reed, wish to advertise the time and location of their Sunday church services. The Church is a small, cash-strapped entity that owns no building, so it holds its services at elementary schools or other locations in or near the Town. In order to inform the public about its services, which are held in a variety of different locations, the Church began placing 15 to 20 temporary signs around the Town, frequently in the public right-of-way abutting the street. The signs typically displayed the Church's name, along with the time and location of the upcoming service. Church members would post the signs early in the day on Saturday and then remove them around midday on Sunday. The display of these signs requires little money and manpower, and thus has proved to be an economical and effective way for the Church to let the community know where its services are being held each week.

This practice caught the attention of the Town's Sign Code compliance manager, who twice cited the Church for violating the Code. The first citation noted that the Church exceeded the time limits for displaying its temporary directional signs. The second citation referred to the same problem, along with the Church's failure to include the date of the event on the signs. Town officials even confiscated one of the Church's signs, which Reed had to retrieve from the municipal offices.

Reed contacted the Sign Code Compliance Department in an attempt to reach an accommodation. His efforts proved unsuccessful. The Town's Code compliance manager informed the Church that there would be "no leniency under the Code" and promised to punish any future violations.

Shortly thereafter, petitioners filed a complaint in the United States District Court for the District of Arizona, arguing that the Sign Code abridged their freedom of speech in violation of the First and Fourteenth Amendments. The District Court denied the petitioners' motion for a preliminary injunction. The Court of Appeals for the Ninth Circuit affirmed, holding that the Sign Code's provision regulating temporary directional signs did not regulate speech on the basis of content. 587 F.3d 966, 979 (2009). It reasoned that, even though an enforcement officer would have to read the sign to determine what provisions of the Sign Code applied to it, the " 'kind of cursory examination' " that would be necessary for an officer to classify it as a temporary directional sign was "not akin to an officer synthesizing the expressive content of the sign." Id., at 978. It then remanded for the District

Court to determine in the first instance whether the Sign Code's distinctions among temporary directional signs, political signs, and ideological signs nevertheless constituted a content-based regulation of speech.

On remand, the District Court granted summary judgment in favor of the Town. The Court of Appeals again affirmed, holding that the Code's sign categories were content neutral. The court concluded that "the distinctions between Temporary Directional Signs, Ideological Signs, and Political Signs ... are based on objective factors relevant to Gilbert's creation of the specific exemption from the permit requirement and do not otherwise consider the substance of the sign." 707 F.3d 1057, 1069 (C.A.9 2013). Relying on this Court's decision in Hill v. Colorado, 530 U.S. 703, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000), the Court of Appeals concluded that the Sign Code is content neutral. 707 F.3d, at 1071–1072. As the court explained, "Gilbert did not adopt its regulation of speech because it disagreed with the message conveyed" and its "interests in regulat[ing] temporary signs are unrelated to the content of the sign." Ibid. Accordingly, the court believed that the Code was "content-neutral as that term [has been] defined by the Supreme Court." Id., at 1071. In light of that determination, it applied a lower level of scrutiny to the Sign Code and concluded that the law did not violate the First Amendment. Id., at 1073–1076.

We granted certiorari, 573 U.S. ——, 134 S.Ct. 2900, 189 L.Ed.2d 854 (2014), and now reverse.

II

A

The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech." U.S. Const., Amdt. 1. Under that Clause, a government, including a municipal government vested with state authority, "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." Police Dept. of Chicago v. Mosley, 408 U.S. 92, 95, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972). Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. R.A.V. v. St. Paul, 505 U.S. 377, 395, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992); Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd., 502 U.S. 105, 115, 118, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991).

Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. E.g., Sorrell v. IMS Health, Inc., 564 U.S. ——, ——– ——, 131 S.Ct. 2653, 2663–2664, 180 L.Ed.2d 544 (2011); Carey v. Brown, 447 U.S. 455, 462, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980); Mosley, supra, at 95, 92 S.Ct. 2286. This commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. Sorrell, supra, at ——, 131 S.Ct., at 2664. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

Our precedents have also recognized a separate and additional category of laws that, though facially content neutral, will be considered content-based regulations of speech: laws that cannot be "

'justified without reference to the content of the regulated speech,' " or that were adopted by the government "because of disagreement with the message [the speech] conveys," Ward v. Rock Against Racism, 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). Those laws, like those that are content based on their face, must also satisfy strict scrutiny.

B

The Town's Sign Code is content based on its face. It defines "Temporary Directional Signs" on the basis of whether a sign conveys the message of directing the public to church or some other "qualifying event." Glossary 25. It defines "Political Signs" on the basis of whether a sign's message is "designed to influence the outcome of an election." Id., at 24. And it defines "Ideological Signs" on the basis of whether a sign "communicat [es] a message or ideas" that do not fit within the Code's other categories. Id., at 23. It then subjects each of these categories to different restrictions.

The restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign. If a sign informs its reader of the time and place a book club will discuss John Locke's Two Treatises of Government, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke's followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke's theory of government. More to the point, the Church's signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas. On its face, the Sign Code is a content-based regulation of speech. We thus have no need to consider the government's justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny.

C

In reaching the contrary conclusion, the Court of Appeals offered several theories to explain why the Town's Sign Code should be deemed content neutral. None is persuasive.

1

The Court of Appeals first determined that the Sign Code was content neutral because the Town "did not adopt its regulation of speech [based on] disagree [ment] with the message conveyed," and its justifications for regulating temporary directional signs were "unrelated to the content of the sign." 707 F.3d, at 1071–1072. In its brief to this Court, the United States similarly contends that a sign regulation is content neutral—even if it expressly draws distinctions based on the sign's communicative content—if those distinctions can be " 'justified without reference to the content of the regulated speech.' " Brief for United States as Amicus Curiae 20, 24 (quoting Ward, supra, at 791, 109 S.Ct. 2746; emphasis deleted).

But this analysis skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of "animus toward the ideas contained" in the regulated speech. Cincinnati v. Discovery Network, Inc., 507 U.S. 410, 429, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993). We have thus made clear that " '[i]llicit legislative intent is not the sine qua non of a violation of the First Amendment,' " and a party opposing the government "need adduce 'no evidence of an improper censorial motive.' " Simon & Schuster, supra, at 117, 112 S.Ct. 501. Although "a content-based purpose may be sufficient in certain circumstances to

show that a regulation is content based, it is not necessary." Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622, 642, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994). In other words, an innocuous justification cannot transform a facially content-based law into one that is content neutral.

That is why we have repeatedly considered whether a law is content neutral on its face before turning to the law's justification or purpose. See, e.g., Sorrell, supra, at ——— – ———, 131 S.Ct., at 2663–2664 (statute was content based "on its face," and there was also evidence of an impermissible legislative motive); United States v. Eichman, 496 U.S. 310, 315, 110 S.Ct. 2404, 110 L.Ed.2d 287 (1990) ("Although the [statute] contains no explicit content-based limitation on the scope of prohibited conduct, it is nevertheless clear that the Government's asserted interest is related to the suppression of free expression" (internal quotation marks omitted)); Members of City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 804, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984) ("The text of the ordinance is neutral," and "there is not even a hint of bias or censorship in the City's enactment or enforcement of this ordinance"); Clark v. Community for Creative Non–Violence, 468 U.S. 288, 293, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984) (requiring that a facially content-neutral ban on camping must be "justified without reference to the content of the regulated speech"); United States v. O'Brien, 391 U.S. 367, 375, 377, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968) (noting that the statute "on its face deals with conduct having no connection with speech," but examining whether the "the governmental interest is unrelated to the suppression of free expression"). Because strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny.

The Court of Appeals and the United States misunderstand our decision in Ward as suggesting that a government's purpose is relevant even when a law is content based on its face. That is incorrect. Ward had nothing to say about facially content-based restrictions because it involved a facially content-neutral ban on the use, in a city-owned music venue, of sound amplification systems not provided by the city. 491 U.S., at 787, and n. 2, 109 S.Ct. 2746. In that context, we looked to governmental motive, including whether the government had regulated speech "because of disagreement" with its message, and whether the regulation was " 'justified without reference to the content of the speech.' " Id., at 791, 109 S.Ct. 2746. But Ward 's framework "applies only if a statute is content neutral." Hill, 530 U.S., at 766, 120 S.Ct. 2480 (KENNEDY, J., dissenting). Its rules thus operate "to protect speech," not "to restrict it." Id., at 765, 120 S.Ct. 2480.

The First Amendment requires no less. Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech. That is why the First Amendment expressly targets the operation of the laws—i.e., the "abridg[ement] of speech"—rather than merely the motives of those who enacted them. U.S. Const., Amdt. 1. " 'The vice of content-based legislation ... is not that it is always used for invidious, thought-control purposes, but that it lends itself to use for those purposes.' " Hill, supra, at 743, 120 S.Ct. 2480 (SCALIA, J., dissenting).

. . .

2

The Court of Appeals next reasoned that the Sign Code was content neutral because it "does not mention any idea or viewpoint, let alone single one out for differential treatment." 587 F.3d, at 977. It

reasoned that, for the purpose of the Code provisions, "[i]t makes no difference which candidate is supported, who sponsors the event, or what ideological perspective is asserted." 707 F.3d, at 1069.

The Town seizes on this reasoning, insisting that "content based" is a term of art that "should be applied flexibly" with the goal of protecting "viewpoints and ideas from government censorship or favoritism." Brief for Respondents 22. In the Town's view, a sign regulation that "does not censor or favor particular viewpoints or ideas" cannot be content based. Ibid. The Sign Code allegedly passes this test because its treatment of temporary directional signs does not raise any concerns that the government is "endorsing or suppressing 'ideas or viewpoints,' " id., at 27, and the provisions for political signs and ideological signs "are neutral as to particular ideas or viewpoints" within those categories. Id., at 37.

This analysis conflates two distinct but related limitations that the First Amendment places on government regulation of speech. Government discrimination among viewpoints—or the regulation of speech based on "the specific motivating ideology or the opinion or perspective of the speaker"—is a "more blatant" and "egregious form of content discrimination." Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). But it is well established that "[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N. Y., 447 U.S. 530, 537, 100 S.Ct. 2326, 65 L.Ed.2d 319 (1980).

Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter. Ibid. For example, a law banning the use of sound trucks for political speech—and only political speech—would be a content-based regulation, even if it imposed no limits on the political viewpoints that could be expressed. See Discovery Network, supra, at 428, 113 S.Ct. 1505. The Town's Sign Code likewise singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter. Ideological messages are given more favorable treatment than messages concerning a political candidate, which are themselves given more favorable treatment than messages announcing an assembly of like-minded individuals. That is a paradigmatic example of content-based discrimination.

3

Finally, the Court of Appeals characterized the Sign Code's distinctions as turning on " 'the content-neutral elements of who is speaking through the sign and whether and when an event is occurring.' " 707 F.3d, at 1069. That analysis is mistaken on both factual and legal grounds.

To start, the Sign Code's distinctions are not speaker based. The restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. If a local business, for example, sought to put up signs advertising the Church's meetings, those signs would be subject to the same limitations as such signs placed by the Church. And if Reed had decided to display signs in support of a particular candidate, he could have made those signs far larger—and kept them up for far longer—than signs inviting people to attend his church services. If the Code's distinctions were truly speaker based, both types of signs would receive the same treatment.

In any case, the fact that a distinction is speaker based does not, as the Court of Appeals seemed to believe, automatically render the distinction content neutral. Because "[s]peech restrictions based on

the identity of the speaker are all too often simply a means to control content," Citizens United v. Federal Election Comm'n, 558 U.S. 310, 340, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010), we have insisted that "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference," Turner, 512 U.S., at 658, 114 S.Ct. 2445. Thus, a law limiting the content of newspapers, but only newspapers, could not evade strict scrutiny simply because it could be characterized as speaker based. Likewise, a content-based law that restricted the political speech of all corporations would not become content neutral just because it singled out corporations as a class of speakers. See Citizens United, supra, at 340–341, 130 S.Ct. 876. Characterizing a distinction *2231 as speaker based is only the beginning—not the end—of the inquiry.

Nor do the Sign Code's distinctions hinge on "whether and when an event is occurring." The Code does not permit citizens to post signs on any topic whatsoever within a set period leading up to an election, for example. Instead, come election time, it requires Town officials to determine whether a sign is "designed to influence the outcome of an election" (and thus "political") or merely "communicating a message or ideas for noncommercial purposes" (and thus "ideological"). Glossary 24. That obvious content-based inquiry does not evade strict scrutiny review simply because an event (i.e., an election) is involved.

And, just as with speaker-based laws, the fact that a distinction is event based does not render it content neutral. The Court of Appeals cited no precedent from this Court supporting its novel theory of an exception from the content-neutrality requirement for event-based laws. As we have explained, a speech regulation is content based if the law applies to particular speech because of the topic discussed or the idea or message expressed. Supra, at 2226 – 2227. A regulation that targets a sign because it conveys an idea about a specific event is no less content based than a regulation that targets a sign because it conveys some other idea. Here, the Code singles out signs bearing a particular message: the time and location of a specific event. This type of ordinance may seem like a perfectly rational way to regulate signs, but a clear and firm rule governing content neutrality is an essential means of protecting the freedom of speech, even if laws that might seem "entirely reasonable" will sometimes be "struck down because of their content-based nature." City of Ladue v. Gilleo, 512 U.S. 43, 60, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994) (O'Connor, J., concurring).

III

Because the Town's Sign Code imposes content-based restrictions on speech, those provisions can stand only if they survive strict scrutiny, " 'which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest,' " Arizona Free Enterprise Club's Freedom Club PAC v. Bennett, 564 U.S. ——, ——, 131 S.Ct. 2806, 2817, 180 L.Ed.2d 664 (2011) (quoting Citizens United, 558 U.S., at 340, 130 S.Ct. 876). Thus, it is the Town's burden to demonstrate that the Code's differentiation between temporary directional signs and other types of signs, such as political signs and ideological signs, furthers a compelling governmental interest and is narrowly tailored to that end. See ibid.

The Town cannot do so. It has offered only two governmental interests in support of the distinctions the Sign Code draws: preserving the Town's aesthetic appeal and traffic safety. Assuming for the sake of argument that those are compelling governmental interests, the Code's distinctions fail as hopelessly underinclusive.

Starting with the preservation of aesthetics, temporary directional signs are "no greater an eyesore," Discovery Network, 507 U.S., at 425, 113 S.Ct. 1505, than ideological or political ones. Yet

the Code allows unlimited proliferation of larger ideological signs while strictly limiting the number, size, and duration of smaller directional ones. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town while at the same time allowing unlimited numbers of other types of signs that create the same problem.

The Town similarly has not shown that limiting temporary directional signs is necessary to eliminate threats to traffic safety, but that limiting other types of signs is not. The Town has offered no reason to believe that directional signs pose a greater threat to safety than do ideological or political signs. If anything, a sharply worded ideological sign seems more likely to distract a driver than a sign directing the public to a nearby church meeting.

In light of this underinclusiveness, the Town has not met its burden to prove that its Sign Code is narrowly tailored to further a compelling government interest. Because a " 'law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction on truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited,' " Republican Party of Minn. v. White, 536 U.S. 765, 780, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002), the Sign Code fails strict scrutiny.

IV

Our decision today will not prevent governments from enacting effective sign laws. The Town asserts that an " 'absolutist' " content-neutrality rule would render "virtually all distinctions in sign laws ... subject to strict scrutiny," Brief for Respondents 34–35, but that is not the case. Not "all distinctions" are subject to strict scrutiny, only content-based ones are. Laws that are content neutral are instead subject to lesser scrutiny. See Clark, 468 U.S., at 295, 104 S.Ct. 3065.

The Town has ample content-neutral options available to resolve problems with safety and aesthetics. For example, its current Code regulates many aspects of signs that have nothing to do with a sign's message: size, building materials, lighting, moving parts, and portability. See, e.g., § 4.402(R). And on public property, the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner. See Taxpayers for Vincent, 466 U.S., at 817, 104 S.Ct. 2118 (upholding content-neutral ban against posting signs on public property). Indeed, some lower courts have long held that similar content-based sign laws receive strict scrutiny, but there is no evidence that towns in those jurisdictions have suffered catastrophic effects. See, e.g., Solantic, LLC v. Neptune Beach, 410 F.3d 1250, 1264–1269 (C.A.11 2005) (sign categories similar to the town of Gilbert's were content based and subject to strict scrutiny); Matthews v. Needham, 764 F.2d 58, 59–60 (C.A.1 1985) (law banning political signs but not commercial signs was content based and subject to strict scrutiny).

We acknowledge that a city might reasonably view the general regulation of signs as necessary because signs "take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation." City of Ladue, 512 U.S., at 48, 114 S.Ct. 2038. At the same time, the presence of certain signs may be essential, both for vehicles and pedestrians, to guide traffic or to identify hazards and ensure safety. A sign ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses—well might survive strict scrutiny. The signs at issue in this case, including political and ideological signs and signs for events, are far removed from those purposes. As discussed above,

they are facially content based and are neither justified by traditional safety concerns nor narrowly tailored.

We reverse the judgment of the Court of Appeals and remand the case for proceedings consistent with this opinion.

It is so ordered.

Justice ALITO, with whom Justice KENNEDY and Justice SOTOMAYOR join, concurring.

I join the opinion of the Court but add a few words of further explanation.

As the Court holds, what we have termed "content-based" laws must satisfy strict scrutiny. Content-based laws merit this protection because they present, albeit sometimes in a subtler form, the same dangers as laws that regulate speech based on viewpoint. Limiting speech based on its "topic" or "subject" favors those who do not want to disturb the status quo. Such regulations may interfere with democratic self-government and the search for truth. See Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N. Y., 447 U.S. 530, 537, 100 S.Ct. 2326, 65 L.Ed.2d 319 (1980).

As the Court shows, the regulations at issue in this case are replete with content-based distinctions, and as a result they must satisfy strict scrutiny. This does not mean, however, that municipalities are powerless to enact and enforce reasonable sign regulations. . . .

In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech. See Pleasant Grove City v. Summum, 555 U.S. 460, 467–469, 129 S.Ct. 1125, 172 L.Ed.2d 853 (2009). They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.

Properly understood, today's decision will not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate esthetic objectives.

Justice BREYER, concurring in the judgment.

. . .

The First Amendment requires greater judicial sensitivity both to the Amendment's expressive objectives and to the public's legitimate need for regulation than a simple recitation of categories, such as "content discrimination" and "strict scrutiny," would permit. In my view, the category "content discrimination" is better considered in many contexts, including here, as a rule of thumb, rather than as an automatic "strict scrutiny" trigger, leading to almost certain legal condemnation.

To use content discrimination to trigger strict scrutiny sometimes makes perfect sense. There are cases in which the Court has found content discrimination an unconstitutional method for suppressing a viewpoint. E.g., Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 828–829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995); see also Boos v. Barry, 485 U.S. 312, 318–319, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988) (plurality opinion) (applying strict scrutiny where the line between subject matter and viewpoint was not obvious). And there are cases where the Court has found content

discrimination to reveal that rules governing a traditional public forum are, in fact, not a neutral way of fairly managing the forum in the interest of all speakers. Police Dept. of Chicago v. Mosley, 408 U.S. 92, 96, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972) ("Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say"). In these types of cases, strict scrutiny is often appropriate, and content discrimination has thus served a useful purpose.

But content discrimination, while helping courts to identify unconstitutional suppression of expression, cannot and should not always trigger strict scrutiny. . . .

The better approach is to generally treat content discrimination as a strong reason weighing against the constitutionality of a rule where a traditional public forum, or where viewpoint discrimination, is threatened, but elsewhere treat it as a rule of thumb, finding it a helpful, but not determinative legal tool, in an appropriate case, to determine the strength of a justification. I would use content discrimination as a supplement to a more basic analysis, which, tracking most of our First Amendment cases, asks whether the regulation at issue works harm to First Amendment interests that is disproportionate in light of the relevant regulatory objectives. Answering this question requires examining the seriousness of the harm to speech, the importance of the countervailing objectives, the extent to which the law will achieve those objectives, and whether there are other, less restrictive ways of doing so. . . .

Justice KAGAN, with whom Justice GINSBURG and Justice BREYER join, concurring in the judgment.

. . .

Our concern with content-based regulation arises from the fear that the government will skew the public's debate of ideas—so when "that risk is inconsequential, ... strict scrutiny is unwarranted." Davenport, 551 U.S., at 188, 127 S.Ct. 2372; see R.A.V., 505 U.S., at 388, 112 S.Ct. 2538 (approving certain content-based distinctions when there is "no significant danger of idea or viewpoint discrimination"). To do its intended work, of course, the category of content-based regulation triggering strict scrutiny must sweep more broadly than the actual harm; that category exists to create a buffer zone guaranteeing that the government cannot favor or disfavor certain viewpoints. But that buffer zone need not extend forever. We can administer our content-regulation doctrine with a dose of common sense, so as to leave standing laws that in no way implicate its intended function.

And indeed we have done just that: Our cases have been far less rigid than the majority admits in applying strict scrutiny to facially content-based laws—including in cases just like this one. See Davenport, 551 U.S., at 188, 127 S.Ct. 2372 (noting that "we have identified numerous situations in which [the] risk" attached to content-based laws is "attenuated"). In Members of City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984), the Court declined to apply strict scrutiny to a municipal ordinance that exempted address numbers and markers commemorating "historical, cultural, or artistic event[s]" from a generally applicable limit on sidewalk signs. Id., at 792, n. 1, 104 S.Ct. 2118 (listing exemptions); see id., at 804–810, 104 S.Ct. 2118 (upholding ordinance under intermediate scrutiny). After all, we explained, the law's enactment and enforcement revealed "not even a hint of bias or censorship." Id., at 804, 104 S.Ct. 2118; see also Renton v. Playtime Theatres, Inc., 475 U.S. 41, 48, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986) (applying intermediate scrutiny to a zoning law that facially distinguished among movie theaters based on content

because it was "designed to prevent crime, protect the city's retail trade, [and] maintain property values ..., not to suppress the expression of unpopular views"). And another decision involving a similar law provides an alternative model. In City of Ladue v. Gilleo, 512 U.S. 43, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994), the Court assumed arguendo that a sign ordinance's exceptions for address signs, safety signs, and for-sale signs in residential areas did not trigger strict scrutiny. See id., at 46–47, and n. 6, 114 S.Ct. 2038 (listing exemptions); id., at 53, 114 S.Ct. 2038 (noting this assumption). We did not need to, and so did not, decide the level-of-scrutiny question because the law's breadth made it unconstitutional under any standard.

To be added at page 396 following notes for *Madsen v. Women's Health Center*:

McCullen v. Coakley
134 S. Ct. 2518 (2014)

Chief Justice ROBERTS delivered the opinion of the Court.

A Massachusetts statute makes it a crime to knowingly stand on a "public way or sidewalk" within 35 feet of an entrance or driveway to any place, other than a hospital, where abortions are performed. Mass. Gen. Laws, ch. 266, §§ 120E½(a), (b) (West 2012). Petitioners are individuals who approach and talk to women outside such facilities, attempting to dissuade them from having abortions. The statute prevents petitioners from doing so near the facilities' entrances. The question presented is whether the statute violates the First Amendment.

I
A

In 2000, the Massachusetts Legislature enacted the Massachusetts Reproductive Health Care Facilities Act, Mass. Gen. Laws, ch. 266, § 120E½ (West 2000). The law was designed to address clashes between abortion opponents and advocates of abortion rights that were occurring outside clinics where abortions were performed. The Act established a defined area with an 18–foot radius around the entrances and driveways of such facilities. § 120E½ (b). Anyone could enter that area, but once within it, no one (other than certain exempt individuals) could knowingly approach within six feet of another person—unless that person consented—"for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person." *Ibid.* A separate provision subjected to criminal punishment anyone who "knowingly obstructs, detains, hinders, impedes or blocks another person's entry to or exit from a reproductive health care facility." § 120E½(e).

The statute was modeled on a similar Colorado law that this Court had upheld in *Hill v. Colorado*, 530 U.S. 703, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000). Relying on *Hill*, the United States Court of Appeals for the First Circuit sustained the Massachusetts statute against a First Amendment challenge. *McGuire v. Reilly*, 386 F.3d 45 (2004) (*McGuire II*), cert. denied, 544 U.S. 974, 125 S.Ct. 1827, 161 L.Ed.2d 724 (2005); *McGuire v. Reilly*, 260 F.3d 36 (2001) (*McGuire I*).

By 2007, some Massachusetts legislators and law enforcement officials had come to regard the 2000 statute as inadequate. At legislative hearings, multiple witnesses recounted apparent violations of the law. Massachusetts Attorney General Martha Coakley, for example, testified that protestors violated the statute "on a routine basis." App. 78. To illustrate this claim, she played a video depicting protestors approaching patients and clinic staff within the buffer zones, ostensibly without the latter individuals' consent. Clinic employees and volunteers also testified that protestors congregated near the doors and in the driveways of the clinics, with the result that prospective patients occasionally retreated from the clinics rather than try to make their way to the clinic entrances or parking lots.

Captain William B. Evans of the Boston Police Department, however, testified that his officers had made "no more than five or so arrests" at the Planned Parenthood clinic in Boston and that what few prosecutions had been brought were unsuccessful. *Id.*, at 68–69. Witnesses attributed the dearth of enforcement to the difficulty of policing the six-foot no-approach zones. Captain Evans testified that the 18–foot zones were so crowded with protestors that they resembled "a goalie's crease," making it hard to determine whether a protestor had deliberately approached a patient or, if so, whether the patient had consented. *Id.*, at 69–71. For similar reasons, Attorney General Coakley concluded that the six-foot no-approach zones were "unenforceable." *Id.*, at 79. What the police needed, she said, was a fixed buffer zone around clinics that protestors could not enter. *Id.*, at 74, 76. Captain Evans agreed, explaining that such a zone would "make our job so much easier." *Id.*, at 68.

To address these concerns, the Massachusetts Legislature amended the statute in 2007, replacing the six-foot no-approach zones (within the 18–foot area) with a 35–foot fixed buffer zone from which individuals are categorically excluded. The statute now provides:

> "No person shall knowingly enter or remain on a public way or sidewalk adjacent to a reproductive health care facility within a radius of 35 feet of any portion of an entrance, exit or driveway of a reproductive health care facility or within the area within a rectangle created by extending the outside boundaries of any entrance, exit or driveway of a reproductive health care facility in straight lines to the point where such lines intersect the sideline of the street in front of such entrance, exit or driveway." Mass. Gen. Laws, ch. 266, § 120E½(b) (West 2012).

A "reproductive health care facility," in turn, is defined as "a place, other than within or upon the grounds of a hospital, where abortions are offered or performed." § 120E½(a).
The 35–foot buffer zone applies only "during a facility's business hours," and the area must be "clearly marked and posted." § 120E½(c). In practice, facilities typically mark the zones with painted arcs and posted signs on adjacent sidewalks and streets. A first violation of the statute is punishable by a fine of up to $500, up to three months in prison, or both, while a subsequent offense is punishable by a fine of between $500 and $5,000, up to two and a half years in prison, or both. § 120E½(d).

The Act exempts four classes of individuals: (1) "persons entering or leaving such facility"; (2) "employees or agents of such facility acting within the scope of their employment"; (3) "law enforcement, ambulance, firefighting, construction, utilities, public works and other municipal agents acting within the scope of their employment"; and (4) "persons using the public sidewalk or street right-of-way adjacent to such facility solely for the purpose of reaching a destination other than such

facility." § 120E½(b)(1)-(4). The legislature also retained the separate provision from the 2000 version that proscribes the knowing obstruction of access to a facility. § 120E½(e).

B

Some of the individuals who stand outside Massachusetts abortion clinics are fairly described as protestors, who express their moral or religious opposition to abortion through signs and chants or, in some cases, more aggressive methods such as face-to-face confrontation. Petitioners take a different tack. They attempt to engage women approaching the clinics in what they call "sidewalk counseling," which involves offering information about alternatives to abortion and help pursuing those options. Petitioner Eleanor McCullen, for instance, will typically initiate a conversation this way: "Good morning, may I give you my literature? Is there anything I can do for you? I'm available if you have any questions." App. 138. If the woman seems receptive, McCullen will provide additional information. ***

The buffer zones have displaced petitioners from their previous positions outside the clinics. McCullen offers counseling outside a Planned Parenthood clinic in Boston***. The clinic occupies its own building on a street corner. Its main door is recessed into an open foyer, approximately 12 feet back from the public sidewalk. Before the Act was amended to create the buffer zones, petitioners stood near the entryway to the foyer. Now a buffer zone—marked by a painted arc and a sign—surrounds the entrance. This zone extends 23 feet down the sidewalk in one direction, 26 feet in the other, and outward just one foot short of the curb. The clinic's entrance adds another seven feet to the width of the zone. *Id.*, at 293–295. The upshot is that petitioners are effectively excluded from a 56–foot–wide expanse of the public sidewalk in front of the clinic.

*** Petitioners at [these] clinics claim that the buffer zones have considerably hampered their counseling efforts. Although they have managed to conduct some counseling and to distribute some literature outside the buffer zones—particularly at the Boston clinic—they say they have had many fewer conversations and distributed many fewer leaflets since the zones went into effect. *Id.*, at 136–137, 180, 200.

The second statutory exemption allows clinic employees and agents acting within the scope of their employment to enter the buffer zones. Relying on this exemption, the Boston clinic uses "escorts" to greet women as they approach the clinic, accompanying them through the zones to the clinic entrance. Petitioners claim that the escorts sometimes thwart petitioners' attempts to communicate with patients by blocking petitioners from handing literature to patients, telling patients not to "pay any attention" or "listen to" petitioners, and disparaging petitioners as "crazy." *Id.*, at 165, 178.

C

In January 2008, petitioners sued Attorney General Coakley and other Commonwealth officials. They sought to enjoin enforcement of the Act, alleging that it violates the First and Fourteenth Amendments, both on its face and as applied to them. The District Court denied petitioners' facial challenge after a bench trial based on a stipulated record. 573 F.Supp.2d 382 (D.Mass.2008).

The Court of Appeals for the First Circuit affirmed. 571 F.3d 167 (2009). Relying extensively on its previous decisions upholding the 2000 version of the Act, see *McGuire II*, 386 F.3d 45; *McGuire I*, 260 F.3d 36, the court upheld the 2007 version as a reasonable "time, place, and manner" regulation under the test set forth in *Ward v. Rock Against Racism*, 491 U.S. 781, 109 S.Ct. 2746, 105 L.Ed.2d

661 (1989). 571 F.3d, at 174–181. It also rejected petitioners' arguments that the Act was substantially overbroad, void for vagueness, and an impermissible prior restraint. *Id.*, at 181–184.

The case then returned to the District Court, which held that the First Circuit's decision foreclosed all but one of petitioners' as-applied challenges. 759 F.Supp.2d 133 (2010). After another bench trial, it denied the remaining as-applied challenge, finding that the Act left petitioners ample alternative channels of communication. 844 F.Supp.2d 206 (2012). The Court of Appeals once again affirmed. 708 F.3d 1 (2013).

We granted certiorari. 570 U.S. ——, 133 S.Ct. 2857, 186 L.Ed.2d 907 (2013).

II

By its very terms, the Massachusetts Act regulates access to "public way[s]" and "sidewalk[s]." Mass. Gen. Laws, ch. 266, § 120E½(b) (Supp. 2007). Such areas occupy a "special position in terms of First Amendment protection" because of their historic role as sites for discussion and debate. *United States v. Grace*, 461 U.S. 171, 180, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983). These places—which we have labeled "traditional public fora"—" 'have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' " *Pleasant Grove City v. Summum*, 555 U.S. 460, 469, 129 S.Ct. 1125, 172 L.Ed.2d 853 (2009) (quoting *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983)).

*** Traditional public fora are areas that have historically been open to the public for speech activities. Thus, even though the Act says nothing about speech on its face, there is no doubt—and respondents do not dispute—that it restricts access to traditional public fora and is therefore subject to First Amendment scrutiny. See Brief for Respondents 26 (although "[b]y its terms, the Act regulates only conduct," it "incidentally regulates the place and time of protected speech").

Consistent with the traditionally open character of public streets and sidewalks, we have held that the government's ability to restrict speech in such locations is "very limited." *Grace, supra*, at 177, 103 S.Ct. 1702. In particular, the guiding First Amendment principle that the "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content" applies with full force in a traditional public forum. *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972). As a general rule, in such a forum the government may not "selectively ... shield the public from some kinds of speech on the ground that they are more offensive than others." *Erznoznik v. Jacksonville*, 422 U.S. 205, 209, 95 S.Ct. 2268, 45 L.Ed.2d 125 (1975).

We have, however, afforded the government somewhat wider leeway to regulate features of speech unrelated to its content. "[E]ven in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions 'are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.' " *Ward*, 491 U.S., at 791, 109 S.Ct. 2746 (quoting *Clark v. Community for Creative Non–Violence*, 468 U.S. 288, 293, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984)).

While the parties agree that this test supplies the proper framework for assessing the constitutionality of the Massachusetts Act, they disagree about whether the Act satisfies the test's three requirements.

III

Petitioners contend that the Act is not content neutral for two independent reasons: First, they argue that it discriminates against abortion-related speech because it establishes buffer zones only at clinics that perform abortions. Second, petitioners contend that the Act, by exempting clinic employees and agents, favors one viewpoint about abortion over the other. If either of these arguments is correct, then the Act must satisfy strict scrutiny—that is, it must be the least restrictive means of achieving a compelling state interest. See *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813, 120 S.Ct. 1878, 146 L.Ed.2d 865 (2000). Respondents do not argue that the Act can survive this exacting standard.

*** There is good reason to address content neutrality. In discussing whether the Act is narrowly tailored, we identify a number of less-restrictive alternative measures that the Massachusetts Legislature might have adopted. Some apply only at abortion clinics, which raises the question whether those provisions are content neutral. While we need not (and do not) endorse any of those measures, it would be odd to consider them as possible alternatives if they were presumptively unconstitutional because they were content based and thus subject to strict scrutiny.

A

The Act applies only at a "reproductive health care facility," defined as "a place, other than within or upon the grounds of a hospital, where abortions are offered or performed." Mass. Gen. Laws, ch. 266, § 120E½ (a). Given this definition, petitioners argue, "virtually all speech affected by the Act is speech concerning abortion," thus rendering the Act content based. Brief for Petitioners 23.

We disagree. To begin, the Act does not draw content-based distinctions on its face. Contrast *Boos v. Barry*, 485 U.S. 312, 315, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988) ***. The Act would be content based if it required "enforcement authorities" to "examine the content of the message that is conveyed to determine whether" a violation has occurred. *League of Women Voters of Cal., supra*, at 383, 104 S.Ct. 3106. But it does not. Whether petitioners violate the Act "depends" not "on what they say," *Humanitarian Law Project, supra*, at 27, 130 S.Ct. 2705, but simply on where they say it. Indeed, petitioners can violate the Act merely by standing in a buffer zone, without displaying a sign or uttering a word.

It is true, of course, that by limiting the buffer zones to abortion clinics, the Act has the "inevitable effect" of restricting abortion-related speech more than speech on other subjects ***. But a facially neutral law does not become content based simply because it may disproportionately affect speech on certain topics. On the contrary, "[a] regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." *Ward, supra*, at 791, 109 S.Ct. 2746. The question in such a case is whether the law is " 'justified without reference to the content of the regulated speech.' " *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986) ***.

The Massachusetts Act is. Its stated purpose is to "increase forthwith public safety at reproductive health care facilities." 2007 Mass. Acts p. 660. Respondents have articulated similar purposes before this Court—namely, "public safety, patient access to healthcare, and the unobstructed use of public sidewalks and roadways." *** It is not the case that "[e]very objective indication shows that the provision's primary purpose is to restrict speech that opposes abortion." ***

We have previously deemed the foregoing concerns to be content neutral. See *Boos*, 485 U.S., at 321, 108 S.Ct. 1157 (identifying "congestion," "interference with ingress or egress," and "the need to protect ... security" as content-neutral concerns). Obstructed access and congested sidewalks are problems no matter what caused them. A group of individuals can obstruct clinic access and clog sidewalks just as much when they loiter as when they protest abortion or counsel patients.

To be clear, the Act would not be content neutral if it were concerned with undesirable effects that arise from "the direct impact of speech on its audience" or "[l]isteners' reactions to speech." *Ibid.* *** All of the problems identified by the Commonwealth here, however, arise irrespective of any listener's reactions. ***

Petitioners do not really dispute that the Commonwealth's interests in ensuring safety and preventing obstruction are, as a general matter, content neutral. But petitioners note that *** [b]y choosing to pursue these interests only at abortion clinics, petitioners argue, the Massachusetts Legislature evinced a purpose to "single[ ] out for regulation speech about one particular topic: abortion." Reply Brief 9.

We cannot infer such a purpose from the Act's limited scope. The broad reach of a statute can help confirm that it was not enacted to burden a narrower category of disfavored speech. See Kagan, Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Doctrine, 63 U. Chi. L.Rev. 413, 451–452 (1996). At the same time, however, "States adopt laws to address the problems that confront them. The First Amendment does not require States to regulate for problems that do not exist." *Burson v. Freeman*, 504 U.S. 191, 207, 112 S.Ct. 1846, 119 L.Ed.2d 5 (1992) (plurality opinion). The Massachusetts Legislature amended the Act in 2007 in response to a problem that was, in its experience, limited to abortion clinics. *** When selecting among various options for combating a particular problem, legislatures should be encouraged to choose the one that restricts less speech, not more. ***

B

Petitioners also argue that the Act is content based because it exempts four classes of individuals, Mass. Gen. Laws, ch. 266, §§ 120E½ (b)(1)-(4), one of which comprises "employees or agents of [a reproductive healthcare] facility acting within the scope of their employment." § 120E½(b)(2). This exemption, petitioners say, favors one side in the abortion debate and thus constitutes viewpoint discrimination—an "egregious form of content discrimination," *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). In particular, petitioners argue that the exemption allows clinic employees and agents—including the volunteers who "escort" patients arriving at the Boston clinic—to speak inside the buffer zones.

It is of course true that "an exemption from an otherwise permissible regulation of speech may represent a governmental 'attempt to give one side of a debatable public question an advantage in expressing its views to the people.' " *City of Ladue v. Gilleo*, 512 U.S. 43, 51, 114 S.Ct. 2038, 129

L.Ed.2d 36 (1994) (quoting *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 785–786, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978)). At least on the record before us, however, the statutory exemption for clinic employees and agents acting within the scope of their employment does not appear to be such an attempt.

There is nothing inherently suspect about providing some kind of exemption to allow individuals who work at the clinics to enter or remain within the buffer zones. In particular, the exemption cannot be regarded as simply a carve-out for the clinic escorts; it also covers employees such as the maintenance worker shoveling a snowy sidewalk or the security guard patrolling a clinic entrance, see App. 95 (affidavit of Michael T. Baniukiewicz).

Given the need for an exemption for clinic employees, the "scope of their employment" qualification simply ensures that the exemption is limited to its purpose of allowing the employees to do their jobs. It performs the same function as the identical "scope of their employment" restriction on the exemption for "law enforcement, ambulance, fire-fighting, construction, utilities, public works and other municipal agents." § 120E½(b)(3). *** [T]here is little reason to suppose that the Massachusetts Legislature intended to incorporate a common law doctrine developed for determining vicarious liability in tort when it used the phrase "scope of their employment" for the wholly different purpose of defining the scope of an exemption to a criminal statute. The limitation instead makes clear—with respect to both clinic employees and municipal agents—that exempted individuals are allowed inside the zones only to perform those acts authorized by their employers. There is no suggestion in the record that any of the clinics authorize their employees to speak about abortion in the buffer zones. The "scope of their employment" limitation thus seems designed to protect against exactly the sort of conduct that petitioners and Justice SCALIA fear.

Petitioners did testify in this litigation about instances in which escorts at the Boston clinic had expressed views about abortion to the women they were accompanying, thwarted petitioners' attempts to speak and hand literature to the women, and disparaged petitioners in various ways. See App. 165, 168–169, 177–178, 189–190. It is unclear from petitioners' testimony whether these alleged incidents occurred within the buffer zones. There is no viewpoint discrimination problem if the incidents occurred outside the zones because petitioners are equally free to say whatever they would like in that area.

Even assuming the incidents occurred inside the zones, the record does not suggest that they involved speech within the scope of the escorts' employment. If the speech was beyond the scope of their employment, then each of the alleged incidents would violate the Act's express terms. Petitioners' complaint would then be that the police were failing to *enforce* the Act equally against clinic escorts. Cf. *Hoye v. City of Oakland*, 653 F.3d 835, 849–852 (C.A.9 2011) (finding selective enforcement of a similar ordinance in Oakland, California). While such allegations might state a claim of official viewpoint discrimination, that would not go to the validity of the Act. In any event, petitioners nowhere allege selective enforcement.

It would be a very different question if it turned out that a clinic authorized escorts to speak about abortion inside the buffer zones. *** In that case, the escorts would not seem to be violating the Act because the speech would be within the scope of their employment. The Act's exemption for clinic employees would then facilitate speech on only one side of the abortion debate—a clear form of viewpoint discrimination that would support an as-applied challenge to the buffer zone at that clinic. But the record before us contains insufficient evidence to show that the exemption operates in this way

at any of the clinics, perhaps because the clinics do not want to doom the Act by allowing their employees to speak about abortion within the buffer zones.

We thus conclude that the Act is neither content nor viewpoint based and therefore need not be analyzed under strict scrutiny.

IV

Even though the Act is content neutral, it still must be "narrowly tailored to serve a significant governmental interest." *Ward*, 491 U.S., at 796, 109 S.Ct. 2746 (internal quotation marks omitted). *** Where certain speech is associated with particular problems, silencing the speech is sometimes the path of least resistance. But by demanding a close fit between ends and means, the tailoring requirement prevents the government from too readily "sacrific[ing] speech for efficiency." *Riley v. National Federation of Blind of N. C., Inc.*, 487 U.S. 781, 795, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988).

For a content-neutral time, place, or manner regulation to be narrowly tailored, it must not "burden substantially more speech than is necessary to further the government's legitimate interests." *Ward*, 491 U.S., at 799, 109 S.Ct. 2746. Such a regulation, unlike a content-based restriction of speech, "need not be the least restrictive or least intrusive means of" serving the government's interests. *Id.*, at 798, 109 S.Ct. 2746. But the government still "may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals." *Id.*, at 799, 109 S.Ct. 2746.

A

As noted, respondents claim that the Act promotes "public safety, patient access to healthcare, and the unobstructed use of public sidewalks and roadways." Brief for Respondents 27. Petitioners do not dispute the significance of these interests. We have, moreover, previously recognized the legitimacy of the government's interests in "ensuring public safety and order, promoting the free flow of traffic on streets and sidewalks, protecting property rights, and protecting a woman's freedom to seek pregnancy-related services." *Schenck v. Pro–Choice Network of Western N.Y.*, 519 U.S. 357, 376, 117 S.Ct. 855, 137 L.Ed.2d 1 (1997). See also *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 767–768, 114 S.Ct. 2516, 129 L.Ed.2d 593 (1994). The buffer zones clearly serve these interests.

At the same time, the buffer zones impose serious burdens on petitioners' speech. At each of the three Planned Parenthood clinics where petitioners attempt to counsel patients, the zones carve out a significant portion of the adjacent public sidewalks, pushing petitioners well back from the clinics' entrances and driveways. The zones thereby compromise petitioners' ability to initiate the close, personal conversations that they view as essential to "sidewalk counseling." ***

*** These burdens on petitioners' speech have clearly taken their toll. Although McCullen claims that she has persuaded about 80 women not to terminate their pregnancies since the 2007 amendment, App. to Pet. for Cert. 42a, she also says that she reaches "far fewer people" than she did before the amendment, App. 137. ***

The buffer zones have also made it substantially more difficult for petitioners to distribute literature to arriving patients. As explained, because petitioners in Boston cannot readily identify patients before they enter the zone, they often cannot approach them in time to place literature near their hands—the most effective means of getting the patients to accept it. *Id.*, at 179. ***

The Court of Appeals and respondents are wrong to downplay these burdens on petitioners' speech. As the Court of Appeals saw it, the Constitution does not accord "special protection" to close conversations or "handbilling." 571 F.3d, at 180. But while the First Amendment does not guarantee a speaker the right to any particular form of expression, some forms—such as normal conversation and leafletting on a public sidewalk—have historically been more closely associated with the transmission of ideas than others.

In the context of petition campaigns, we have observed that "one-on-one communication" is "the most effective, fundamental, and perhaps economical avenue of political discourse." *Meyer v. Grant,* 486 U.S. 414, 424, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988). *** And "handing out leaflets in the advocacy of a politically controversial viewpoint ... is the essence of First Amendment expression"; "[n]o form of speech is entitled to greater constitutional protection." *McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 347, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995). When the government makes it more difficult to engage in these modes of communication, it imposes an especially significant First Amendment burden.

Respondents also emphasize that the Act does not prevent petitioners from engaging in various forms of "protest"—such as chanting slogans and displaying signs—outside the buffer zones. Brief for Respondents 50–54. That misses the point. *** Petitioners believe that they can accomplish [their] objective only through personal, caring, consensual conversations. And for good reason: It is easier to ignore a strained voice or a waving hand than a direct greeting or an outstretched arm. It is thus no answer to say that petitioners can still be "seen and heard" by women within the buffer zones. *Id.,* at 51–53. If all that the women can see and hear are vociferous opponents of abortion, then the buffer zones have effectively stifled petitioners' message.

Finally, respondents suggest that, at the Worcester and Springfield clinics, petitioners are prevented from communicating with patients not by the buffer zones but by the fact that most patients arrive by car and park in the clinics' private lots. *Id.,* at 52. It is true that the layout of the two clinics would prevent petitioners from approaching the clinics' *doorways,* even without the buffer zones. But petitioners do not claim a right to trespass on the clinics' property. They instead claim a right to stand on the public sidewalks by the driveway as cars turn into the parking lot. Before the buffer zones, they could do so. Now they must stand a substantial distance away. The Act alone is responsible for that restriction on their ability to convey their message.

B
1

The buffer zones burden substantially more speech than necessary to achieve the Commonwealth's asserted interests. At the outset, we note that the Act is truly exceptional: Respondents and their *amici* identify no other State with a law that creates fixed buffer zones around abortion clinics. That ***raise[s] concern that the Commonwealth has too readily forgone options that could serve its interests just as well, without substantially burdening the kind of speech in which petitioners wish to engage.

That is the case here. The Commonwealth's interests include ensuring public safety outside abortion clinics, preventing harassment and intimidation of patients and clinic staff, and combating deliberate obstruction of clinic entrances. The Act itself contains a separate provision, subsection (e)—unchallenged by petitioners—that prohibits much of this conduct. That provision subjects to criminal

punishment "[a]ny person who knowingly obstructs, detains, hinders, impedes or blocks another person's entry to or exit from a reproductive health care facility." Mass. Gen. Laws, ch. 266, § 120E½(e). If Massachusetts determines that broader prohibitions along the same lines are necessary, it could enact legislation similar to the federal Freedom of Access to Clinic Entrances Act of 1994 (FACE Act), 18 U.S.C. § 248(a)(1), which subjects to both criminal and civil penalties anyone who "by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services." *** If the Commonwealth is particularly concerned about harassment, it could also consider an ordinance such as the one adopted in New York City that not only prohibits obstructing access to a clinic, but also makes it a crime "to follow and harass another person within 15 feet of the premises of a reproductive health care facility." N.Y.C. Admin. Code § 8–803(a)(3) (2014).

The Commonwealth points to a substantial public safety risk created when protestors obstruct driveways leading to the clinics. See App. 18, 41, 51, 88–89, 99, 118–119. That is, however, an example of its failure to look to less intrusive means of addressing its concerns. Any such obstruction can readily be addressed through existing local ordinances. See, *e.g.,* Worcester, Mass., Revised Ordinances of 2008, ch. 12, § 25(b) ("No person shall stand, or place any obstruction of any kind, upon any street, sidewalk or crosswalk in such a manner as to obstruct a free passage for travelers thereon"); Boston, Mass., Municipal Code, ch. 16–41.2(d) (2013) ("No person shall solicit while walking on, standing on or going into any street or highway used for motor vehicle travel, or any area appurtenant thereto (including medians, shoulder areas, bicycle lanes, ramps and exit ramps)").

All of the foregoing measures are, of course, in addition to available generic criminal statutes forbidding assault, breach of the peace, trespass, vandalism, and the like.

In addition, subsection (e) of the Act, the FACE Act, and the New York City anti-harassment ordinance are all enforceable not only through criminal prosecutions but also through public and private civil actions for injunctions and other equitable relief. See Mass. Gen. Laws § 120E½(f); 18 U.S.C. § 248(c)(1); N.Y.C. Admin. Code §§ 8–804, 8–805. We have previously noted the First Amendment virtues of targeted injunctions as alternatives to broad, prophylactic measures. *** [I]njunctive relief focuses on the precise individuals and the precise conduct causing a particular problem. The Act, by contrast, categorically excludes non-exempt individuals from the buffer zones, unnecessarily sweeping in innocent individuals and their speech.

The Commonwealth also asserts an interest in preventing congestion in front of abortion clinics. According to respondents, even when individuals do not deliberately obstruct access to clinics, they can inadvertently do so simply by gathering in large numbers. But the Commonwealth could address that problem through more targeted means. Some localities, for example, have ordinances that require crowds blocking a clinic entrance to disperse when ordered to do so by the police, and that forbid the individuals to reassemble within a certain distance of the clinic for a certain period. See Brief for State of New York et al. as *Amici Curiae* 14–15, and n. 10. We upheld a similar law forbidding three or more people " 'to congregate within 500 feet of [a foreign embassy], and refuse to disperse after having been ordered so to do by the police,' " *Boos,* 485 U.S., at 316, 108 S.Ct. 1157 ***.

And to the extent the Commonwealth argues that even these types of laws are ineffective, it has another problem. The portions of the record that respondents cite to support the anticongestion interest pertain mainly to one place at one time: the Boston Planned Parenthood clinic on Saturday mornings.

App. 69–71, 88–89, 96, 123. Respondents point us to no evidence that individuals regularly gather at other clinics, or at other times in Boston, in sufficiently large groups to obstruct access. For a problem shown to arise only once a week in one city at one clinic, creating 35–foot buffer zones at every clinic across the Commonwealth is hardly a narrowly tailored solution. ***

2

Respondents emphasize the history in Massachusetts of obstruction at abortion clinics, and the Commonwealth's allegedly failed attempts to combat such obstruction with injunctions and individual prosecutions. They also point to the Commonwealth's experience under the 2000 version of the Act, during which the police found it difficult to enforce the six-foot no-approach zones given the "frenetic" activity in front of clinic entrances. Brief for Respondents 43. According to respondents, this history shows that Massachusetts has tried less restrictive alternatives to the buffer zones, to no avail.

We cannot accept that contention. Although respondents claim that Massachusetts "tried other laws already on the books," *id.*, at 41, they identify not a single prosecution brought under those laws within at least the last 17 years. And while they also claim that the Commonwealth "tried injunctions," *ibid.*, the last injunctions they cite date to the 1990s, see *id.*, at 42 (citing *Planned Parenthood League of Mass., Inc. v. Bell*, 424 Mass. 573, 677 N.E.2d 204 (1997); *Planned Parenthood League of Mass., Inc. v. Operation Rescue*, 406 Mass. 701, 550 N.E.2d 1361 (1990)). ***

Respondents contend that the alternatives we have discussed suffer from two defects: First, given the "widespread" nature of the problem, it is simply not "practicable" to rely on individual prosecutions and injunctions. Brief for Respondents 45. But far from being "widespread," the problem appears from the record to be limited principally to the Boston clinic on Saturday mornings. Moreover, by their own account, the police appear perfectly capable of singling out lawbreakers. *** If Commonwealth officials can compile an extensive record of obstruction and harassment to support their preferred legislation, we do not see why they cannot do the same to support injunctions and prosecutions against those who might deliberately flout the law.

The second supposed defect in the alternatives we have identified is that laws like subsection (e) of the Act and the federal FACE Act require a showing of intentional or deliberate obstruction, intimidation, or harassment, which is often difficult to prove. Brief for Respondents 45–47. As Captain Evans predicted in his legislative testimony, fixed buffer zones would "make our job so much easier." App. 68.

*** To meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier. *** In any case, we do not think that showing intentional obstruction is nearly so difficult in this context as respondents suggest. To determine whether a protestor intends to block access to a clinic, a police officer need only order him to move. If he refuses, then there is no question that his continued conduct is knowing or intentional.

For similar reasons, respondents' reliance on our decision in *Burson v. Freeman* is misplaced. There, we upheld a state statute that established 100–foot buffer zones outside polling places on election day within which no one could display or distribute campaign materials or solicit votes. 504 U.S., at 193–194, 112 S.Ct. 1846. We approved the buffer zones as a valid prophylactic measure, noting that existing "[i]ntimidation and interference laws fall short of serving a State's compelling

interests because they ‘deal with only the most blatant and specific attempts' to impede elections.” *Id.*, at 206–207, 112 S.Ct. 1846 (quoting *Buckley v. Valeo*, 424 U.S. 1, 28, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (*per curiam*)). Such laws were insufficient because “[v]oter intimidation and election fraud are ... difficult to detect.” *Burson*, 504 U.S., at 208, 112 S.Ct. 1846. Obstruction of abortion clinics and harassment of patients, by contrast, are anything but subtle.

We also noted in *Burson* that under state law, “law enforcement officers generally are barred from the vicinity of the polls to avoid any appearance of coercion in the electoral process,” with the result that “many acts of interference would go undetected.” *Id.*, at 207, 112 S.Ct. 1846. *** The buffer zones *** were justified because less restrictive measures were inadequate. Respondents have not shown that to be the case here.

Given the vital First Amendment interests at stake, it is not enough for Massachusetts simply to say that other approaches have not worked.

Petitioners wish to converse with their fellow citizens about an important subject on the public streets and sidewalks—sites that have hosted discussions about the issues of the day throughout history. Respondents assert undeniably significant interests in maintaining public safety on those same streets and sidewalks, as well as in preserving access to adjacent healthcare facilities. But here the Commonwealth has pursued those interests by the extreme step of closing a substantial portion of a traditional public forum to all speakers. It has done so without seriously addressing the problem through alternatives that leave the forum open for its time-honored purposes. The Commonwealth may not do that consistent with the First Amendment.

The judgment of the Court of Appeals for the First Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice SCALIA, with whom Justice KENNEDY and Justice THOMAS join, concurring in the judgment.

Today's opinion carries forward this Court's practice of giving abortion-rights advocates a pass when it comes to suppressing the free-speech rights of their opponents. There is an entirely separate, abridged edition of the First Amendment applicable to speech against abortion. See, *e.g., Hill v. Colorado*, 530 U.S. 703, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000); *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 114 S.Ct. 2516, 129 L.Ed.2d 593 (1994). ***

*** The provision at issue here was indisputably meant to serve the *** interest in protecting citizens' supposed right to avoid speech that they would rather not hear. For that reason, we granted a second question for review in this case (though one would not know that from the Court's opinion, which fails to mention it): whether *Hill* should be cut back or cast aside. *** In concluding that the statute is content based and therefore subject to strict scrutiny, I necessarily conclude that *Hill* should be overruled. *** Protecting people from speech they do not want to hear is not a function that the First Amendment allows the government to undertake in the public streets and sidewalks.

Justice ALITO, concurring in the judgment. ***

*** Consider this entirely realistic situation. A woman enters a buffer zone and heads haltingly toward the entrance. A sidewalk counselor, such as petitioners, enters the buffer zone, approaches the woman and says, "If you have doubts about an abortion, let me try to answer any questions you may have. The clinic will not give you good information." At the same time, a clinic employee, as instructed by the management, approaches the same woman and says, "Come inside and we will give you honest answers to all your questions." The sidewalk counselor and the clinic employee expressed opposing viewpoints, but only the first violated the statute. ***

However, if the law were truly content neutral, I would agree with the Court that the law would still be unconstitutional on the ground that it burdens more speech than is necessary to serve the Commonwealth's asserted interests.

To be added at page 408 following *Snyder v. Phelps*:

Wood v. Moss
134 S. Ct. 2056, 2060-70 (2014)

Justice GINSBURG delivered the opinion of the Court.

This case concerns a charge that two Secret Service agents, in carrying out their responsibility to protect the President, engaged in unconstitutional viewpoint-based discrimination. The episode in suit occurred in Jacksonville, Oregon, on the evening of October 14, 2004. President George W. Bush, campaigning in the area for a second term, was scheduled to spend the evening at a cottage in Jacksonville. With permission from local law enforcement officials, two groups assembled on opposite sides of the street on which the President's motorcade was to travel to reach the cottage. One group supported the President, the other opposed him.

The President made a last-minute decision to stop in town for dinner before completing the drive to the cottage. His motorcade therefore turned from the planned route and proceeded to the outdoor patio dining area of the Jacksonville Inn's restaurant. Learning of the route change, the protesters moved down the sidewalk to the area in front of the Inn. The President's supporters remained across the street and about a half block away from the Inn. At the direction of the Secret Service agents, state and local police cleared the block on which the Inn was located and moved the protesters some two blocks away to a street beyond handgun or explosive reach of the President. The move placed the protesters a block farther away from the Inn than the supporters.

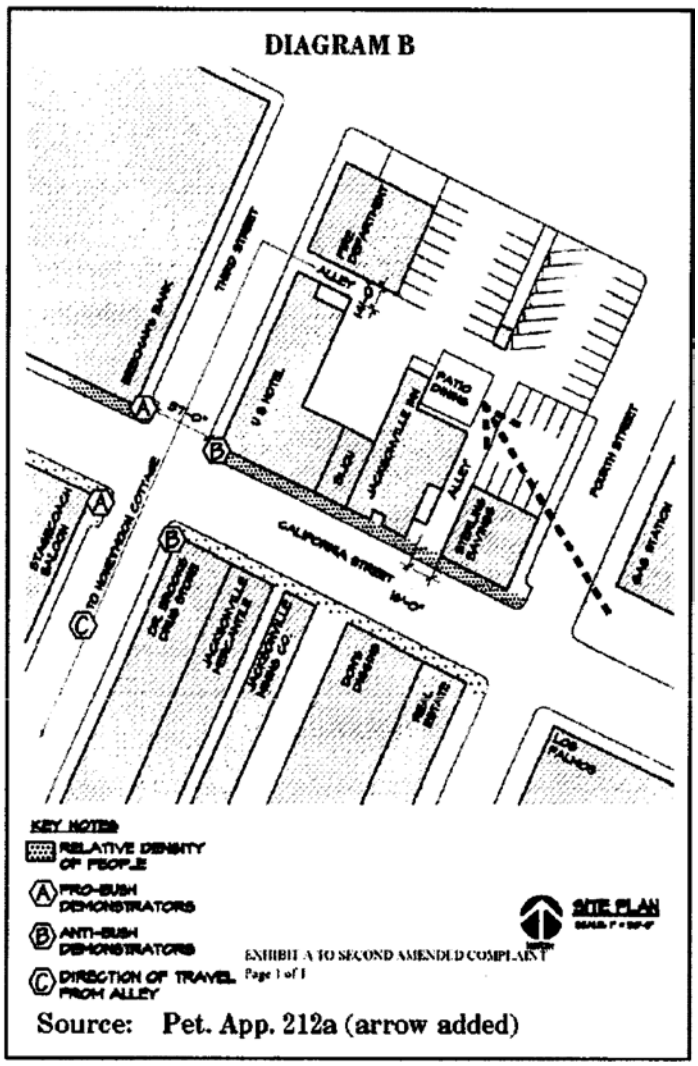
Officials are sheltered from suit, under a doctrine known as qualified immunity, when their conduct "does not violate clearly established ... constitutional rights" a reasonable official, similarly situated, would have comprehended. *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). The First Amendment, our precedent makes plain, disfavors viewpoint-based discrimination. See *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 828, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). But safeguarding the President is also of overwhelming importance in our constitutional system. See *Watts v. United States*, 394 U.S. 705, 707, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969) (*per curiam*). Faced with the President's sudden decision to stop for dinner, the Secret Service agents had to cope with a security situation not earlier anticipated. No decision of this Court so much as hinted that their on-the-spot action was unlawful because they failed to keep the protesters and supporters, throughout the episode, equidistant from the President.

The United States Court of Appeals for the Ninth Circuit ruled otherwise. It found dispositive of the agents' motion to dismiss "the considerable disparity in the distance each group was allowed to stand from the Presiden[t]." *Moss v. United States Secret Serv.*, 711 F.3d 941, 946 (2013). Because no "clearly established law" so controlled the agents' response to the motorcade's detour, we reverse the Ninth Circuit's judgment.

I
A

On October 14, 2004, *** President George W. Bush was scheduled to spend the night at a cottage in Jacksonville, Oregon. *** A group of *** protesters organized a demonstration to express their opposition to the President and his policies. *** Between 200 and 300 protesters gathered in Jacksonville, on California Street between Third and Fourth Streets. The gathering had been precleared with local law enforcement authorities. On the opposite side of Third Street, a similarly sized group of *** supporters assembled to show their support for the President. *** [If no changes occurred], the protesters and supporters would have had equal access to the President throughout in delivering their respective messages.

This situation was unsettled when President Bush *** [decided] to stop for dinner at the Jacksonville Inn***. The Inn stands on the north side of California Street***. [T]he protesters moved along the block to face the Inn. ***



Source: Pet. App. 212a (arrow added)

As the map indicates, the protesters massed on the sidewalk directly in front of the Inn, while the supporters remained assembled on the block west of Third Street, some distance from the Inn. The map also shows an alley running along the east side of the Inn (the California Street alley) leading to an outdoor patio used by the Inn's restaurant as a dining area. A six-foot high wooden fence surrounded the patio. At the location where the President's supporters gathered, a large two-story building, the U.S. Hotel, extended north around the corner of California and Third Streets. That structure blocked sight of, and weapons access to, the patio from points on California Street west of the Inn.

Petitioners, *** [two Secret Service] agents[,] enlisted the aid of local police officers to secure the area for the President's unexpected stop at the Inn. At around 7:15 p.m., the President arrived at the Inn. *** As the motorcade entered the Third Street alley, both sets of demonstrators were equally within the President's sight and hearing. When the President reached the outdoor patio dining area, the protesters stood on the sidewalk directly in front of the California Street alley, exhibiting signs and chanting slogans critical of the President and his policies. In view of the short distance between California Street and the patio, the protesters *** were then within weapons range of the President. See Tr. of Oral Arg. 3–4, 35, 39–40; Brief for Petitioners 44.

Approximately 15 minutes later, the agents directed the officers to clear the protesters from the block in front of the Inn and move them to the east side of Fourth Street. *** After another 15 minutes passed, the agents directed the officers again to move the protesters, this time one block farther away from the Inn, to the east side of Fifth Street. The relocation was necessary, the agents told the local officers, to ensure that no demonstrator would be "within handgun or explosive range of the President." App. to Pet. for Cert. 177a. The agents, however, did not require the guests already inside the Inn to leave, stay clear of the patio, or go through any security screening. The supporters at all times retained their original location on the west side of Third Street.

After the President dined, the motorcade left the Inn by traveling south on Third Street toward the cottage. On its way, the motorcade passed the President's supporters. The protesters remained on Fifth Street, two blocks away from the motorcade's route, thus beyond the President's sight and hearing.

B

The protesters sued the agents for damages in the U.S. District Court for the District of Oregon. The agents' actions, the complaint asserted, violated the protesters' First Amendment rights by the manner in which the agents established a security perimeter around the President during his unscheduled stop for dinner. *** Specifically, the protesters alleged that the agents engaged in viewpoint discrimination when they moved the protesters away from the Inn, while allowing the supporters to remain in their original location. ***

*** On remand [from a Ninth Circuit decision granting a motion to dismiss, without prejudice, for failure to state a claim], the protesters supplemented their complaint with allegations that the agents acted pursuant to an "actual but unwritten" Secret Service policy of "work[ing] with the White House under President Bush to eliminate dissent and protest from presidential appearances." App. to Pet. for Cert. 184a. *** The amended complaint also included an excerpt from a White House manual instructing the President's advance team to "work with the Secret Service and have them ask the local police department to designate a protest area where demonstrators can be placed; preferably not in view of the event site or motorcade route." *Id.,* at 219a. See also *id.,* at 183a.

The agents renewed their motion to dismiss the suit for failure to state a claim and on qualified immunity grounds. The District Court denied the motion, holding that the complaint adequately alleged a violation of the First Amendment, and that the constitutional right asserted was clearly established. *Moss v. United States Secret Serv.,* 750 F.Supp.2d 1197, 1216–1228 (Ore.2010). The agents again sought an interlocutory appeal.

This time, the Ninth Circuit affirmed, 711 F.3d 941, satisfied that the amended pleading plausibly alleged that the agents "sought to suppress [the protesters'] political speech" based on the viewpoint they expressed, *id.,* at 958. Viewpoint-driven conduct, the Court of Appeals maintained, could be inferred from the absence of a legitimate security rationale for "the differential treatment" accorded the two groups of demonstrators. See *id.,* at 946. The Court of Appeals further held that the agents were not entitled to qualified immunity because this Court's precedent "make[s] clear ... 'that the government may not regulate speech based on its substantive content or the message it conveys.' " *Id.,* at 963 (quoting *Rosenberger,* 515 U.S., at 828, 115 S.Ct. 2510).

*** We granted certiorari. 571 U.S. ——, 134 S.Ct. 677, 187 L.Ed.2d 544 (2013).

II

A

It is uncontested and uncontestable that government officials may not exclude from public places persons engaged in peaceful expressive activity solely because the government actor fears, dislikes, or disagrees with the views those persons express. *** It is equally plain that the fundamental right to speak secured by the First Amendment does not leave people at liberty to publicize their views " 'whenever and however and wherever they please.' " *United States v. Grace*, 461 U.S. 171, 177–178, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983) ***. Our decision in this case starts from those premises.

The particular question before us is whether the protesters have alleged violation of a clearly established First Amendment right based on the agents' decision to order the protesters moved from their original location in front of the Inn, first to the block just east of the Inn, and then another block farther. We note, initially, an antecedent issue: Does the First Amendment give rise to an implied right of action for damages against federal officers who violate that Amendment's guarantees? In *Bivens* [*v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971)], *** we recognized an implied right of action against federal officers for violations of the Fourth Amendment. Thereafter, we have several times assumed without deciding that *Bivens* extends to First Amendment claims. We do so again in this case. ***

The doctrine of qualified immunity protects government officials from liability for civil damages "unless a plaintiff ***2067** pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." *Ashcroft v. al–Kidd*, 563 U.S. ——, ——, 131 S.Ct. 2074, 2080, 179 L.Ed.2d 1149 (2011). *** The "dispositive inquiry," we have said, "is whether it would [have been] clear to a reasonable officer" in the agents' position "that [their] conduct was unlawful in the situation [they] confronted." *Saucier v. Katz*, 533 U.S. 194, 202, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001).

At the time of the Jacksonville incident, this Court had addressed a constitutional challenge to Secret Service actions on only one occasion.[6] In *Hunter v. Bryant*, 502 U.S. 224, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991) (*per curiam*), the plaintiff sued two Secret Service agents alleging that they arrested him without probable cause for writing and delivering to two University of Southern California offices a letter referring to a plot to assassinate President Ronald Reagan. We held that qualified immunity shielded the agents from claims that the arrest violated the plaintiff's rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments. "[N]owhere," we stated, is "accommodation for reasonable error ... more important than when the specter of Presidential assassination is raised." *Id.*, at 229, 112 S.Ct. 534.

*** Mindful that "[o]fficers assigned to protect public officials must make singularly swift, on the spot, decisions whether the safety of the person they are guarding is in jeopardy," *Reichle v. Howards*, 566 U.S. ——, ——, 132 S.Ct. 2088, 2097, 182 L.Ed.2d 985 (2012) (GINSBURG, J., concurring in judgment), we address the key question: Should it have been clear to the agents that the security perimeter they established violated the First Amendment?

B

The protesters assert that it violated clearly established First Amendment law to deny them "equal access to the President," App. Pet. for Cert. 175a, during his dinner at the Inn and subsequent drive to the cottage, *id.*, at 185a. *** The agents offended the First Amendment, in the Court of

Appeals' view, because their directions to the local officers placed the protesters at a "comparativ[e] disadvantag[e] in expressing their views" to the President. *Ibid.*

No decision of which we are aware, however, would alert Secret Service agents engaged in crowd control that they bear a First Amendment obligation "to ensure that groups with different viewpoints are at comparable locations at all times." *Id.*, at 952 (O'Scannlain, J., dissenting from denial of rehearing en banc). Nor would the maintenance of equal access make sense in the situation the agents confronted. ***

***** III**

The protesters allege that, when the agents directed their displacement, the agents acted not to ensure the President's safety from handguns or explosive devices. Instead, the protesters urge, the agents had them moved solely to insulate the President from their message, thereby giving the President's supporters greater visibility and audibility. See Tr. of Oral Arg. 35–36. The Ninth Circuit found sufficient the protesters' allegations that the agents "acted *with the sole intent* to discriminate against [the protesters] because of their viewpoint". 711 F.3d, at 964. Accordingly, the Court of Appeals "allow[ed] the protestors' claim of viewpoint discrimination to proceed." *Id.*, at 962.

It may be, the agents acknowledged, that clearly established law proscribed the Secret Service from disadvantaging one group of speakers in comparison to another if the agents had "no objectively reasonable security rationale" for their conduct, but acted solely to inhibit the expression of disfavored views. See Tr. of Oral Arg. 28–29***. We agree with the agents, however, that the map itself, undermines the protesters' allegations of viewpoint discrimination as the sole reason for the agents' directions. The map corroborates that, because of their location, the protesters posed a potential security risk to the President, while the supporters, because of their location, did not.

* * *

This case comes to us on the agents' petition to review the Ninth Circuit's denial of their qualified immunity defense. See Tr. of Oral Arg. 10 (petitioners' briefing on appeal trained on the issue of qualified immunity). Limiting our decision to that question, we hold, for the reasons stated, that the agents are entitled to qualified immunity. Accordingly, we reverse the judgment of the Court of Appeals.

It is so ordered.

To be added at page 594 following *Abood v. Detroit Board of Education*:

Harris v. Quinn
134 S. Ct. 2618 (2014)

Justice ALITO delivered the opinion of the Court.

This case presents the question whether the First Amendment permits a State to compel personal care providers to subsidize speech on matters of public concern by a union that they do not wish to join or support. We hold that it does not, and we therefore reverse the judgment of the Court of Appeals.

I

***

B

Section 6 of the Illinois Public Labor Relations Act (PLRA) authorizes state employees to join labor unions and to bargain collectively on the terms and conditions of employment. Ill. Comp. Stat., ch. 5, § 315/6(a). This law applies to "[e]mployees of the State and any political subdivision of the State," subject to certain exceptions, and it provides for a union to be recognized if it is "designated by the [Public Labor Relations] Board as the representative of the majority of public employees in an appropriate unit .... " §§ 315/6(a), (c).

The PLRA contains an agency-fee provision, *i.e.*, a provision under which members of a bargaining unit who do not wish to join the union are nevertheless required to pay a fee to the union. See *Workers v. Mobil Oil Corp.*, 426 U.S. 407, 409, n. 1, 96 S.Ct. 2140, 48 L.Ed.2d 736 (1976). Labeled a "fair share" provision, this section of the PLRA provides: "When a collective bargaining agreement is entered into with an exclusive representative, it may include in the agreement a provision requiring employees covered by the agreement who are not members of the organization to pay their proportionate share of the costs of the collective-bargaining process, contract administration and pursuing matters affecting wages, hours and conditions of employment." § 315/6(e). This payment is "deducted by the employer from the earnings of the nonmember employees and paid to the employee organization." *Ibid.*

In the 1980's, the Service Employees International Union (SEIU) petitioned the Illinois Labor Relations Board for permission to represent personal assistants employed by customers in the Rehabilitation Program, but the board rebuffed this effort. *Illinois Dept. of Central Management Servs., supra,* at VIII–30. The board concluded that "it is clear ... that [Illinois] does not exercise the type of control over the petitioned-for employees necessary to be considered, in the collective bargaining context envisioned by the [PLRA], their 'employer' or, at least, their sole employer." *Ibid.*

In March 2003, however, Illinois' newly elected Governor, Rod Blagojevich, circumvented this decision by issuing Executive Order 2003–08. See App. to Pet. for Cert. 45a–47a. The order noted the Illinois Labor Relations Board decision but nevertheless called for state recognition of a union as the personal assistants' exclusive representative for the purpose of collective bargaining with the State. This was necessary, Gov. Blagojevich declared, so that the State could "receive feedback from the personal assistants in order to effectively and efficiently deliver home services." *Id.*, at 46a. Without such representation, the Governor proclaimed, personal assistants "cannot effectively voice their concerns about the organization of the Home Services program, their role in the program, or the terms and conditions of their employment under the Program." *Ibid.*

Several months later, the Illinois Legislature codified that executive order by amending the PLRA. Pub. Act no. 93–204, § 5, 2003 Ill. Laws p.1930. While acknowledging "the right of the persons receiving services ... to hire and fire personal assistants or supervise them," the Act declared personal assistants to be "public employees" of the State of Illinois—but "[s]olely for the purposes of coverage under the Illinois Public Labor Relations Act." Ill. Comp. Stat., ch. 20, § 2405/3(f). The statute emphasized that personal assistants are not state employees for any other purpose, "including but not limited to, purposes of vicarious liability in tort and purposes of statutory retirement or health insurance benefits." *Ibid.*

Following a vote, SEIU Healthcare Illinois & Indiana (SEIU–HII) was designated as the personal assistants' exclusive representative for purposes of collective bargaining. See App. 23. The union and the State subsequently entered into collective-bargaining agreements that require all personal

assistants who are not union members to pay a "fair share" of the union dues. *Id.*, at 24–25. These payments are deducted directly from the personal assistants' Medicaid payments. *Ibid.* The record in this case shows that each year, personal assistants in Illinois pay SEIU–HII more than $3.6 million in fees. *Id.*, at 25.

C

Three of the petitioners in the case now before us *** are personal assistants under the Rehabilitation Program. They all provide in-home services to family members or other individuals suffering from disabilities. *** In 2010, these petitioners filed a putative class action on behalf of all Rehabilitation Program personal assistants in the United States District Court for the Northern District of Illinois. See 656 F.3d 692, 696 (C.A.7 2011). Their complaint, which named the Governor and the union as defendants, sought an injunction against enforcement of the fair-share provision and a declaration that the Illinois PLRA violates the First Amendment insofar as it requires personal assistants to pay a fee to a union that they do not wish to support. *Ibid.*

The District Court dismissed their claims with prejudice, and the Seventh Circuit affirmed in relevant part, concluding that the case was controlled by this Court's decision in *Abood v. Detroit Bd. of Ed.* 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977). 656 F.3d, at 698. The Seventh Circuit held that Illinois and the customers who receive in-home care are "joint employers" of the personal assistants, and the court stated that it had "no difficulty concluding that the State employs personal assistants within the meaning of *Abood*." *Ibid.*

Petitioners sought certiorari. Their petition pointed out that other States were following Illinois' lead by enacting laws or issuing executive orders that deem personal assistants to be state employees for the purpose of unionization and the assessment of fair-share fees. See App. to Pet. for Cert. 22a. Petitioners also noted that Illinois has enacted a law that deems "individual maintenance home health workers"—a category that includes registered nurses, licensed practical nurses, and certain therapists who work in private homes—to be "public employees" for similar purposes. Ill. Pub. Act no. 97–1158, 2012 Ill. Laws p. 7823.

In light of the important First Amendment questions these laws raise, we granted certiorari. 570 U.S. —— (2013).

II

In upholding the constitutionality of the Illinois law, the Seventh Circuit relied on this Court's decision in *Abood*, which held that state employees who choose not to join a public-sector union may nevertheless be compelled to pay an agency fee to support union work that is related to the collective-bargaining process. *Id.*, at 235–236. Two Terms ago, in *Knox v. Service Employees*, 567 U.S. —— (2012), we pointed out that *Abood* is "something of an anomaly." *Id.*, at —— (slip op., at 11). " 'The primary purpose' of permitting unions to collect fees from nonmembers," we noted, "is 'to prevent nonmembers from free-riding on the union's efforts, sharing the employment benefits obtained by the union's collective bargaining without sharing the costs incurred.' " *Id.*, at —— (slip op., at 10) ***. But "[s]uch free-rider arguments ... are generally insufficient to overcome First Amendment objections." 567 U.S., at —— (slip op., at 10–11).

For this reason, *Abood* stands out, but the State of Illinois now asks us to sanction what amounts to a very significant expansion of *Abood*—so that it applies, not just to full-fledged public employees, but also to others who are deemed to be public employees solely for the purpose of unionization and the collection of an agency fee. Faced with this argument, we begin by examining the path that led to this Court's decision in *Abood.*

A

The starting point was *Railway Employes v. Hanson,* 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed. 1112 (1956), a case in which the First Amendment was barely mentioned. The dispute in *Hanson* resulted from an amendment to the Railway Labor Act (RLA). *Id.,* at 229, 232. As originally enacted in 1926, the Act did not permit a collective-bargaining agreement to require employees to join or make any payments to a union. ***

When the case reached this Court, the primary issue was whether the provision of the RLA that authorized union-shop agreements was "germane to the exercise of power under the Commerce Clause." 351 U.S., at 234–235. In an opinion by Justice Douglas, the Court held that this provision represented a permissible regulation of commerce. The Court reasoned that the challenged provision " 'stabilized labor-management relations' " and thus furthered " 'industrial peace.' " *Id*., at 233–234. ***

The *Hanson* Court dismissed the objecting employees' First Amendment argument with a single sentence. The Court wrote: "On the present record, there is no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar." *Id*., at 238.

*** The First Amendment analysis in *Hanson* was thin, and the Court's resulting First Amendment holding was narrow. As the Court later noted, "all that was held in *Hanson* was that [the RLA] was constitutional in its *bare authorization* of union-shop contracts requiring workers to give 'financial support' to unions legally authorized to act as their collective bargaining agents." *Street,* 367 U.S., at 749 (emphasis added). The Court did not suggest that "industrial peace" could justify a law that "forces men into ideological and political associations which violate their right to freedom of conscience, freedom of association, and freedom of thought," or a law that forces a person to "conform to [a union's] ideology." *Hanson, supra,* at 236–237. The RLA did not compel such results, and the record in *Hanson* did not show that this had occurred.

B

Five years later, in *Street, supra,* the Court considered another case in which workers objected to a union shop. Employees of the Southern Railway System raised a First Amendment challenge, contending that a substantial part of the money that they were required to pay to the union was used to support political candidates and causes with which they disagreed. A Georgia court enjoined the enforcement of the union-shop provision and entered judgment for the dissenting employees in the amount of the payments that they had been forced to make to the union. The Georgia Supreme Court affirmed. *Id*., at 742–745.

Reviewing the State Supreme Court's decision, this Court recognized that the case presented constitutional questions "of the utmost gravity," *id*., at 749, but the Court found it unnecessary to reach those questions. Instead, the Court construed the RLA "as not vesting the unions with unlimited power

to spend exacted money." *Id.*, at 768. Specifically, the Court held, the Act "is to be construed to deny the unions, over an employee's objection, the power to use his exacted funds to support political causes which he opposes." *Id.*, at 768–769. ***

C

This brings us to *Abood,* which, unlike *Hanson* and *Street,* involved a public-sector collective-bargaining agreement. The Detroit Federation of Teachers served "as the exclusive representative of teachers employed by the Detroit Board of Education." 431 U.S., at 211–212. The collective-bargaining agreement between the union and the board contained an agency-shop clause requiring every teacher to "pay the Union a service charge equal to the regular dues required of Union members." *Id.*, at 212. A putative class of teachers sued to invalidate this clause. ***

This Court treated the First Amendment issue as largely settled by *Hanson* and *Street*. 431 U.S., at 217, 223. The Court acknowledged that *Street* was resolved as a matter of statutory construction without reaching any constitutional issues, 431 U.S., at 220, and the Court recognized that forced membership and forced contributions impinge on free speech and associational rights, *id.*, at 223. But the Court dismissed the objecting teachers' constitutional arguments with this observation: "[T]he judgment clearly made in *Hanson* and *Street* is that such interference as exists is constitutionally justified by the legislative assessment of the important contribution of the union shop to the system of labor relations established by Congress." *Id.,* at 222.

The *Abood* Court understood *Hanson* and *Street* to have upheld union-shop agreements in the private sector based on two primary considerations: the desirability of "labor peace" and the problem of " 'free riders[hip].' " 431 U.S., at 220–222, 224. ***

D

The *Abood* Court's analysis is questionable on several grounds. Some of these were noted or apparent at or before the time of the decision, but several have become more evident and troubling in the years since then.

The *Abood* Court seriously erred in treating *Hanson* and *Street* as having all but decided the constitutionality of compulsory payments to a public-sector union. As we have explained, *Street* was not a constitutional decision at all, and *Hanson* disposed of the critical question in a single, unsupported sentence that its author essentially abandoned a few years later. Surely a First Amendment issue of this importance deserved better treatment.

The *Abood* Court fundamentally misunderstood the holding in *Hanson,* which was really quite narrow. As the Court made clear in *Street,* "all that was held in *Hanson* was that [the RLA] was constitutional *in its bare authorization* of union-shop contracts requiring workers to give 'financial support' to unions legally authorized to act as their collective bargaining agents." 367 U.S., at 749 (emphasis added). In *Abood,* on the other hand, the State of Michigan did more than simply *authorize* the imposition of an agency fee. A state instrumentality, the Detroit Board of Education, actually *imposed* that fee. This presented a very different question.

Abood failed to appreciate the difference between the core union speech involuntarily subsidized by dissenting public-sector employees and the core union speech involuntarily funded by

their counterparts in the private sector. In the public sector, core issues such as wages, pensions, and benefits are important political issues, but that is generally not so in the private sector.

Abood failed to appreciate the conceptual difficulty of distinguishing in public-sector cases between union expenditures that are made for collective-bargaining purposes and those that are made to achieve political ends. In the private sector, the line is easier to see. Collective bargaining concerns the union's dealings with the employer; political advocacy and lobbying are directed at the government. But in the public sector, both collective-bargaining and political advocacy and lobbying are directed at the government. ***

Abood does not seem to have anticipated the magnitude of the practical administrative problems that would result in attempting to classify public-sector union expenditures as either "chargeable" (in *Abood* 's terms, expenditures for "collective-bargaining, contract administration, and grievance-adjustment purposes," *id.*, at 232) or nonchargeable (*i.e.*, expenditures for political or ideological purposes, *id*., at 236). In the years since *Abood*, the Court has struggled repeatedly with this issue. *** In *Lehnert [v. Ferris Faculty Assn*., 500 U.S. 507, 111 S.Ct. 1950, 114 L.Ed.2d 572 (1991)], the Court held that "chargeable activities must (1) be 'germane' to collective-bargaining activity; (2) be justified by the government's vital policy interest in labor peace and avoiding 'free riders'; and (3) not significantly add to the burdening of free speech that is inherent in the allowance of an agency or union shop." 500 U.S., at 519. But as noted in Justice SCALIA'S dissent in that case, "each one of the three 'prongs' of the test involves a substantial judgment call (What is 'germane'? What is 'justified'? What is a 'significant' additional burden)." *Id.*, at 551 (opinion concurring in judgment in part and dissenting in part).

Abood likewise did not foresee the practical problems that would face objecting nonmembers. Employees who suspect that a union has improperly put certain expenses in the "germane" category must bear a heavy burden if they wish to challenge the union's actions. "[T]he onus is on the employees to come up with the resources to mount the legal challenge in a timely fashion," *Knox*, 567 U.S., at ——– (slip op., at 19) (citing *Lehnert, supra*, at 513), and litigating such cases is expensive. Because of the open-ended nature of the *Lehnert* test, classifying particular categories of expenses may not be straightforward. See *Jibson v. Michigan Ed. Assn.*–NEA, 30 F.3d 723, 730 (C.A.6 1994)). And although *Hudson* required that a union's books be audited, auditors do not themselves review the correctness of a union's categorization. See *Knox, supra*, at —— (slip op., at 18–19) (citing *Andrews v. Education Assn. of Cheshire*, 829 F.2d 335, 340 (C.A.2 1987)). ***

Finally, a critical pillar of the *Abood* Court's analysis rests on an unsupported empirical assumption, namely, that the principle of exclusive representation in the public sector is dependent on a union or agency shop. As we will explain, this assumption is unwarranted.

III
A

*** [T]he State of Illinois now asks us to approve a very substantial expansion of *Abood's* reach. *Abood* involved full-fledged public employees, but in this case, the status of the personal assistants is much different. The Illinois Legislature has taken pains to specify that personal assistants are public employees for one purpose only: collective bargaining. For all other purposes, Illinois regards the personal assistants as private-sector employees. This approach has important practical consequences.

For one thing, the State's authority with respect to these two groups is vastly different. In the case of full-fledged public employees, the State establishes all of the duties imposed on each employee, as well as all of the qualifications needed for each position. The State vets applicants and chooses the employees to be hired. The State provides or arranges for whatever training is needed, and it supervises and evaluates the employees' job performance and imposes corrective measures if appropriate. If a state employee's performance is deficient, the State may discharge the employee in accordance with whatever procedures are required by law.

With respect to the personal assistants involved in this case, the picture is entirely changed. The job duties of personal assistants are specified in their individualized Service Plans, which must be approved by the customer and the customer's physician. 89 Ill. Admin. Code § 684.10. Customers have complete discretion to hire any personal assistant who meets the meager basic qualifications that the State prescribes in § 686.10. See § 676.30(b). ***

Customers supervise their personal assistants on a daily basis, and no provision of the Illinois statute or implementing regulations gives the State the right to enter the home in which the personal assistant is employed for the purpose of checking on the personal assistant's job performance. Cf. § 676.20(b) ***. And while state law mandates an annual review of each personal assistant's work, that evaluation is also controlled by the customer. §§ 686.10(k), 686.30. A state counselor is assigned to assist the customer in performing the review but has no power to override the customer's evaluation. See *ibid.* Nor do the regulations empower the State to discharge a personal assistant for substandard performance. See n. 1, *supra*. Discharge, like hiring, is entirely in the hands of the customer. See § 676.30.

Consistent with this scheme, under which personal assistants are almost entirely answerable to the customers and not to the State, Illinois withholds from personal assistants most of the rights and benefits enjoyed by full-fledged state employees. As we have noted already, state law explicitly excludes personal assistants from statutory retirement and health insurance benefits. Ill. Comp. Stat., ch. 20, § 2405/3(f). It also excludes personal assistants from group life insurance and certain other employee benefits provided under the State Employees Group Insurance Act of 1971. *Ibid*. (“Personal assistants shall not be covered by the State Employees Group Insurance Act of 1971”). And the State “does not provide paid vacation, holiday, or sick leave” to personal assistants. 89 Ill. Admin. Code § 686.10(h)(7). ***

Just as the State denies personal assistants most of the rights and benefits enjoyed by full-fledged state workers, the State does not assume responsibility for actions taken by personal assistants during the course of their employment. The governing statute explicitly disclaims “vicarious liability in tort.” *Ibid*. So if a personal assistant steals from a customer, neglects a customer, or abuses a customer, the State washes its hands.

Illinois deems personal assistants to be state employees for one purpose only, collective bargaining, but the scope of bargaining that may be conducted on their behalf is sharply limited. Under the governing Illinois statute, collective bargaining can occur only for “terms and conditions of employment that are within the State's control.” Ill. Comp. Stat., ch. 20, § 2405/3(f). That is not very much.

As an illustration, consider the subjects of mandatory bargaining under federal and state labor law that are outof bounds when it comes to personal assistants. Under federal law, mandatory subjects include the days of the week and the hours of the day during which an employee must work, lunch breaks, holidays, vacations, termination of employment, and changes in job duties. Illinois law similarly makes subject to mandatory collective-bargaining decisions concerning the "hours and terms and conditions of employment." *Belvidere v. Illinois State Labor Relations Bd.,* 181 Ill.2d 191, 201, 229 Ill.Dec. 522, 692 N.E.2d 295, 301 (1998) ***. But under the Rehabilitation Program, all these topics are governed by the Service Plan, with respect to which the union has no role. See § 676.30(b) (the customer "is responsible for controlling all aspects of the employment relationship between the customer and the PA, including, without limitation, locating and hiring the PA, training the PA, directing, evaluating, and otherwise supervising the work performed by the PA, imposing ... disciplinary action against the PA, and terminating the employment relationship between the customer and the PA"); § 684.50 (the Service Plan must specify "the frequency with which the specific tasks are to be provided" and "the number of hours each task is to be provided per month").

B
1

The unusual status of personal assistants has important implications for present purposes. *Abood* 's rationale, whatever its strengths and weaknesses, is based on the assumption that the union possesses the full scope of powers and duties generally available under American labor law. Under the Illinois scheme now before us, however, the union's powers and duties are sharply circumscribed, and as a result, even the best argument for the "extraordinary power" that *Abood* allows a union to wield, see *Davenport,* 551 U.S., at 184, is a poor fit.

In our post-*Abood* cases involving public-sector agency-fee issues, *Abood* has been a given, and our task has been to attempt to understand its rationale and to apply it in a way that is consistent with that rationale. In that vein, *Abood* 's reasoning has been described as follows. *** What justifies the agency fee, the argument goes, is the fact that the State compels the union to promote and protect the interests of nonmembers. [*Lehnert,* 500 U.S., at 556 (opinion of SCALIA, J.)]. Specifically, the union must not discriminate between members and nonmembers in "negotiating and administering a collective-bargaining agreement and representing the interests of employees in settling disputes and processing grievances." *Ibid.* This means that the union "cannot, for example, negotiate particularly high wage increases for its members in exchange for accepting no increases for others." *Ibid.* And it has the duty to provide equal and effective representation for nonmembers in grievance proceedings, see Ill. Comp. Stat. Ann., ch. 5, §§ 315/6, 315/8, an undertaking that can be very involved. ***

This argument has little force in the situation now before us. Illinois law specifies that personal assistants "shall be paid at the hourly rate set by law," see 89 Ill. Admin. Code § 686.40(a), and therefore the union cannot be in the position of having to sacrifice higher pay for its members in order to protect the nonmembers whom it is obligated to represent. And as for the adjustment of grievances, the union's authority and responsibilities are narrow, as we have seen. The union has no authority with respect to any grievances that a personal assistant may have with a customer, and the customer has virtually complete control over a personal assistant's work.

The union's limited authority in this area has important practical implications. Suppose, for example that a customer fires a personal assistant because the customer wrongly believes that the assistant stole a fork. Or suppose that a personal assistant is discharged because the assistant shows no

interest in the customer's favorite daytime soaps. Can the union file a grievance on behalf of the assistant? The answer is no.

It is true that Illinois law requires a collective-bargaining agreement to "contain a grievance resolution procedure which shall apply to all employees in the bargaining unit," Ill. Comp. Stat., ch. 5, § 315/8, but in the situation here, this procedure appears to relate solely to any grievance that a personal assistant may have with the State, not with the customer for whom the personal assistant works.

2

Because of *Abood* 's questionable foundations, and because the personal assistants are quite different from full-fledged public employees, we refuse to extend *Abood* to the new situation now before us. *Abood* itself has clear boundaries; it applies to public employees. Extending those boundaries to encompass partial-public employees, quasi-public employees, or simply private employees would invite problems. ***

If respondents' and the dissent's views were adopted, a host of workers who receive payments from a governmental entity for some sort of service would be candidates for inclusion within *Abood* 's reach. Medicare-funded home health employees may be one such group. See Brief for Petitioners 51; 42 U.S.C. § 1395x(m); 42 CFR § 424.22(a). The same goes for adult foster care providers in Oregon (Ore.Rev.Stat. § 443.733 (2013)) and Washington (Wash. Rev.Code § 41.56.029 (2012)) and certain workers under the federal Child Care and Development Fund programs (45 CFR § 98.2).

If we allowed *Abood* to be extended to those who are not full-fledged public employees, it would be hard to see just where to draw the line, and we therefore confine *Abood* 's reach to full-fledged state employees.

IV

A

Because *Abood* is not controlling, we must analyze the constitutionality of the payments compelled by Illinois law under generally applicable First Amendment standards. As we explained in *Knox,* "[t]he government may not prohibit the dissemination of ideas that it disfavors, nor compel the endorsement of ideas that it approves." 567 U.S., at —— (slip op. at 8–9) ***. And "compelled funding of the speech of other private speakers or groups" presents the same dangers as compelled speech. *Knox, supra,* at —— (slip op. at 9). As a result, we explained in *Knox* that an agency-fee provision imposes "a 'significant impingement on First Amendment rights,' " and this cannot be tolerated unless it passes "exacting First Amendment scrutiny." 567 U.S., at —— (slip op. at 9–10). ***

B

*** [T]his provision does not serve a " 'compelling state interes[t] ... that cannot be achieved through means significantly less restrictive of associational freedoms.' " *Knox, supra,* at —— (slip op. at 10) ***. Respondents contend that the agency-fee provision in this case furthers several important interests, but none is sufficient.

1

Focusing on the benefits of the union's status as the exclusive bargaining agent for all employees in the unit, respondents argue that the agency-fee provision promotes "labor peace," but their argument largely misses the point. Petitioners do not contend that they have a First Amendment right to form a rival union. Nor do they challenge the authority of the SEIU–HII to serve as the exclusive representative of all the personal assistants in bargaining with the State. All they seek is the right not to be forced to contribute to the union, with which they broadly disagree.

A union's status as exclusive bargaining agent and the right to collect an agency fee from non-members are not inextricably linked. For example, employees in some federal agencies may choose a union to serve as the exclusive bargaining agent for the unit, but no employee is required to join the union or to pay any union fee. Under federal law, in agencies in which unionization is permitted, "[e]ach employee shall have the right to form, join, or assist any labor organization, *or to refrain from any such activity,* freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right." 5 U.S.C. § 7102 (emphasis added).

Moreover, even if the agency fee provision at issue here were tied to the union's status as exclusive bargaining agents, features of the Illinois scheme would still undermine the argument that the agency fee plays an important role in maintaining labor peace. For one thing, any threat to labor peace is diminished because the personal assistants do not work together in a common state facility but instead spend all their time in private homes, either the customers' or their own. *** Federal labor law reflects the fact that the organization of household workers like the personal assistants does not further the interest of labor peace. "[A]ny individual employed ... in the domestic service of any family or person at his home" is excluded from coverage under the National Labor Relations Act. See 29 U.S.C. § 152(3).

The union's very restricted role under the Illinois law is also significant. Since the union is largely limited to petitioning the State for greater pay and benefits, the specter of conflicting demands by personal assistants is lessened. And of course, State officials must deal on a daily basis with conflicting pleas for funding in many contexts.

2

Respondents also maintain that the agency-fee provision promotes the welfare of personal assistants and thus contributes to the success of the Rehabilitation Program. As a result of unionization, they claim, the wages and benefits of personal assistants have been substantially improved; orientation and training programs, background checks, and a program to deal with lost and erroneous paychecks have been instituted; and a procedure was established to resolve grievances arising under the collective-bargaining agreement (but apparently not grievances relating to a Service Plan or actions taken by a customer).

The thrust of these arguments is that the union has been an effective advocate for personal assistants in the State of Illinois, and we will assume that this is correct. But in order to pass exacting scrutiny, more must be shown. The agency-fee provision cannot be sustained unless the cited benefits for personal assistants could not have been achieved if the union had been required to depend for funding on the dues paid by those personal assistants who chose to join. No such showing has been made.

In claiming that the agency fee was needed to bring about the cited improvements, the State is in a curious position. The State is not like the closed-fisted employer that is bent on minimizing

employee wages and benefits and that yields only grudgingly under intense union pressure. As Governor Blagojevich put it in the executive order that first created the Illinois program, the State took the initiative because it was eager for "feedback" regarding the needs and views of the personal assistants. See App. to Pet. for Cert. 46. Thereafter, a majority of the personal assistants voted to unionize. When they did so, they must have realized that this would require the payment of union dues, and therefore it may be presumed that a high percentage of these personal assistants became union members and are willingly paying union dues. Why are these dues insufficient to enable the union to provide "feedback" to a State that is highly receptive to suggestions for increased wages and other improvements? A host of organizations advocate on behalf of the interests of persons falling within an occupational group, and many of these groups are quite successful even though they are dependent on voluntary contributions. Respondents' showing falls far short of what the First Amendment demands.

V

Respondents and their supporting *amici* make two additional arguments that must be addressed.

A

First, respondents and the Solicitor General urge us to apply a balancing test derived from *Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968). See Brief for Respondent Quinn 25–26; Brief for SEIU–HII 35–36; Brief for *United States* as *Amicus Curiae* 11. ***

[T]his effort to recast *Abood* falls short. To begin, the *Pickering* test is inapplicable because with respect to the personal assistants, the State is not acting in a traditional employer role. But even if it were, application of *Pickering* would not sustain the agency-fee provision.

Pickering and later cases in the same line concern the constitutionality of restrictions on speech by public employees. Under those cases, employee speech is unprotected if it is not on a matter of public concern (or is pursuant to an employee's job duties), but speech on matters of public concern may be restricted only if "the interest of the state, as an employer, in promoting the efficiency of the public services it performs through its employees" outweighs "the interests of the [employee], as a citizen, in commenting upon matters of public concern." 391 U.S., at 568. ***

Attempting to fit *Abood* into the *Pickering* framework, the United States contends that union speech that is germane to collective bargaining does not address matters of public concern and, as a result, is not protected. Taking up this argument, the dissent insists that the speech at issue here is not a matter of public concern. ***

This argument flies in the face of reality. *** Increased wages and benefits for personal assistants would almost certainly mean increased expenditures under the Medicaid program, and it is impossible to argue that the level of Medicaid funding (or, for that matter, state spending for employee benefits in general) is not a matter of great public concern. ***

For this reason, if *Pickering* were to be applied, it would be necessary to proceed to the next step of the analysis prescribed in that case, and this would require an assessment of both the degree to which the agency-fee provision promotes the efficiency of the Rehabilitation Program and the degree to which that provision interferes with the First Amendment interests of those personal assistants who do not wish to support the union.

We need not discuss this analysis at length because it is covered by what we have already said. Agency-fee provisions unquestionably impose a heavy burden on the First Amendment interests of objecting employees. See *Knox*, 567 U.S., at —— (slip op. at 19) (citing *Lehnert*, 500 U.S., at 513; *Jibson v. Michigan Ed. Assn.*, 30 F.3d 723, 730 (C.A.6 1994). And on the other side of the balance, the arguments on which the United States relies—relating to the promotion of labor peace and the problem of free riders—have already been discussed. Thus, even if the permissibility of the agency-shop provision in the collective-bargaining agreement now at issue were analyzed under *Pickering*, that provision could not be upheld.

B

Respondents contend, finally, that a refusal to extend *Abood* to cover the situation presented in this case will call into question our decisions in *Keller v. State Bar of Cal.* 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990), and *Board of Regents of Univ. of Wis. System v. Southworth*, 529 U.S. 217, 120 S.Ct. 1346, 146 L.Ed.2d 193 (2000). Respondents are mistaken.

In *Keller*, we considered the constitutionality of a rule applicable to all members of an "integrated" bar, *i.e.*, "an association of attorneys in which membership and dues are required as a condition of practicing law." 496 U.S., at 5. We held that members of this bar could not be required to pay the portion of bar dues used for political or ideological purposes but that they could be required to pay the portion of the dues used for activities connected with proposing ethical codes and disciplining bar members. *Id*., at 14.

This decision fits comfortably within the framework applied in the present case. Licensed attorneys are subject to detailed ethics rules, and the bar rule requiring the payment of dues was part of this regulatory scheme. The portion of the rule that we upheld served the "State's interest in regulating the legal profession and improving the quality of legal services." *Ibid.* States also have a strong interest in allocating to the members of the bar, rather than the general public, the expense of ensuring that attorneys adhere to ethical practices. Thus, our decision in this case is wholly consistent with our holding in *Keller*.

Contrary to respondents' submission, the same is true with respect to *Southworth*, *supra*. In that case, we upheld the constitutionality of a university-imposed mandatory student activities fee that was used in part to support a wide array of student groups that engaged in expressive activity. The mandatory fee was challenged by students who objected to some of the expression that the fee was used to subsidize, but we rejected that challenge, and our holding is entirely consistent with our decision in this case.

Public universities have a compelling interest in promoting student expression in a manner that is viewpoint neutral. See *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). This may be done by providing funding for a broad array of student groups. If the groups funded are truly diverse, many students are likely to disagree with things that are said by some groups. And if every student were entitled to a partial exemption from the fee requirement so that no portion of the student's fee went to support a group that the student did not wish to support, the administrative problems would likely be insuperable. Our decision today thus does not undermine *Southworth*.

• * *

For all these reasons, we refuse to extend *Abood* in the manner that Illinois seeks. If we accepted Illinois' argument, we would approve an unprecedented violation of the bedrock principle that, except perhaps in the rarest of circumstances, no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support. The First Amendment prohibits the collection of an agency fee from personal assistants in the Rehabilitation Program who do not want to join or support the union.

The judgment of the Court of Appeals is reversed in part and affirmed in part,[30] and the case is remanded for further proceedings consistent with this opinion.

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

Abood v. Detroit Bd. of Ed., 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977), answers the question presented in this case. *Abood* held that a government entity may, consistently with the First Amendment, require public employees to pay a fair share of the cost that a union incurs negotiating on their behalf for better terms of employment. That is exactly what Illinois did in entering into collective bargaining agreements with the Service Employees International Union Healthcare (SEIU) which included fair-share provisions. Contrary to the Court's decision, those agreements fall squarely within *Abood* 's holding. Here, Illinois employs, jointly with individuals suffering from disabilities, the in-home care providers whom the SEIU represents. Illinois establishes, following negotiations with the union, the most important terms of their employment, including wages, benefits, and basic qualifications. And Illinois's interests in imposing fair-share fees apply no less to those caregivers than to other state workers. The petitioners' challenge should therefore fail.

And that result would fully comport with our decisions applying the First Amendment to public employment. *Abood* is not, as the majority at one point describes it, "something of an anomaly," allowing uncommon interference with individuals' expressive activities. Rather, the lines it draws and the balance it strikes reflect the way courts generally evaluate claims that a condition of public employment violates the First Amendment. Our decisions have long afforded government entities broad latitude to manage their workforces, even when that affects speech they could not regulate in other contexts. *Abood* is of a piece with all those decisions: While protecting an employee's most significant expression, that decision also enables the government to advance its interests in operating effectively—by bargaining, if it so chooses, with a single employee representative and preventing free riding on that union's efforts.

*** The *Abood* rule is deeply entrenched, and is the foundation for not tens or hundreds, but thousands of contracts between unions and governments across the Nation. Our precedent about precedent, fairly understood and applied, makes it impossible for this Court to reverse that decision.

***

The majority today misapplies *Abood*, which properly should control this case. Nothing separates, for purposes of that decision, Illinois's personal assistants from any other public employees. The balance *Abood* struck thus should have defeated the petitioners' demand to invalidate Illinois's fair-share agreement. I respectfully dissent.

To be added at page 719 following *Citizens United v. Federal Election Commission*:

McCutcheon v. Fed. Election Comm'n
134 S. Ct. 1434, 188 L. Ed. 2d 468 (2014)

Chief Justice ROBERTS announced the judgment of the Court and delivered an opinion, in which Justice SCALIA, Justice KENNEDY, and Justice ALITO join.

There is no right more basic in our democracy than the right to participate in electing our political leaders. Citizens can exercise that right in a variety of ways: They can run for office themselves, vote, urge others to vote for a particular candidate, volunteer to work on a campaign, and contribute to a candidate's campaign. This case is about the last of those options.

The right to participate in democracy through political contributions is protected by the First Amendment, but that right is not absolute. Our cases have held that Congress may regulate campaign contributions to protect against corruption or the appearance of corruption. See, *e.g., Buckley v. Valeo*, 424 U.S. 1, 26–27, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (*per curiam*). At the same time, we have made clear that Congress may not regulate contributions simply to reduce the amount of money in politics, or to restrict the political participation of some in order to enhance the relative influence of others. See, *e.g., Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 564 U.S. ——, ——, 131 S.Ct. 2806, 2825–2826, 180 L.Ed.2d 664 (2011). ***

*** In a series of cases over the past 40 years, we have spelled out how to draw the constitutional line between the permissible goal of avoiding corruption in the political process and the impermissible desire simply to limit political speech. We have said that government regulation may not target the general gratitude a candidate may feel toward those who support him or his allies, or the political access such support may afford. "Ingratiation and access ... are not corruption." *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 360, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010). ***

Any regulation must instead target what we have called "*quid pro quo* " corruption or its appearance. See *id.*, at 359, 130 S.Ct. 876. That Latin phrase captures the notion of a direct exchange of an official act for money. See *McCormick v. United States*, 500 U.S. 257, 266, 111 S.Ct. 1807, 114 L.Ed.2d 307 (1991). ***

The statute at issue in this case imposes two types of limits on campaign contributions. The first, called base limits, restricts how much money a donor may contribute to a particular candidate or committee. 2 U.S.C. § 441a(a)(1). The second, called aggregate limits, restricts how much money a donor may contribute in total to all candidates or committees. § 441a(a)(3).

This case does not involve any challenge to the base limits, which we have previously upheld as serving the permissible objective of combatting corruption. The Government contends that the aggregate limits also serve that objective, by preventing circumvention of the base limits. We conclude, however, that the aggregate limits do little, if anything, to address that concern, while seriously restricting participation in the democratic process. The aggregate limits are therefore invalid under the First Amendment.

I

A

For the 2013–2014 election cycle, the base limits in the Federal Election Campaign Act of 1971 (FECA), as amended by the Bipartisan Campaign Reform Act of 2002 (BCRA), permit an individual to contribute up to $2,600 per election to a candidate ($5,200 total for the primary and general elections); $32,400 per year to a national party committee; $10,000 per year to a state or local party committee; and $5,000 per year to a political action committee, or "PAC." 2 U.S.C. § 441a(a)(1); 78 Fed.Reg. 8532 (2013). A national committee, state or local party committee, or multicandidate PAC may in turn contribute up to $5,000 per election to a candidate. § 441a(a)(2).

The base limits apply with equal force to contributions that are "in any way earmarked or otherwise directed through an intermediary or conduit" to a candidate. § 441a(a)(8). ***

For the 2013–2014 election cycle, the aggregate limits in BCRA permit an individual to contribute a total of $48,600 to federal candidates and a total of $74,600 to other political committees. Of that $74,600, only $48,600 may be contributed to state or local party committees and PACs, as opposed to national party committees. § 441a(a)(3); 78 Fed.Reg. 8532. All told, an individual may contribute up to $123,200 to candidate and noncandidate committees during each two-year election cycle.

The base limits thus restrict how much money a donor may contribute to any particular candidate or committee; the aggregate limits have the effect of restricting how many candidates or committees the donor may support, to the extent permitted by the base limits.

B***

*** In June 2012, McCutcheon and the RNC filed a complaint before a three-judge panel of the U.S. District Court for the District of Columbia. See BCRA § 403(a), 116 Stat. 113–114. McCutcheon and the RNC asserted that the aggregate limits on contributions to candidates and to noncandidate political committees were unconstitutional under the First Amendment. They moved for a preliminary injunction against enforcement of the challenged provisions, and the Government moved to dismiss the case.

The three-judge District Court denied appellants' motion for a preliminary injunction and granted the Government's motion to dismiss. Assuming that the base limits appropriately served the Government's anticorruption interest, the District Court concluded that the aggregate limits survived First Amendment scrutiny because they prevented evasion of the base limits. 893 F.Supp.2d 133, 140 (2012). ***

*** McCutcheon and the RNC appealed directly to this Court, as authorized by law. 28 U.S.C. § 1253.

II
A

Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659, presented this Court with its first opportunity to evaluate the constitutionality of the original contribution and expenditure limits set forth in FECA. ***

Buckley recognized that "contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities." 424 U.S., at 14, 96 S.Ct. 612. But it distinguished expenditure limits from contribution limits based on the degree to which each encroaches upon protected First Amendment interests. Expenditure limits, the Court explained, "necessarily reduce[ ] the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." *Id.,* at 19, 96 S.Ct. 612. The Court thus subjected expenditure limits to "the exacting scrutiny applicable to limitations on core First Amendment rights of political expression." *Id.,* at 44–45, 96 S.Ct. 612. ***

By contrast, the Court concluded that contribution limits impose a lesser restraint on political speech because they "permit[ ] the symbolic expression of support evidenced by a contribution but do[ ] not in any way infringe the contributor's freedom to discuss candidates and issues." *Buckley,* 424 U.S., at 21, 96 S.Ct. 612. As a result, the Court focused on the effect of the contribution limits on the freedom of political association and applied a lesser but still "rigorous standard of review." *Id.,* at 29, 96 S.Ct. 612. Under that standard, "[e]ven a ' "significant interference" with protected rights of political association' may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms." *Id.,* at 25, 96 S.Ct. 612 (quoting *Cousins v. Wigoda,* 419 U.S. 477, 488, 95 S.Ct. 541, 42 L.Ed.2d 595 (1975)).

The primary purpose of FECA was to limit *quid pro quo* corruption and its appearance; that purpose satisfied the requirement of a "sufficiently important" governmental interest. 424 U.S., at 26–27, 96 S.Ct. 612. As for the "closely drawn" component, *Buckley* concluded that the $1,000 base limit "focuses precisely on the problem of large campaign contributions ... while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources." *Id.,* at 28, 96 S.Ct. 612. The Court therefore upheld the $1,000 base limit under the "closely drawn" test. *Id.,* at 29, 96 S.Ct. 612.

The Court next separately considered an overbreadth challenge to the base limit. See *id.,* at 29–30, 96 S.Ct. 612. The challengers argued that the base limit was fatally overbroad because most large donors do not seek improper influence over legislators' actions. Although the Court accepted that premise, it nevertheless rejected the overbreadth challenge for two reasons: First, it was too "difficult to isolate suspect contributions" based on a contributor's subjective intent. *Id.,* at 30, 96 S.Ct. 612. Second, "Congress was justified in concluding that the interest in safeguarding against the appearance of impropriety requires that the opportunity for abuse inherent in the process of raising large monetary contributions be eliminated." *Ibid.*

Finally, in one paragraph of its 139–page opinion, the Court turned to the $25,000 aggregate limit under FECA. As a preliminary matter, it noted that the constitutionality of the aggregate limit "ha[d] not been separately addressed at length by the parties." *Id.,* at 38, 96 S.Ct. 612. Then, in three sentences, the Court disposed of any constitutional objections to the aggregate limit that the challengers might have had:

> "The overall $25,000 ceiling does impose an ultimate restriction upon the number of candidates and committees with which an individual may associate himself by means of financial support. But this quite modest restraint upon protected political activity serves to prevent evasion of the $1,000 contribution limitation by a person who might otherwise contribute

> massive amounts of money to a particular candidate through the use of unearmarked contributions to political committees likely to contribute to that candidate, or huge contributions to the candidate's political party. The limited, additional restriction on associational freedom imposed by the overall ceiling is thus no more than a corollary of the basic individual contribution limitation that we have found to be constitutionally valid." *Ibid.*

B
1

Because we find a substantial mismatch between the Government's stated objective and the means selected to achieve it, the aggregate limits fail even under the "closely drawn" test. We therefore need not parse the differences between the two standards in this case.

2

*** Although *Buckley* provides some guidance, we think that its ultimate conclusion about the constitutionality of the aggregate limit in place under FECA does not control here. *Buckley* spent a total of three sentences analyzing that limit; in fact, the opinion pointed out that the constitutionality of the aggregate limit "ha[d] not been separately addressed at length by the parties." *Ibid.* We are now asked to address appellants' direct challenge to the aggregate limits in place under BCRA. *** With more targeted anticircumvention measures in place today, the indiscriminate aggregate limits under BCRA appear particularly heavy-handed.

In addition to accounting for statutory and regulatory changes in the campaign finance arena, appellants' challenge raises distinct legal arguments that *Buckley* did not consider. *** The aggregate limit *** was upheld as an anticircumvention measure, without considering whether it was possible to discern which donations might be used to circumvent the base limits. See *id.*, at 38, 96 S.Ct. 612. The Court never addressed overbreadth in the specific context of aggregate limits, where such an argument has far more force.

*** We are confronted with a different statute and different legal arguments, at a different point in the development of campaign finance regulation. Appellants' substantial First Amendment challenge to the system of aggregate limits currently in place thus merits our plenary consideration.

III

As relevant here, the First Amendment safeguards an individual's right to participate in the public debate through political expression and political association. See *Buckley*, 424 U.S., at 15, 96 S.Ct. 612. When an individual contributes money to a candidate, he exercises both of those rights: The contribution "serves as a general expression of support for the candidate and his views" and "serves to affiliate a person with a candidate." *Id.*, at 21–22, 96 S.Ct. 612.

Buckley acknowledged that aggregate limits at least diminish an individual's right of political association. *** But the Court characterized that restriction as a "quite modest restraint upon protected political activity." *Ibid.* We cannot agree with that characterization. An aggregate limit on *how many* candidates and committees an individual may support through contributions is not a "modest restraint"

at all. The Government may no more restrict how many candidates or causes a donor may support than it may tell a newspaper how many candidates it may endorse.

To put it in the simplest terms, the aggregate limits prohibit an individual from fully contributing to the primary and general election campaigns of ten or more candidates, even if all contributions fall within the base limits Congress views as adequate to protect against corruption. *** At that point, the limits deny the individual all ability to exercise his expressive and associational rights by contributing to someone who will advocate for his policy preferences. A donor must limit the number of candidates he supports, and may have to choose which of several policy concerns he will advance—clear First Amendment harms ***.

It is no answer to say that the individual can simply contribute less money to more people. *** And as we have recently admonished, the Government may not penalize an individual for "robustly exercis[ing]" his First Amendment rights. *Davis v. Federal Election Comm'n,* 554 U.S. 724, 739, 128 S.Ct. 2759, 171 L.Ed.2d 737 (2008).

The First Amendment burden is especially great for individuals who do not have ready access to alternative avenues for supporting their preferred politicians and policies. *** Other effective methods of supporting preferred candidates or causes without contributing money are reserved for a select few, such as entertainers capable of raising hundreds of thousands of dollars in a single evening. Cf. *Davis, supra,* at 742, 128 S.Ct. 2759.

But there are compelling reasons not to define the boundaries of the First Amendment by reference to such a generalized conception of the public good. First, the dissent's "collective speech" reflected in laws is of course the will of the majority, and plainly can include laws that restrict free speech. The whole point of the First Amendment is to afford individuals protection against such infringements. ***

Second, the degree to which speech is protected cannot turn on a legislative or judicial determination that particular speech is useful to the democratic process. The First Amendment does not contemplate such "ad hoc balancing of relative social costs and benefits." *United States v. Stevens,* 559 U.S. 460, 470, 130 S.Ct. 1577, 176 L.Ed.2d 435 (2010). ***

Third, our established First Amendment analysis already takes account of any "collective" interest that may justify restrictions on individual speech. Under that accepted analysis, such restrictions are measured against the asserted public interest (usually framed as an important or compelling governmental interest). As explained below, we do not doubt the compelling nature of the "collective" interest in preventing corruption in the electoral process. But we permit Congress to pursue that interest only so long as it does not unnecessarily infringe an individual's right to freedom of speech; we do not truncate this tailoring test at the outset.

IV
A

*** This Court has identified only one legitimate governmental interest for restricting campaign finances: preventing corruption or the appearance of corruption. See *Davis, supra,* at 741, 128 S.Ct. 2759; *National Conservative Political Action Comm.,* 470 U.S., at 496–497, 105 S.Ct. 1459. We have consistently rejected attempts to suppress campaign speech based on other legislative objectives. No matter how desirable it may seem, it is not an acceptable governmental objective to "level the playing

field," or to "level electoral opportunities," or to "equaliz[e] the financial resources of candidates." *Bennett,* 564 U.S., at ——, 131 S.Ct., at 2825–2826***.

*** Moreover, while preventing corruption or its appearance is a legitimate objective, Congress may target only a specific type of corruption—"*quid pro quo* " corruption. In addition to "actual *quid pro quo* arrangements," Congress may permissibly limit "the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions" to particular candidates. *Id.,* at 27, 96 S.Ct. 612***.

Spending large sums of money in connection with elections, but not in connection with an effort to control the exercise of an officeholder's official duties, does not give rise to such *quid pro quo* corruption. *** Nor does the possibility that an individual who spends large sums may garner "influence over or access to" elected officials or political parties. *Id.,* at 359, 130 S.Ct. 876; see *McConnell v. Federal Election Comm'n,* 540 U.S. 93, 297, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003) (KENNEDY, J., concurring in judgment in part and dissenting in part). ***

*** The line between *quid pro quo* corruption and general influence may seem vague at times, but the distinction must be respected in order to safeguard basic First Amendment rights. In addition, "[i]n drawing that line, the First Amendment requires us to err on the side of protecting political speech rather than suppressing it." *Federal Election Comm'n v. Wisconsin Right to Life,* 551 U.S. 449, 457, 127 S.Ct. 2652, 168 L.Ed.2d 329 (2007) (opinion of ROBERTS, C.J.).

B

"When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *United States v. Playboy Entertainment Group, Inc.,* 529 U.S., at 816, 120 S.Ct. 1878. Here, the Government seeks to carry that burden by arguing that the aggregate limits further the permissible objective of preventing *quid pro quo* corruption.

The problem is that they do not serve that function in any meaningful way. In light of the various statutes and regulations currently in effect, *Buckley*'s fear that an individual might "contribute massive amounts of money to a particular candidate through the use of unearmarked contributions" to entities likely to support the candidate, 424 U.S., at 38, 96 S.Ct. 612, is far too speculative. ***

As an initial matter, there is not the same risk of *quid pro quo* corruption or its appearance when money flows through independent actors to a candidate, as when a donor contributes to a candidate directly. When an individual contributes to a candidate, a party committee, or a PAC, the individual must by law cede control over the funds. See 2 U.S.C. § 441a(a)(8); 11 CFR § 110.6. As a consequence, the chain of attribution grows longer, and any credit must be shared among the various actors along the way. ***

Buckley nonetheless focused on the possibility that "unearmarked contributions" could eventually find their way to a candidate's coffers. 424 U.S., at 38, 96 S.Ct. 612. Even accepting the validity of *Buckley*'s circumvention theory, it is hard to see how a candidate today could receive a "massive amount[ ] of money" that could be traced back to a particular contributor uninhibited by the aggregate limits. *Ibid.* ***

[The scenarios proposed by the Government and the dissent] are either illegal under current campaign finance laws or divorced from reality. The dissent does not explain how the large sums it postulates can be legally rerouted to a particular candidate, why most state committees would participate in a plan to redirect their donations to a candidate in another State, or how a donor or group of donors can avoid regulations prohibiting contributions to a committee "with the knowledge that a substantial portion" of the contribution will support a candidate to whom the donor has already contributed, 11 CFR § 110.1(h)(2).

The dissent argues that such knowledge may be difficult to prove, pointing to eight FEC cases that did not proceed because of insufficient evidence of a donor's incriminating knowledge. *** The FEC's failure to find the requisite knowledge in those cases hardly means that the agency will be equally powerless to prevent a scheme in which a donor routes *millions of dollars* in excess of the base limits to a particular candidate, as in the dissent's "Example Two." And if an FEC official cannot establish knowledge of circumvention (or establish affiliation) when the same ten donors contribute $10,000 each to 200 newly created PACs, and each PAC writes a $10,000 check to the same ten candidates—the dissent's "Example Three"—then that official has not a heart but a head of stone. ***

*** *Buckley* upheld aggregate limits only on the ground that they prevented channeling money to candidates beyond the base limits. The absence of such a prospect today belies the Government's asserted objective of preventing corruption or its appearance. The improbability of circumvention indicates that the aggregate limits instead further the impermissible objective of simply limiting the amount of money in political campaigns.

C

Quite apart from the foregoing, the aggregate limits violate the First Amendment because they are not "closely drawn to avoid unnecessary abridgment of associational freedoms." *Buckley,* 424 U.S., at 25, 96 S.Ct. 612. In the First Amendment context, fit matters. Even when the Court is not applying strict scrutiny, we still require "a fit *** that employs not necessarily the least restrictive means but ... a means narrowly tailored to achieve the desired objective." *Board of Trustees of State Univ. of N.Y. v. Fox,* 492 U.S. 469, 480 (1989) ***. Here, because the statute is poorly tailored to the Government's interest in preventing circumvention of the base limits, it impermissibly restricts participation in the political process.

1

The Government argues that the aggregate limits are justified because they prevent an individual from giving to too many initial recipients who might subsequently recontribute a donation. After all, only recontributed funds can conceivably give rise to circumvention of the base limits. Yet all indications are that many types of recipients have scant interest in regifting donations they receive.

Some figures might be useful to put the risk of circumvention in perspective. We recognize that no data can be marshaled to capture perfectly the counterfactual world in which aggregate limits do not exist. But, as we have noted elsewhere, we can nonetheless ask "whether experience under the present law confirms a serious threat of abuse." *Federal Election Comm'n v. Colorado Republican Federal Campaign Comm.,* 533 U.S. 431, 457, 121 S.Ct. 2351, 150 L.Ed.2d 461 (2001). It does not. Experience suggests that the vast majority of contributions made in excess of the aggregate limits are likely to be retained and spent by their recipients rather than rerouted to candidates.

In the 2012 election cycle, federal candidates, political parties, and PACs spent a total of $7 billion, according to the FEC. In particular, each national political party's spending ran in the hundreds of millions of dollars. The National Republican Senatorial Committee (NRSC), National Republican Congressional Committee (NRCC), Democratic Senatorial Campaign Committee (DSCC), and Democratic Congressional Campaign Committee (DCCC), however, spent less than $1 million each on direct candidate contributions and less than $10 million each on coordinated expenditures. Brief for NRSC et al. as *Amici Curiae* 23, 25 (NRSC Brief). Including both coordinated expenditures and direct candidate contributions, the NRSC and DSCC spent just 7% of their total funds on contributions to candidates and the NRCC and DCCC spent just 3%.

Likewise, as explained previously, state parties rarely contribute to candidates in other States. In the 2012 election cycle, the Republican and Democratic state party committees in all 50 States (and the District of Columbia) contributed a paltry $17,750 to House and Senate candidates in other States. The state party committees spent over half a billion dollars over the same time period, of which the $17,750 in contributions to other States' candidates constituted just 0.003%.

As with national and state party committees, candidates contribute only a small fraction of their campaign funds to other candidates. The fact is that candidates who receive campaign contributions spend most of the money on themselves, rather than passing along donations to other candidates. In this arena at least, charity begins at home.

Based on what we can discern from experience, the indiscriminate ban on all contributions above the aggregate limits is disproportionate to the Government's interest in preventing circumvention. The Government has not given us any reason to believe that parties or candidates would dramatically shift their priorities if the aggregate limits were lifted. ***

A final point: It is worth keeping in mind that the *base limits* themselves are a prophylactic measure. As we have explained, "restrictions on direct contributions are preventative, because few if any contributions to candidates will involve *quid pro quo* arrangements." *Citizens United,* 558 U.S., at 357, 130 S.Ct. 876. The aggregate limits are then layered on top, ostensibly to prevent circumvention of the base limits. This "prophylaxis-upon-prophylaxis approach" requires that we be particularly diligent in scrutinizing the law's fit. *Wisconsin Right to Life,* 551 U.S., at 479 (opinion of ROBERTS, C.J.); see *McConnell,* 540 U.S., at 268–269(opinion of THOMAS, J.).

2

Importantly, there are multiple alternatives available to Congress that would serve the Government's anticircumvention interest, while avoiding "unnecessary abridgment" of First Amendment rights. *Buckley,* 424 U.S., at 25, 96 S.Ct. 612.

The most obvious might involve targeted restrictions on transfers among candidates and political committees. There are currently no such limits on transfers among party committees and from candidates to party committees. See 2 U.S.C. § 441a(a)(4); 11 CFR § 113.2(c). *** If Congress agrees that this is problematic, it might tighten its permissive transfer rules. Doing so would impose a lesser burden on First Amendment rights, as compared to aggregate limits that flatly ban contributions beyond certain levels. And*** the Government ***has recognized that they would mitigate the risk of circumvention. See Tr. of Oral Arg. 29.

*** Indeed, Congress has adopted transfer restrictions, and the Court has upheld them, in the context of state party spending. See 2 U.S.C. § 441i(b). So-called "Levin funds" are donations permissible under state law that may be spent on certain federal election activity—namely, voter registration and identification, get-out-the-vote efforts, or generic campaign activities. Levin funds are raised directly by the state or local party committee that ultimately spends them. § 441i(b)(2)(B)(iv). That means that other party committees may not transfer Levin funds, solicit Levin funds on behalf of the particular state or local committee, or engage in joint fundraising of Levin funds. See *McConnell*, 540 U.S., at 171–173, 124 S.Ct. 619. *McConnell* upheld those transfer restrictions as "justifiable anticircumvention measures," though it acknowledged that they posed some associational burdens. *Id.*, at 171, 124 S.Ct. 619. Here, a narrow transfer restriction on contributions that could otherwise be recontributed in excess of the base limits could rely on a similar justification.

Other alternatives might focus on earmarking. Many of the scenarios that the Government and the dissent hypothesize involve at least implicit agreements to circumvent the base limits—agreements that are already prohibited by the earmarking rules. See 11 CFR § 110.6. The FEC might strengthen those rules further by, for example, defining how many candidates a PAC must support in order to ensure that "a substantial portion" of a donor's contribution is not rerouted to a certain candidate. § 110.1(h)(2). Congress might also consider a modified version of the aggregate limits, such as one that prohibits donors who have contributed the current maximum sums from further contributing to political committees that have indicated they will support candidates to whom the donor has already contributed. To be sure, the existing earmarking provision does not define "the outer limit of acceptable tailoring." *Colorado Republican Federal Campaign Comm.*, 533 U.S., at 462, 121 S.Ct. 2351. But tighter rules could have a significant effect, especially when adopted in concert with other measures.

We do not mean to opine on the validity of any particular proposal. The point is that there are numerous alternative approaches available to Congress to prevent circumvention of the base limits.

D

Finally, disclosure of contributions minimizes the potential for abuse of the campaign finance system. Disclosure requirements are in part "justified based on a governmental interest in 'provid[ing] the electorate with information' about the sources of election-related spending." *Citizens United*, 558 U.S., at 367, 130 S.Ct. 876 (quoting *Buckley, supra*, at 66, 96 S.Ct. 612). They may also "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." *Id.*, at 67, 96 S.Ct. 612. Disclosure requirements burden speech, but—unlike the aggregate limits—they do not impose a ceiling on speech. *Citizens United, supra*, at 366, 130 S.Ct. 876. ***

With modern technology, disclosure now offers a particularly effective means of arming the voting public with information. Reports and databases are available on the FEC's Web site almost immediately after they are filed, supplemented by private entities such as OpenSecrets.org and FollowTheMoney.org. Because massive quantities of information can be accessed at the click of a mouse, disclosure is effective to a degree not possible at the time *Buckley*, or even *McConnell*, was decided. ***

V

At oral argument, the Government shifted its focus from *Buckley*'s anticircumvention rationale to an argument that the aggregate limits deter corruption regardless of their ability to prevent circumvention of the base limits. See Tr. of Oral Arg. 29–30, 50–52. The aggregate limits, the argument goes, ensure that the check amount does not become too large. That new rationale for the aggregate limits *** dangerously broadens the circumscribed definition of *quid pro quo* corruption articulated in our prior cases, and targets as corruption the general, broad-based support of a political party.

In analyzing the base limits, *Buckley* made clear that the risk of corruption arises when an individual makes large contributions to the candidate or officeholder himself. See 424 U.S., at 26–27, 96 S.Ct. 612. *** We have reiterated that understanding several times. ***

Of course a candidate would be pleased with a donor who contributed not only to the candidate himself, but also to other candidates from the same party, to party committees, and to PACs supporting the party. But there is a clear, administrable line between money beyond the base limits funneled in an identifiable way to a candidate—for which the candidate feels obligated—and money within the base limits given widely to a candidate's party—for which the candidate, like all other members of the party, feels grateful. *** To recast such shared interest, standing alone, as an opportunity for *quid pro quo* corruption would dramatically expand government regulation of the political process. Cf. *California Democratic Party v. Jones*, 530 U.S. 567, 572–573, 120 S.Ct. 2402, 147 L.Ed.2d 502 (2000) (recognizing the Government's "role to play in structuring and monitoring the election process," but rejecting "the proposition that party affairs are public affairs, free of First Amendment protections").

The Government suggests that it is the *solicitation* of large contributions that poses the danger of corruption, see Tr. of Oral Arg. 29–30, 38–39, 50–51, *** but the aggregate limits are not limited to any direct solicitation by an officeholder or candidate. *** We have no occasion to consider a law that would specifically ban candidates from soliciting donations—within the base limits—that would go to many other candidates, and would add up to a large sum. For our purposes here, it is enough that the aggregate limits at issue are not directed specifically to candidate behavior.

* * *

For the past 40 years, our campaign finance jurisprudence has focused on the need to preserve authority for the Government to combat corruption, without at the same time compromising the political responsiveness at the heart of the democratic process, or allowing the Government to favor some participants in that process over others. As Edmund Burke explained in his famous speech to the electors of Bristol, a representative owes constituents the exercise of his "mature judgment," but judgment informed by "the strictest union, the closest correspondence, and the most unreserved communication with his constituents." ***1462** The Speeches of the Right Hon. Edmund Burke 129–130 (J. Burke ed. 1867). Constituents have the right to support candidates who share their views and concerns. Representatives are not to follow constituent orders, but can be expected to be cognizant of and responsive to those concerns. Such responsiveness is key to the very concept of self-governance through elected officials. ***

The judgment of the District Court is reversed, and the case is remanded for further proceedings.

It is so ordered.

Justice THOMAS, concurring in the judgment.

I adhere to the view that this Court's decision in *Buckley v. Valeo,* 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (*per curiam*), denigrates core First Amendment speech and should be overruled.

*** This case represents yet another missed opportunity to right the course of our campaign finance jurisprudence by restoring a standard that is faithful to the First Amendment. Until we undertake that reexamination, we remain in a "halfway house" of our own design. *Shrink Missouri,* 528 U.S., at 410, 120 S.Ct. 897 (KENNEDY, J., dissenting). For these reasons, I concur only in the judgment. . . .

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

Nearly 40 years ago in *Buckley* v. *Valeo,* 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (*per curiam*), this Court considered the constitutionality of laws that imposed limits upon the overall amount a single person can contribute to all federal candidates, political parties, and committees taken together. The Court held that those limits did not violate the Constitution. *Id.,* at 38, 96 S.Ct. 612; accord, *McConnell v. Federal Election Comm'n,* 540 U.S. 93, 138, n. 40, 152–153, n. 48, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003) (citing with approval *Buckley*'s aggregate limits holding).

The *Buckley* Court focused upon the same problem that concerns the Court today, and it wrote:

> "The overall $25,000 ceiling does impose an ultimate restriction upon the number of candidates and committees with which an individual may associate himself by means of financial support. But this quite modest restraint upon protected political activity serves to prevent evasion of the $1,000 contribution limitation by a person who might otherwise contribute massive amounts of money to a particular candidate through the use of unearmarked contributions to political committees likely to contribute to that candidate, or huge contributions to the candidate's political party. The limited, additional restriction on associational freedom imposed by the overall ceiling is thus no more than a corollary of the basic individual contribution limitation that we have found to be constitutionally valid." 424 U.S., at 38, 96 S.Ct. 612.

Today a majority of the Court overrules this holding. It is wrong to do so. Its conclusion rests upon its own, not a record-based, view of the facts. Its legal analysis is faulty: It misconstrues the nature of the competing constitutional interests at stake. It understates the importance of protecting the political integrity of our governmental institutions. It creates a loophole that will allow a single individual to contribute millions of dollars to a political party or to a candidate's campaign. Taken together with *Citizens United v. Federal Election Comm'n,* 558 U.S. 310, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010), today's decision eviscerates our Nation's campaign finance laws, leaving a remnant incapable of dealing with the grave problems of democratic legitimacy that those laws were intended to resolve.

***

II

***

A

In reality, as the history of campaign finance reform shows and as our earlier cases on the subject have recognized, the anticorruption interest that drives Congress to regulate campaign contributions is a far broader, more important interest than the plurality acknowledges. ***

Consider at least one reason why the First Amendment protects political speech. Speech does not exist in a vacuum. Rather, political communication seeks to secure government action. A politically oriented "marketplace of ideas" seeks to form a public opinion that can and will influence elected representatives.

*** The Framers had good reason to emphasize this same connection between political speech and governmental action. An influential 18th-century continental philosopher had argued that in a representative democracy, the people lose control of their representatives between elections, during which interim periods they were "in chains." J. Rousseau, An Inquiry Into the Nature of the Social Contract 265–266 (transl. 1791).

The Framers responded to this criticism both by requiring frequent elections to federal office, and by enacting a First Amendment that would facilitate a "chain of communication between the people, and those, to whom they have committed the exercise of the powers of government." J. Wilson, Commentaries on the Constitution of the United States of America 30–31 (1792). *** Accordingly, the First Amendment advances not only the individual's right to engage in political speech, but also the public's interest in preserving a democratic order in which collective speech *matters*.

Corruption breaks the constitutionally necessary "chain of communication" between the people and their representatives. It derails the essential speech-to-government-action tie. Where enough money calls the tune, the general public will not be heard ***[and] a free marketplace of political ideas loses its point. That is one reason why the Court has stressed the constitutional importance of Congress' concern that a few large donations not drown out the voices of the many. See, *e.g.*, *Buckley,* 424 U.S., at 26–27, 96 S.Ct. 612. ***

The "appearance of corruption" can make matters worse. It can lead the public to believe that its efforts to communicate with its representatives or to help sway public opinion have little purpose. And a cynical public can lose interest in political participation altogether. *** Democracy, the Court has often said, cannot work unless "the people have faith in those who govern." *United States v. Mississippi Valley Generating Co.,* 364 U.S. 520, 562, 81 S.Ct. 294, 5 L.Ed.2d 268 (1961).

The upshot is that the interests the Court has long described as preventing "corruption" or the "appearance of corruption" are more than ordinary factors to be weighed against the constitutional right to political speech. Rather, they are interests rooted in the First Amendment itself. They are rooted in the constitutional effort to create a democracy responsive to the people—a government where laws reflect the very thoughts, views, ideas, and sentiments, the expression of which the First Amendment protects. Given that end, we can and should understand campaign finance laws as resting upon a broader and more significant constitutional rationale than the plurality's limited definition of "corruption" suggests. ***

B

Since the kinds of corruption that can destroy the link between public opinion and governmental action extend well beyond those the plurality describes, the plurality's notion of corruption is flatly inconsistent with the basic constitutional rationale I have just described. Thus, it should surprise no one that this Court's case law (*Citizens United* excepted) insists upon a considerably broader definition.

In *Buckley,* for instance, the Court said explicitly that aggregate limits were constitutional because they helped "prevent evasion ... [through] huge contributions to the candidate's political party," 424 U.S., at 26, 96 S.Ct. 612. *** Moreover, *Buckley* upheld the base limits in significant part because they helped thwart "the appearance of corruption stemming from public awareness of the opportunities for abuse *inherent in a regime of large individual financial contributions.*" 424 U.S., at 27, 96 S.Ct. 612 (emphasis added). And it said that Congress could reasonably conclude that criminal laws forbidding "the giving and taking of bribes" did *not* adequately "deal with the reality or appearance of corruption." *Id.,* at 28, 96 S.Ct. 612. *** The concern with corruption extends further.

Other cases put the matter yet more strongly. *** Most important[ly], in *McConnell,* this Court considered the constitutionality of the Bipartisan Campaign Reform Act of 2002, an Act that set new limits on "soft money" contributions to political parties. "Soft money" referred to funds that, prior to BCRA, were freely donated to parties for activities other than directly helping elect a federal candidate—activities such as voter registration, "get out the vote" drives, and advertising that did not expressly advocate a federal candidate's election or defeat. 540 U.S., at 122–124, 124 S.Ct. 619. BCRA imposed a new ban on soft money contributions to national party committees, and greatly curtailed them in respect to state and local parties. *Id.,* at 133–134, 161–164, 124 S.Ct. 619.

The Court in *McConnell* upheld these new contribution restrictions under the First Amendment for the very reason the plurality today discounts or ignores. Namely, the Court found they thwarted a significant risk of corruption—understood not as *quid pro quo* bribery, but as privileged access to and pernicious influence upon elected representatives.

In reaching its conclusion in *McConnell,* the Court relied upon a vast record compiled in the District Court. That record consisted of over 100,000 pages of material and included testimony from more than 200 witnesses. See 251 F.Supp.2d 176, 209 (D.C.2003) (*per curiam*). What it showed, in detail, was the web of relationships and understandings among parties, candidates, and large donors that underlies privileged access and influence. See *McConnell,* 540 U.S., at 146–152, 154–157, 167–171, 182–184, 124 S.Ct. 619. The District Judges in *McConnell* made clear that the record *** had [not] identified a "single discrete instance of *quid pro quo* corruption" due to soft money. 251 F.Supp.2d ., at 395 (opinion of Henderson, J.). But what the record did demonstrate was that enormous soft money contributions, ranging between $1 million and $5 million among the largest donors, enabled wealthy contributors to gain disproportionate "access to federal lawmakers" and the ability to "influenc[e] legislation." *Id.,* at 481 (opinion of Kollar–Kotelly, J.). ***

*** This Court upheld BCRA's limitations on soft money contributions by relying on just the kind of evidence I have described. We wrote:

> "The evidence in the record shows that candidates and donors alike have in fact exploited the soft-money loophole, the former to increase their prospects of election and the latter to create debt on the part of officeholders.... Plaintiffs argue that without concrete evidence of an instance in which a federal officeholder has actually switched a vote [in

> exchange for soft money] ..., Congress has not shown that there exists real or apparent corruption.... *[P]laintiffs conceive of corruption too narrowly.* Our cases have firmly established that Congress' legitimate interest extends beyond preventing simple cash-for-votes corruption to curbing 'undue influence on an officeholder's judgment, and the appearance of such influence.' " 540 U.S., at 146, 149–150, 124 S.Ct. 619 (quoting *Colorado II,* 533 U.S., at 441, 121 S.Ct. 2351; emphasis added; paragraphs and paragraph breaks omitted).

*** Insofar as today's decision sets forth a significantly narrower definition of "corruption," and hence of the public's interest in political integrity, it is flatly inconsistent with *McConnell.*

*****III**

The plurality invalidates the aggregate contribution limits for a second reason. It believes they are no longer needed to prevent contributors from circumventing federal limits on direct contributions to individuals, political parties, and political action committees. *** Other "campaign finance laws," combined with "experience" and "common sense," foreclose the various circumvention scenarios that the Government hypothesizes. *** Accordingly, the plurality concludes, the aggregate limits provide no added benefit.

*** Here, as in *Buckley,* in the absence of limits on aggregate political contributions, donors can and likely will find ways to channel millions of dollars to parties and to individual candidates, producing precisely the kind of "corruption" or "appearance of corruption" that previously led the Court to hold aggregate limits constitutional. Those opportunities for circumvention will also produce the type of corruption that concerns the plurality today. ***

A

Example One: Gifts for the Benefit of the Party. *** [The applicable] individual limits mean that, in the absence of any aggregate limit, an individual could legally give to the Republican Party or to the Democratic Party about $1.2 million over two years. *** To make it easier for contributors to give gifts of this size, each party could create a "Joint Party Committee," comprising all of its national and state party committees. ***A contributor could then write a single check to the Joint Party Committee—and its staff would divide the funds so that each constituent unit receives no more than it could obtain from the contributor directly ($64,800 for a national committee over two years, $20,000 for a state committee over the same). Before today's decision, the total size of Rich Donor's check to the Joint Party Committee was capped at $74,600—the aggregate limit for donations to political parties over a 2–year election cycle. ***

*** Will elected officials be particularly grateful to the large donor, feeling obliged to provide him special access and influence, and perhaps even a *quid pro quo* legislative favor? That is what we have previously believed. See *McConnell,* 540 U.S., at 182, 124 S.Ct. 619 ("Large soft-money donations at a candidate's or officeholder's behest give rise to all of the same corruption concerns posed by contributions made directly to the candidate or officeholder"); *id*., at 308, 124 S.Ct. 619 (opinion of KENNEDY, J.) ("The making of a solicited gift is a *quid* both to the recipient of the money and to the one who solicits the payment") ***.

Example Two: Donations to Individual Candidates (The $3.6 Million Check). The first example significantly *understates* the problem. That is because federal election law also allows a single contributor to give $5,200 to each party candidate over a 2–year election cycle (assuming the candidate is running in both a primary and a general election). § 441a(a)(1)(A); 78 Fed.Reg. 8532. *** Thus, without an aggregate limit, the law will permit a wealthy individual to write a check, over a 2–year election cycle, for $3.6 million—all to benefit his political party and its candidates. ***

To make it easier for a wealthy donor to make a contribution of this size, the parties can simply enlarge the composition of the Joint Party Committee described in *Example One,* so that it now includes party candidates. And a party can proliferate such joint entities, perhaps calling the first the "Smith Victory Committee," the second the "Jones Victory Committee," and the like. See 11 CFR § 102.17(c)(5) (2012). (I say "perhaps" because too transparent a name might call into play certain earmarking rules. But the Federal Election Commission's (FEC) database of joint fundraising committees in 2012 shows similarly named entities, *e.g.,* "Landrieu Wyden Victory Fund," etc.). As I have just said, without any aggregate limit, the law will allow Rich Donor to write a single check to, say, the Smith Victory Committee, for up to $3.6 million. This check represents "the total amount that the contributor could contribute to all of the participants" in the Committee over a 2–year cycle. § 102.17(c)(5). The Committee would operate under an agreement that provides a "formula for the allocation of fundraising proceeds" among its constituent units. § 102.17(c)(1). And that "formula" would divide the proceeds so that no committee or candidate receives more than it could have received from Rich Donor directly—$64,800, $20,000, or $5,200. See § 102.17(c)(6).

*** [Current] law will also permit a party and its candidates to shift most of Rich Donor's contributions to a *single* candidate, [because] *** [t]he law permits each candidate and each party committee in the Smith Victory Committee to write Candidate Smith a check directly. For his primary and general elections combined, they can write checks of up to $4,000 (from each candidate's authorized campaign committee) and $10,000 (from each state and national committee). 2 U.S.C. §§ 432(e)(3)(B), 441a(a)(2)(A); 11 CFR § 110.3(b). ***

The upshot is that Candidate Smith can receive at least $2.37 million and possibly the full $3.6 million contributed by Rich Donor to the Smith Victory Committee, even though the funds must first be divided up among the constituent units before they can be rerouted to Smith. *** And the evidence in the *McConnell* record***—with respect to soft money contributions—makes clear that Candidate Smith will almost certainly come to learn from whom he has received this money. *** Today's opinion creates a loophole measured in the millions.

Example Three: Proliferating Political Action Committees (PACs). Campaign finance law prohibits an individual from contributing (1) more than $5,200 to any candidate in a federal election cycle, and (2) more than $5,000 to a PAC in a calendar year. 2 U.S.C. §§ 441a(a)(1)(A), (C); 78 Fed.Reg. 8532. It also prohibits (3) any PAC from contributing more than $10,000 to any candidate in an election cycle. § 441(a)(2)(A). But the law does not prohibit an individual from contributing (within the current $123,200 biannual aggregate limit) $5,000 to each of an unlimited total number of PACs. And there, so to speak, lies the rub.

Here is how, without any aggregate limits, a party will be able to channel $2 million from each of ten Rich Donors to each of ten Embattled Candidates. Groups of party supporters—individuals, corporations, or trade unions—create 200 PACs. Each PAC claims it will use the funds it raises to support several candidates from the party, though it will favor those who are most endangered. (Each

PAC qualifies for "multicandidate" status because it has received contributions from more than 50 persons and has made contributions to five federal candidates at some point previously. § 441a(a)(4); 11 CFR § 100.5(e)(3)). Over a 2–year election cycle, Rich Donor One gives $10,000 to each PAC ($5,000 per year)—yielding $2 million total. Rich Donor 2 does the same. So, too, do the other eight Rich Donors. This brings their total donations to $20 million, disbursed among the 200 PACs. Each PAC will have collected $100,000, and each can use its money to write ten checks of $10,000—to each of the ten most Embattled Candidates in the party (over two years). See Appendix B, Table 3, *infra,* at 1487. Every Embattled Candidate, receiving a $10,000 check from 200 PACs, will have collected $2 million. ***

B

The plurality believes that the three scenarios I have just depicted either pose no threat, or cannot or will not take place. It does not believe the scenario depicted in *Example One* is any cause for concern, because it involves only "general, broad-based support of a political party." *** Not so. A candidate who solicits a multimillion dollar check for his party will be deeply grateful to the checkwriter, and surely could reward him with a *quid pro quo* favor. The plurality discounts the scenarios depicted in *Example Two* and *Example Three* because it finds such circumvention tactics "illegal under current campaign finance laws," "implausible," or "divorced from reality." But they are not. ***

First, the plurality points out that in 1976 (a few months after this Court decided *Buckley*) Congress "added limits on contributions *to* political committees," *i.e.,* to PACs***. But *Example Three*, the here-relevant example, takes account of those limits, namely, $5,000 to a PAC in any given year. And it shows that the per-PAC limit does not matter much when it comes to the potential for circumvention, as long as party supporters can create dozens or hundreds of PACs. *** And creating a PAC is primarily a matter of paperwork, a knowledgeable staff person, and a little time.

Second, the plurality points out that in 1976, Congress "also added an antiproliferation rule prohibiting donors from creating or controlling multiple affiliated political committees." *** But different supporters can create different PACs. Indeed, there were roughly 2,700 "nonconnected" PACs (*i.e.*, PACs not connected to a specific corporation or labor union) operating during the 2012 elections. *** In a future without aggregate contribution limits, far more nonconnected PACs will likely appear. *** But the ultimate question in the affiliation inquiry is whether "one committee or organization [has] been established, financed, maintain or controlled by another committee or sponsoring organization." Just because a group of multicandidate PACs all support the same party and all decide to donate funds to a group of endangered candidates in that party does not mean they will qualify as "affiliated" under the relevant definition. ***

Third, the plurality says that a post-*Buckley* regulation has strengthened the statute's earmarking provision. *** Namely, the plurality points to a rule promulgated by the FEC in 1976, specifying that earmarking includes any "designation 'whether direct or indirect, express or implied, oral or written.' " *** This means that if Rich Donor were to give $5,000 to a PAC while "designat[ing]" (in any way) that the money go to Candidate Smith, those funds must count towards Rich Donor's total allowable contributions to Smith—$5,200 per election cycle. But the virtually identical earmarking provision in effect when this Court decided *Buckley* would have required the same thing. ***

Fourth, the plurality points out that the FEC's regulations "specify that an individual who has contributed to a particular candidate committee may not also contribute to a *single*-candidate committee for that candidate." *** The regulations, however, do not prevent a person who has contributed to a candidate from also contributing to *multi* candidate committees that support the candidate. Indeed, the rules specifically authorize such contributions. *** *Example Three* illustrates the latter kind of contribution. And briefs before us make clear that the possibility for circumventing the base limits through making such contributions is a realistic, not an illusory, one.

Fifth, the plurality points to another FEC regulation (also added in 1976), which says that "an individual who has contributed to a candidate" may not "also contribute to a political committee that

has supported or anticipates supporting the same candidate if the individual knows that 'a substantial portion [of his contribution] will be contributed to, or expended on behalf of,' that candidate. *** This regulation is important, for in principle, the FEC might use it to prevent the circumstances that *Examples Two* and *Three* set forth from arising. And it is not surprising that the plurality relies upon the existence of this rule when it describes those circumstances as "implausible," "illegal," or "divorced from reality." ***

In fact, however, this regulation is not the strong anti-circumvention weapon that the plurality imagines. That is because the regulation requires a showing that donors have "*knowledge* that a substantial portion" of their contributions will be used by a PAC to support a candidate to whom they have already contributed. § 110.1(h)(2) (emphasis added). And "knowledge" is hard to prove. I have found nine FEC cases decided since the year 2000 that refer to this regulation. In all but one, the FEC failed to find the requisite "knowledge"—despite the presence of *Example Two* or *Example Three* circumstances. [Justice Breyer gives several examples of cases where no knowledge was found, despite probable inferences to that effect]. *** Given this record of FEC (in)activity, my reaction to the plurality's reliance upon agency enforcement of this rule (as an adequate substitute for Congress' aggregate limits) is like Oscar Wilde's after reading Dickens' account of the death of Little Nell: "One must have a heart of stone," said Wilde, "to read [it] without laughing." Oxford Dictionary of Humorous Quotations 86 (N. Sherrin 2d ed. 2001).

I have found one contrary example—the single example to which the plurality refers. *** In that case, the FEC found probable cause to believe that three individual contributors to several PACs had the requisite "knowledge" that the PACs would use a "substantial portion" of their contributions to support a candidate to whom they had already contributed—Sam Brownback, a candidate for the Senate (for two of the contributors), and Robert Riley, a candidate for the House (for the third). The individuals had made donations to several PACs operating as a network, under the direction of a single political consulting firm. The two contributors to Sam Brownback were his parents-in-law, and the FEC believed they might be using the PAC network to channel extra support to him. The contributor to Robert Riley was his son, and the FEC believed he might be doing the same. The facts in this case are unusual, *** [and] in any event, this single swallow cannot make the plurality's summer.

Thus, it is not surprising that throughout the many years this FEC regulation has been in effect, political parties and candidates have established ever more joint fundraising committees (numbering over 500 in the last federal elections); candidates have established ever more "Leadership PACs" (numbering over 450 in the last elections); and party supporters have established ever more multicandidate PACs (numbering over 3,000 in the last elections). ***

Using these entities, candidates, parties, and party supporters can transfer and, we are told, have transferred large sums of money to specific candidates, thereby avoiding the base contribution limits in ways that *Examples Two* and *Three* help demonstrate. *** They have done so without drawing FEC prosecution—at least not according to *** publicly available records. That is likely because in the real world, the methods of achieving circumvention are more subtle and more complex than our stylized *Examples Two* and *Three* depict. And persons have used these entities to channel money to candidates without any individual breaching the current aggregate $123,200 limit. The plurality now removes that limit, thereby permitting wealthy donors to make aggregate contributions not of $123,200, but of several millions of dollars. If the FEC regulation has failed to plug a small hole, how can it possibly plug a large one?

IV

The plurality concludes that even if circumvention were a threat, the aggregate limits are "poorly tailored" to address it. The First Amendment requires " 'a fit that is ... reasonable,' " and there is no such "fit" here because there are several alternative ways Congress could prevent evasion of the base limits. *** For the most part, the alternatives the plurality mentions were similarly available at the time of *Buckley*. Their hypothetical presence did not prevent the Court from upholding aggregate limits in 1976. How can their continued hypothetical presence lead the plurality now to conclude that aggregate limits are "poorly tailored?" How can their continued hypothetical presence lead the Court to overrule *Buckley* now?

In sum, the explanation of why aggregate limits are needed is complicated, as is the explanation of why other methods will not work. The Court, as in *Buckley*, should hold that aggregate contribution limits are constitutional.

To be added at bottom of page 928, at end of "Ed. note"

See also, *Elonis v. United States*, 135 S.Ct. 2001 (2015)

The next two cases are to be added at page 1048 following Agency for International Development v. Alliance for Open Society Int'l, Inc.

Pleasant Grove City, Utah v. Summum
129 S.Ct. 1125 (2009)

Justice ALITO delivered the opinion of the Court.

This case presents the question whether the Free Speech Clause of the First Amendment entitles a private group to insist that a municipality permit it to place a permanent monument in a city park in which other donated monuments were previously erected. The Court of Appeals held that the municipality was required to accept the monument because a public park is a traditional public forum. We conclude, however, that although a park is a traditional public forum for speeches and other transitory expressive acts, the display of a permanent monument in a public park is not a form of expression to which forum analysis applies. Instead, the placement of a permanent monument in a public park is best viewed as a form of government speech and is therefore not subject to scrutiny under the Free Speech Clause.

I
A

Pioneer Park (or Park) is a 2.5 acre public park located in the Historic District of Pleasant Grove City (or City) in Utah. The Park currently contains 15 permanent displays, at least 11 of which were donated by private groups or individuals. These include an historic granary, a wishing well, the City's first fire station, a September 11 monument, and a Ten Commandments monument donated by the Fraternal Order of Eagles in 1971.

Respondent Summum is a religious organization founded in 1975 and headquartered in Salt Lake City, Utah. On two separate occasions in 2003, Summum's president wrote a letter to the City's mayor requesting permission to erect a "stone monument," which would contain "the Seven Aphorisms of SUMMUM" (fn.1) and be similar in size and nature to the Ten Commandments monument. App. 57, 59. The City denied the requests and explained that its practice was to limit monuments in the Park to those that "either (1) directly relate to the history of Pleasant Grove, or (2) were donated by groups with longstanding ties to the Pleasant Grove community." Id., at 61. The following year, the City passed a resolution putting this policy into writing. The resolution also mentioned other criteria, such as safety and esthetics.

> Fn. 1: Respondent's brief describes the church and the Seven Aphorisms as follows: "The Summum church incorporates elements of Gnostic Christianity, teaching that spiritual knowledge is experiential and that through devotion comes revelation, which 'modifies human perceptions, and transfigures the individual.' See The Teachings of Summum are the Teachings of Gnostic Christianity, http://www.summum.us/philosophy/ gnosticism.shtml (visited Aug. 15, 2008).
>
> "Central to Summum religious belief and practice are the Seven Principles of Creation (the "Seven Aphorisms"). According to Summum doctrine, the Seven Aphorisms were inscribed on the original tablets handed down by God to Moses on Mount Sinai .... Because Moses believed that the Israelites were not ready to receive the Aphorisms, he shared them only with a select group of people. In the Summum Exodus account, Moses then destroyed the original tablets, traveled back to Mount Sinai, and returned with a second set of tablets containing the Ten Commandments. See The Aphorisms of Summum and the Ten Commandments, http://www.summum.us/philosophy/ tencommandments.shtml (visited Aug. 15, 2008)." Brief for Respondent 1–2.

In May 2005, respondent's president again wrote to the mayor asking to erect a monument, but the letter did not describe the monument, its historical significance, or Summum's connection to the community. The city council rejected this request.

B

In 2005, respondent filed this action against the City and various local officials (petitioners), asserting, among other claims, that petitioners had violated the Free Speech Clause of the First Amendment by accepting the Ten Commandments monument but rejecting the proposed Seven Aphorisms monument. Respondent sought a preliminary injunction directing the City to permit Summum to erect its monument in Pioneer Park. After the District Court denied Summum's preliminary injunction request, No. 2:05CV00638, 2006 WL 3421838 (D.Utah, Nov.22, 2006), respondent appealed, pressing solely its free speech claim.

A panel of the Tenth Circuit reversed. 483 F.3d 1044 (2007). The panel noted that it had previously found the Ten Commandments monument to be private rather than government speech. See Summum v. Ogden, 297 F.3d 995 (2002). Noting that public parks have traditionally been regarded as public forums, the panel held that the City could not reject the Seven Aphorisms monument unless it had a compelling justification that could not be served by more narrowly tailored means. See 483 F.3d, at 1054. The panel then concluded that the exclusion of respondent's monument was unlikely to

survive this strict scrutiny, and the panel therefore held that the City was required to erect Summum's monument immediately.

The Tenth Circuit denied the City's petition for rehearing en banc by an equally divided vote. 499 F.3d 1170 (2007). Judge Lucero dissented, arguing that the Park was not a traditional public forum for the purpose of displaying monuments. Id., at 1171. Judge McConnell also dissented, contending that the monuments in the Park constitute government speech. Id., at 1174.

We granted certiorari, and now reverse.

II

No prior decision of this Court has addressed the application of the Free Speech Clause to a government entity's acceptance of privately donated, permanent monuments for installation in a public park, and the parties disagree sharply about the line of precedents that governs this situation. Petitioners contend that the pertinent cases are those concerning government speech. Respondent, on the other hand, agrees with the Court of Appeals panel that the applicable cases are those that analyze private speech in a public forum. The parties' fundamental disagreement thus centers on the nature of petitioners' conduct when they permitted privately donated monuments to be erected in Pioneer Park. Were petitioners engaging in their own expressive conduct? Or were they providing a forum for private speech?

A

If petitioners were engaging in their own expressive conduct, then the Free Speech Clause has no application. The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech. A government entity has the right to "speak for itself." Board of Regents of Univ. of Wis. System v. Southworth, 529 U.S. 217, 229, 120 S.Ct. 1346, 146 L.Ed.2d 193 (2000). "[I]t is entitled to say what it wishes," Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 833, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995), and to select the views that it wants to express. See Rust v. Sullivan, 500 U.S. 173, 194, 111 S.Ct. 1759, 114 L.Ed.2d 233 (1991); National Endowment for Arts v. Finley, 524 U.S. 569, 598, 118 S.Ct. 2168, 141 L.Ed.2d 500 (1998) (SCALIA, J., concurring in judgment) ("It is the very business of government to favor and disfavor points of view").

Indeed, it is not easy to imagine how government could function if it lacked this freedom. "If every citizen were to have a right to insist that no one paid by public funds express a view with which he disagreed, debate over issues of great concern to the public would be limited to those in the private sector, and the process of government as we know it radically transformed." Keller v. State Bar of Cal., 496 U.S. 1, 12–13, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990). See also Johanns, 544 U.S., at 574, 125 S.Ct. 2055 (SOUTER, J., dissenting) ("To govern, government has to say something, and a First Amendment heckler's veto of any forced contribution to raising the government's voice in the 'marketplace of ideas' would be out of the question" (footnote omitted)).

A government entity may exercise this same freedom to express its views when it receives assistance from private sources for the purpose of delivering a government-controlled message. See id., at 562, 125 S.Ct. 2055 (opinion of the Court) (where the government controls the message, "it is not precluded from relying on the government-speech doctrine merely because it solicits assistance from

nongovernmental sources"); Rosenberger, supra, at 833, 115 S.Ct. 2510 (a government entity may "regulate the content of what is or is not expressed ... when it enlists private entities to convey its own message").

This does not mean that there are no restraints on government speech. For example, government speech must comport with the Establishment Clause. The involvement of public officials in advocacy may be limited by law, regulation, or practice. And of course, a government entity is ultimately "accountable to the electorate and the political process for its advocacy." Southworth, 529 U.S., at 235, 120 S.Ct. 1346. "If the citizenry objects, newly elected officials later could espouse some different or contrary position." Ibid.

B

While government speech is not restricted by the Free Speech Clause, the government does not have a free hand to regulate private speech on government property. This Court long ago recognized that members of the public retain strong free speech rights when they venture into public streets and parks, "which 'have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' " Perry Ed. Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983) (quoting Hague v. Committee for Industrial Organization, 307 U.S. 496, 515, 59 S.Ct. 954, 83 L.Ed. 1423 (1939) (opinion of Roberts, J.)). In order to preserve this freedom, government entities are strictly limited in their ability to regulate private speech in such "traditional public fora." Cornelius v. NAACP Legal Defense & Ed. Fund, Inc., 473 U.S. 788, 800, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985). Reasonable time, place, and manner restrictions are allowed, see Perry Ed. Assn., supra, at 45, 103 S.Ct. 948, but any restriction based on the content of the speech must satisfy strict scrutiny, that is, the restriction must be narrowly tailored to serve a compelling government interest, see Cornelius, supra, at 800, 105 S.Ct. 3439, and restrictions based on viewpoint are prohibited, see Carey v. Brown, 447 U.S. 455, 463, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980).

With the concept of the traditional public forum as a starting point, this Court has recognized that members of the public have free speech rights on other types of government property and in certain other government programs that share essential attributes of a traditional public forum. We have held that a government entity may create "a designated public forum" if government property that has not traditionally been regarded as a public forum is intentionally opened up for that purpose. See Cornelius, 473 U.S., at 802, 105 S.Ct. 3439. Government restrictions on speech in a designated public forum are subject to the same strict scrutiny as restrictions in a traditional public forum. Id., at 800, 105 S.Ct. 3439.

The Court has also held that a government entity may create a forum that is limited to use by certain groups or dedicated solely to the discussion of certain subjects. Perry Ed. Assn., supra, at 46, n. 7, 103 S.Ct. 948. In such a forum, a government entity may impose restrictions on speech that are reasonable and viewpoint neutral. See Good News Club v. Milford Central School, 533 U.S. 98, 106–107, 121 S.Ct. 2093, 150 L.Ed.2d 151 (2001).

III

There may be situations in which it is difficult to tell whether a government entity is speaking on its own behalf or is providing a forum for private speech, but this case does not present such a situation. Permanent monuments displayed on public property typically represent government speech.

Governments have long used monuments to speak to the public. Since ancient times, kings, emperors, and other rulers have erected statues of themselves to remind their subjects of their authority and power. Triumphal arches, columns, and other monuments have been built to commemorate military victories and sacrifices and other events of civic importance. A monument, by definition, is a structure that is designed as a means of expression. When a government entity arranges for the construction of a monument, it does so because it wishes to convey some thought or instill some feeling in those who see the structure. Neither the Court of Appeals nor respondent disputes the obvious proposition that a monument that is commissioned and financed by a government body for placement on public land constitutes government speech.

Just as government-commissioned and government-financed monuments speak for the government, so do privately financed and donated monuments that the government accepts and displays to the public on government land. It certainly is not common for property owners to open up their property for the installation of permanent monuments that convey a message with which they do not wish to be associated. And because property owners typically do not permit the construction of such monuments on their land, persons who observe donated monuments routinely—and reasonably—interpret them as conveying some message on the property owner's behalf. In this context, there is little chance that observers will fail to appreciate the identity of the speaker. This is true whether the monument is located on private property or on public property, such as national, state, or city park land.

We think it is fair to say that throughout our Nation's history, the general government practice with respect to donated monuments has been one of selective receptivity. A great many of the monuments that adorn the Nation's public parks were financed with private funds or donated by private parties. Sites managed by the National Park Service contain thousands of privately designed or funded commemorative objects, including the Statue of Liberty, the Marine Corps War Memorial (the Iwo Jima monument), and the Vietnam Veterans Memorial. States and cities likewise have received thousands of donated monuments. See, e.g., App. to Brief for International Municipal Lawyers Association as Amicus Curiae 15a–29a (hereinafter IMLA Brief) (listing examples); Brief for American Legion et al. as Amici Curiae 7, and n. 2 (same). By accepting monuments that are privately funded or donated, government entities save tax dollars and are able to acquire monuments that they could not have afforded to fund on their own.

But while government entities regularly accept privately funded or donated monuments, they have exercised selectivity. An example discussed by the city of New York as amicus curiae is illustrative. In the wake of the controversy generated in 1876 when the city rejected the donor's proposed placement of a donated monument to honor Daniel Webster, the city adopted rules governing the acceptance of artwork for permanent placement in city parks, requiring, among other things, that "any proposed gift of art had to be viewed either in its finished condition or as a model before acceptance." Brief for City of New York as Amicus Curiae 4–5 (hereinafter NYC Brief). Across the country, "municipalities generally exercise editorial control over donated monuments through prior submission requirements, design input, requested modifications, written criteria, and legislative approvals of specific content proposals." IMLA Brief 21.

Public parks are often closely identified in the public mind with the government unit that owns the land. City parks—ranging from those in small towns, like Pioneer Park in Pleasant Grove City, to those in major metropolises, like Central Park in New York City—commonly play an important role in defining the identity that a city projects to its own residents and to the outside world. Accordingly, cities and other jurisdictions take some care in accepting donated monuments. Government decisionmakers select the monuments that portray what they view as appropriate for the place in question, taking into account such content-based factors as esthetics, history, and local culture. The monuments that are accepted, therefore, are meant to convey and have the effect of conveying a government message, and they thus constitute government speech.

IV

A

In this case, it is clear that the monuments in Pleasant Grove's Pioneer Park represent government speech. Although many of the monuments were not designed or built by the City and were donated in completed form by private entities, the City decided to accept those donations and to display them in the Park. Respondent does not claim that the City ever opened up the Park for the placement of whatever permanent monuments might be offered by private donors. Rather, the City has "effectively controlled" the messages sent by the monuments in the Park by exercising "final approval authority" over their selection. Johanns, 544 U.S., at 560–561, 125 S.Ct. 2055. The City has selected those monuments that it wants to display for the purpose of presenting the image of the City that it wishes to project to all who frequent the Park; it has taken ownership of most of the monuments in the Park, including the Ten Commandments monument that is the focus of respondent's concern; and the City has now expressly set forth the criteria it will use in making future selections.

B

Respondent voices the legitimate concern that the government speech doctrine not be used as a subterfuge for favoring certain private speakers over others based on viewpoint. Respondent's suggested solution is to require a government entity accepting a privately donated monument to go through a formal process of adopting a resolution publicly embracing "the message" that the monument conveys. See Brief for Respondent 33–34, 57.

We see no reason for imposing a requirement of this sort. The parks of this country contain thousands of donated monuments that government entities have used for their own expressive purposes, usually without producing the sort of formal documentation that respondent now says is required to escape Free Speech Clause restrictions. Requiring all of these jurisdictions to go back and proclaim formally that they adopt all of these monuments as their own expressive vehicles would be a pointless exercise that the Constitution does not mandate.

In this case, for example, although respondent argues that Pleasant Grove City has not adequately "controll[ed] the message," id., at 31, of the Ten Commandments monument, the City took ownership of that monument and put it on permanent display in a park that it owns and manages and that is linked to the City's identity. All rights previously possessed by the monument's donor have been relinquished. The City's actions provided a more dramatic form of adoption than the sort of formal endorsement that respondent would demand, unmistakably signifying to all Park visitors that the City intends the monument to speak on its behalf. And the City has made no effort to abridge the traditional

free speech rights—the right to speak, distribute leaflets, etc.—that may be exercised by respondent and others in Pioneer Park.

What respondent demands, however, is that the City "adopt" or "embrace" "the message" that it associates with the monument. Id., at 33–34, 57. Respondent seems to think that a monument can convey only one "message"—which is, presumably, the message intended by the donor—and that, if a government entity that accepts a monument for placement on its property does not formally embrace that message, then the government has not engaged in expressive conduct.

This argument fundamentally misunderstands the way monuments convey meaning. The meaning conveyed by a monument is generally not a simple one like " 'Beef. It's What's for Dinner.' " Johanns, supra, at 554, 125 S.Ct. 2055. Even when a monument features the written word, the monument may be intended to be interpreted, and may in fact be interpreted by different observers, in a variety of ways. Monuments called to our attention by the briefing in this case illustrate this phenomenon.

What, for example, is "the message" of the Greco–Roman mosaic of the word "Imagine" that was donated to New York City's Central Park in memory of John Lennon? See NYC Brief 18; App. to id., at A5. Some observers may "imagine" the musical contributions that John Lennon would have made if he had not been killed. Others may think of the lyrics of the Lennon song that obviously inspired the mosaic and may "imagine" a world without religion, countries, possessions, greed, or hunger. Or, to take another example, what is "the message" of the "large bronze statue displaying the word 'peace' in many world languages" that is displayed in Fayetteville, Arkansas?

These text-based monuments are almost certain to evoke different thoughts and sentiments in the minds of different observers, and the effect of monuments that do not contain text is likely to be even more variable. Consider, for example, the statue of Pancho Villa that was given to the city of Tucson, Arizona, in 1981 by the Government of Mexico with, according to a Tucson publication, "a wry sense of irony." Does this statue commemorate a "revolutionary leader who advocated for agrarian reform and the poor" or "a violent bandit"? IMLA Brief 13.

Contrary to respondent's apparent belief, it frequently is not possible to identify a single "message" that is conveyed by an object or structure, and consequently, the thoughts or sentiments expressed by a government entity that accepts and displays such an object may be quite different from those of either its creator or its donor. By accepting a privately donated monument and placing it on city property, a city engages in expressive conduct, but the intended and perceived significance of that conduct may not coincide with the thinking of the monument's donor or creator. Indeed, when a privately donated memorial is funded by many small donations, the donors themselves may differ in their interpretation of the monument's significance. By accepting such a monument, a government entity does not necessarily endorse the specific meaning that any particular donor sees in the monument.

The message that a government entity conveys by allowing a monument to remain on its property may also be altered by the subsequent addition of other monuments in the same vicinity. For example, following controversy over the original design of the Vietnam Veterans Memorial, a compromise was reached that called for the nearby addition of a flagstaff and bronze Three Soldiers statue, which many believed changed the overall effect of the memorial. See, e.g., J. Mayo, War

Memorials as Political Landscape: The American Experience and Beyond 202–203, 205 (1988); K. Hass, Carried to the Wall: American Memory and the Vietnam Veterans Memorial 15–18 (1998).

The "message" conveyed by a monument may change over time. A study of war memorials found that "people reinterpret" the meaning of these memorials as "historical interpretations" and "the society around them changes." Mayo, supra, at 8–9.

A striking example of how the interpretation of a monument can evolve is provided by one of the most famous and beloved public monuments in the United States, the Statue of Liberty. The statue was given to this country by the Third French Republic to express republican solidarity and friendship between the two countries. See J. Res. 6, 44th Cong., 2d Sess. (1877), 19 Stat. 410 (accepting the statue as an "expressive and felicitous memorial of the sympathy of the citizens of our sister Republic"). At the inaugural ceremony, President Cleveland saw the statue as an emblem of international friendship and the widespread influence of American ideals. See Inauguration of the Statue of Liberty Enlightening the World 30 (1887). Only later did the statue come to be viewed as a beacon welcoming immigrants to a land of freedom. See Public Papers of the Presidents, Ronald Reagan, Vol. 2, July 3, 1986, pp. 918–919 (1989), Remarks at the Opening Ceremonies of the Statue of Liberty Centennial Celebration in New York, New York; J. Higham, The Transformation of the Statue of Liberty, in Send These To Me 74–80 (rev. ed. 1984).

C

Respondent and the Court of Appeals analogize the installation of permanent monuments in a public park to the delivery of speeches and the holding of marches and demonstrations, and they thus invoke the rule that a public park is a traditional public forum for these activities. But "public forum principles ... are out of place in the context of this case." United States v. American Library Assn., Inc., 539 U.S. 194, 205, 123 S.Ct. 2297, 156 L.Ed.2d 221 (2003). The forum doctrine has been applied in situations in which government-owned property or a government program was capable of accommodating a large number of public speakers without defeating the essential function of the land or the program. For example, a park can accommodate many speakers and, over time, many parades and demonstrations. The Combined Federal Campaign permits hundreds of groups to solicit donations from federal employees. See Cornelius, 473 U.S., at 804–805, 105 S.Ct. 3439. A public university's student activity fund can provide money for many campus activities. See Rosenberger, 515 U.S., at 825, 115 S.Ct. 2510. A public university's buildings may offer meeting space for hundreds of student groups. See Widmar v. Vincent, 454 U.S. 263, 274–275, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981). A school system's internal mail facilities can support the transmission of many messages to and from teachers and school administrators. See Perry Ed. Assn., 460 U.S., at 39, 46–47, 103 S.Ct. 948. See also Arkansas Ed. Television Comm'n v. Forbes, 523 U.S. 666, 680–681, 118 S.Ct. 1633, 140 L.Ed.2d 875 (1998) (noting that allowing any candidate to participate in a televised political debate would be burdensome on "logistical grounds" and "would result in less speech, not more").

By contrast, public parks can accommodate only a limited number of permanent monuments. Public parks have been used, " 'time out of mind, ... for purposes of assembly, communicating thoughts between citizens, and discussing public questions,' " Perry Ed. Assn., supra, at 45, 103 S.Ct. 948 (quoting Hague, 307 U.S., at 515, 59 S.Ct. 954), but "one would be hard pressed to find a 'long tradition' of allowing people to permanently occupy public space with any manner of monuments." 499 F.3d, at 1173 (Lucero, J., dissenting from denial of rehearing en banc).

Speakers, no matter how long-winded, eventually come to the end of their remarks; persons distributing leaflets and carrying signs at some point tire and go home; monuments, however, endure. They monopolize the use of the land on which they stand and interfere permanently with other uses of public space. A public park, over the years, can provide a soapbox for a very large number of orators—often, for all who want to speak—but it is hard to imagine how a public park could be opened up for the installation of permanent monuments by every person or group wishing to engage in that form of expression.

Respondent contends that this issue "can be dealt with through content-neutral time, place and manner restrictions, including the option of a ban on all unattended displays." Brief for Respondent 14. On this view, when France presented the Statue of Liberty to the United States in 1884, this country had the option of either (a) declining France's offer or (b) accepting the gift, but providing a comparable location in the harbor of New York for other statues of a similar size and nature (e.g., a Statue of Autocracy, if one had been offered by, say, the German Empire or Imperial Russia).

While respondent and some of its amici deride the fears expressed about the consequences of the Court of Appeals holding in this case, those concerns are well founded. If government entities must maintain viewpoint neutrality in their selection of donated monuments, they must either "brace themselves for an influx of clutter" or face the pressure to remove longstanding and cherished monuments. See 499 F.3d, at 1175 (McConnell, J., dissenting from denial of rehearing en banc). Every jurisdiction that has accepted a donated war memorial may be asked to provide equal treatment for a donated monument questioning the cause for which the veterans fought. New York City, having accepted a donated statue of one heroic dog (Balto, the sled dog who brought medicine to Nome, Alaska, during a diphtheria epidemic) may be pressed to accept monuments for other dogs who are claimed to be equally worthy of commemoration. The obvious truth of the matter is that if public parks were considered to be traditional public forums for the purpose of erecting privately donated monuments, most parks would have little choice but to refuse all such donations. And where the application of forum analysis would lead almost inexorably to closing of the forum, it is obvious that forum analysis is out of place.

Respondent compares the present case to Capitol Square Review and Advisory Bd. v. Pinette, 515 U.S. 753, 115 S.Ct. 2440, 132 L.Ed.2d 650 (1995), but that case involved a very different situation—a request by a private group, the Ku Klux Klan, to erect a cross for a period of 16 days on public property that had been opened up for similar temporary displays, including a Christmas tree and a menorah. See id., at 758, 115 S.Ct. 2440. Although some public parks can accommodate and may be made generally available for temporary private displays, the same is rarely true for permanent monuments.

To be sure, there are limited circumstances in which the forum doctrine might properly be applied to a permanent monument—for example, if a town created a monument on which all of its residents (or all those meeting some other criterion) could place the name of a person to be honored or some other private message. But as a general matter, forum analysis simply does not apply to the installation of permanent monuments on public property.

V

In sum, we hold that the City's decision to accept certain privately donated monuments while rejecting respondent's is best viewed as a form of government speech. As a result, the City's decision is

not subject to the Free Speech Clause, and the Court of Appeals erred in holding otherwise. We therefore reverse.

It is so ordered.

Justice SCALIA, with whom Justice THOMAS joins, concurring.

As framed and argued by the parties, this case presents a question under the Free Speech Clause of the First Amendment. I agree with the Court's analysis of that question and join its opinion in full. But it is also obvious that from the start, the case has been litigated in the shadow of the First Amendment's Establishment Clause: the city wary of associating itself too closely with the Ten Commandments monument displayed in the park, lest that be deemed a breach in the so-called "wall of separation between church and State," Reynolds v. United States, 98 U.S. 145, 164, 25 L.Ed. 244 (1879); respondent exploiting that hesitation to argue that the monument is not government speech because the city has not sufficiently "adopted" its message. Respondent menacingly observed that while the city could have formally adopted the monument as its own, that "might of course raise Establishment Clause issues." Brief for Respondent 34, n. 11.

The city ought not fear that today's victory has propelled it from the Free Speech Clause frying pan into the Establishment Clause fire. Contrary to respondent's intimations, there are very good reasons to be confident that the park displays do not violate any part of the First Amendment.

In Van Orden v. Perry, 545 U.S. 677, 125 S.Ct. 2854, 162 L.Ed.2d 607 (2005), this Court upheld against Establishment Clause challenge a virtually identical Ten Commandments monument, donated by the very same organization (the Fraternal Order of Eagles), which was displayed on the grounds surrounding the Texas State Capitol. Nothing in that decision suggested that the outcome turned on a finding that the monument was only "private" speech. To the contrary, all the Justices agreed that government speech was at issue, but the Establishment Clause argument was nonetheless rejected. For the plurality, that was because the Ten Commandments "have an undeniable historical meaning" in addition to their "religious significance," id., at 690, 125 S.Ct. 2854 (opinion of Rehnquist, C. J.). Justice BREYER, concurring in the judgment, agreed that the monument conveyed a permissible secular message, as evidenced by its location in a park that contained multiple monuments and historical markers; by the fact that it had been donated by the Eagles "as part of that organization's efforts to combat juvenile delinquency"; and by the length of time (40 years) for which the monument had gone unchallenged. Id., at 701–703, 125 S.Ct. 2854. See also id., at 739–740, 125 S.Ct. 2854 (SOUTER, J., dissenting).

Even accepting the narrowest reading of the narrowest opinion necessary to the judgment in Van Orden, there is little basis to distinguish the monument in this case: Pioneer Park includes "15 permanent displays," ante, at 1129; it was donated by the Eagles as part of its national effort to combat juvenile delinquency, Brief for Respondent 3; and it was erected in 1971, ibid., which means it is approaching its (momentous!) 40th anniversary.

The city can safely exhale. Its residents and visitors can now return to enjoying Pioneer Park's wishing well, its historic granary—and, yes, even its Ten Commandments monument—without fear that they are complicit in an establishment of religion.

Justice BREYER, concurring.

I agree with the Court and join its opinion. I do so, however, on the understanding that the "government speech" doctrine is a rule of thumb, not a rigid category. Were Pleasant Grove City to discriminate in the selection of permanent monuments on grounds unrelated to the display's theme, say solely on political grounds, its action might well violate the First Amendment.

Walker v. Texas Div., Sons of Confederate Veterans, Inc.
135 S.Ct. 2239 (2015)

Justice BREYER delivered the opinion of the Court.

Texas offers automobile owners a choice between ordinary and specialty license plates. Those who want the State to issue a particular specialty plate may propose a plate design, comprising a slogan, a graphic, or (most commonly) both. If the Texas Department of Motor Vehicles Board approves the design, the State will make it available for display on vehicles registered in Texas.

In this case, the Texas Division of the Sons of Confederate Veterans proposed a specialty license plate design featuring a Confederate battle flag. The Board rejected the proposal. We must decide whether that rejection violated the Constitution's free speech guarantees. See Amdts. 1, 14. We conclude that it did not.

I
A

Texas law requires all motor vehicles operating on the State's roads to display valid license plates. See Tex. Transp. Code Ann. §§ 502.001 (West Supp. 2014), 504.001 (2013), 504.943 (Supp. 2014). And Texas makes available several kinds of plates. Drivers may choose to display the State's general-issue license plates. See Texas Dept. of Motor Vehicles, Motor Vehicle Registration Manual 9.1 (Apr. 2015). Each of these plates contains the word "Texas," a license plate number, a silhouette of the State, a graphic of the Lone Star, and the slogan "The Lone Star State." Texas Dept. of Motor Vehicles, The Texas Classic FAQs (July 16, 2012), online at http://www.txdmv. gov/motorists/license-plates (all Internet materials as visited June 16, 2015, and available in Clerk of Court's case file). In the alternative, drivers may choose from an assortment of specialty license plates. § 504.008(b) (West 2013). Each of these plates contains the word "Texas," a license plate number, and one of a selection of designs prepared by the State. See ibid.; Specialty License Plates, http://www.txdmv.gov/motorists/license-plates/specialty-license-plates (displaying available Texas specialty plates); Create a Plate: Your Design, http://www.myplates.com/BackgroundOnly (same). Finally, Texas law provides for personalized plates (also known as vanity plates). 43 Tex. Admin. Code § 217.45(c)(7) (2015). Pursuant to the personalization program, a vehicle owner may request a particular alphanumeric pattern for use as a plate number, such as "BOB" or "TEXPL8."

Here we are concerned only with the second category of plates, namely specialty license plates, not with the personalization program. Texas offers vehicle owners a variety of specialty plates, generally for an annual fee. See § 217.45(b)(2). And Texas selects the designs for specialty plates through three distinct processes.

First, the state legislature may specifically call for the development of a specialty license plate. See Tex. Transp. Code §§ 504.602–504.663 (West 2013 and Supp. 2014). The legislature has enacted statutes authorizing, for example, plates that say "Keep Texas Beautiful" and "Mothers Against Drunk Driving," plates that "honor" the Texas citrus industry, and plates that feature an image of the World Trade Center towers and the words "Fight Terrorism." See §§ 504.602, 504.608, 504.626, 504.647.

Second, the Board may approve a specialty plate design proposal that a state-designated private vendor has created at the request of an individual or organization. See §§ 504.6011(a), 504.851(a); 43 Tex. Admin. Code § 217.52(b). Among the plates created through the private-vendor process are plates promoting the "Keller Indians" and plates with the slogan "Get it Sold with RE/MAX."

Third, the Board "may create new specialty license plates on its own initiative or on receipt of an application from a" nonprofit entity seeking to sponsor a specialty plate. Tex. Transp. Code Ann. §§ 504.801(a), (b). A nonprofit must include in its application "a draft design of the specialty license plate." 43 Tex. Admin. Code § 217.45(i)(2)(C). And Texas law vests in the Board authority to approve or to disapprove an application. See § 217.45(i)(7). The relevant statute says that the Board "may refuse to create a new specialty license plate" for a number of reasons, for example "if the design might be offensive to any member of the public ... or for any other reason established by rule." Tex. Transp. Code Ann. § 504.801(c). Specialty plates that the Board has sanctioned through this process include plates featuring the words "The Gator Nation," together with the Florida Gators logo, and plates featuring the logo of Rotary International and the words "SERVICE ABOVE SELF."

B

In 2009, the Sons of Confederate Veterans, Texas Division (a nonprofit entity), applied to sponsor a specialty license plate through this last-mentioned process. SCV's application included a draft plate design. See Appendix, infra. At the bottom of the proposed plate were the words "SONS OF CONFEDERATE VETERANS." At the side was the organization's logo, a square Confederate battle flag framed by the words "Sons of Confederate Veterans 1896." A faint Confederate battle flag appeared in the background on the lower portion of the plate. Additionally, in the middle of the plate was the license plate number, and at the top was the State's name and silhouette. The Board's predecessor denied this application.

In 2010, SCV renewed its application before the Board. The Board invited public comment on its website and at an open meeting. After considering the responses, including a number of letters sent by elected officials who opposed the proposal, the Board voted unanimously against issuing the plate. The Board explained that it had found "it necessary to deny th[e] plate design application, specifically the confederate flag portion of the design, because public comments ha[d] shown that many members of the general public find the design offensive, and because such comments are reasonable." App. 64. The Board added "that a significant portion of the public associate the confederate flag with organizations advocating expressions of hate directed toward people or groups that is demeaning to those people or groups." Id., at 65.

In 2012, SCV and two of its officers (collectively SCV) brought this lawsuit against the chairman and members of the Board (collectively Board). SCV argued that the Board's decision violated the Free Speech Clause of the First Amendment, and it sought an injunction requiring the Board to approve the proposed plate design. The District Court entered judgment for the Board. A divided panel of the Court of Appeals for the Fifth Circuit reversed. Texas Div., Sons of Confederate

Veterans, Inc. v. Vandergriff, 759 F.3d 388 (2014). It held that Texas's specialty license plate designs are private speech and that the Board, in refusing to approve SCV's design, engaged in constitutionally forbidden viewpoint discrimination. The dissenting judge argued that Texas's specialty license plate designs are government speech, the content of which the State is free to control.

We granted the Board's petition for certiorari, and we now reverse.

II

When government speaks, it is not barred by the Free Speech Clause from determining the content of what it says. Pleasant Grove City v. Summum, 555 U.S. 460, 467–468, 129 S.Ct. 1125, 172 L.Ed.2d 853 (2009). That freedom in part reflects the fact that it is the democratic electoral process that first and foremost provides a check on government speech. See Board of Regents of Univ. of Wis. System v. Southworth, 529 U.S. 217, 235, 120 S.Ct. 1346, 146 L.Ed.2d 193 (2000). Thus, government statements (and government actions and programs that take the form of speech) do not normally trigger the First Amendment rules designed to protect the marketplace of ideas. See Johanns v. Livestock Marketing Assn., 544 U.S. 550, 559, 125 S.Ct. 2055, 161 L.Ed.2d 896 (2005). Instead, the Free Speech Clause helps produce informed opinions among members of the public, who are then able to influence the choices of a government that, through words and deeds, will reflect its electoral mandate. See Stromberg v. California, 283 U.S. 359, 369, 51 S.Ct. 532, 75 L.Ed. 1117 (1931) (observing that "our constitutional system" seeks to maintain "the opportunity for free political discussion to the end that government may be responsive to the will of the people").

Were the Free Speech Clause interpreted otherwise, government would not work. How could a city government create a successful recycling program if officials, when writing householders asking them to recycle cans and bottles, had to include in the letter a long plea from the local trash disposal enterprise demanding the contrary? How could a state government effectively develop programs designed to encourage and provide vaccinations, if officials also had to voice the perspective of those who oppose this type of immunization? "[I]t is not easy to imagine how government could function if it lacked th[e] freedom" to select the messages it wishes to convey. Summum, supra, at 468, 129 S.Ct. 1125.

We have therefore refused "[t]o hold that the Government unconstitutionally discriminates on the basis of viewpoint when it chooses to fund a program dedicated to advance certain permissible goals, because the program in advancing those goals necessarily discourages alternative goals." Rust v. Sullivan, 500 U.S. 173, 194, 111 S.Ct. 1759, 114 L.Ed.2d 233 (1991). We have pointed out that a contrary holding "would render numerous Government programs constitutionally suspect." Ibid. And we have made clear that "the government can speak for itself." Southworth, supra, at 229, 120 S.Ct. 1346.

That is not to say that a government's ability to express itself is without restriction. Constitutional and statutory provisions outside of the Free Speech Clause may limit government speech. Summum, supra, at 468, 129 S.Ct. 1125. And the Free Speech Clause itself may constrain the government's speech if, for example, the government seeks to compel private persons to convey the government's speech. But, as a general matter, when the government speaks it is entitled to promote a program, to espouse a policy, or to take a position. In doing so, it represents its citizens and it carries out its duties on their behalf.

III

In our view, specialty license plates issued pursuant to Texas's statutory scheme convey government speech. Our reasoning rests primarily on our analysis in Summum, a recent case that presented a similar problem. We conclude here, as we did there, that our precedents regarding government speech (and not our precedents regarding forums for private speech) provide the appropriate framework through which to approach the case. See 555 U.S., at 464, 129 S.Ct. 1125.

A

In Summum, we considered a religious organization's request to erect in a 2.5–acre city park a monument setting forth the organization's religious tenets. See id., at 464–465, 129 S.Ct. 1125. In the park were 15 other permanent displays. Id., at 464, 129 S.Ct. 1125. At least 11 of these—including a wishing well, a September 11 monument, a historic granary, the city's first fire station, and a Ten Commandments monument—had been donated to the city by private entities. Id., at 464–465, 129 S.Ct. 1125. The religious organization argued that the Free Speech Clause required the city to display the organization's proposed monument because, by accepting a broad range of permanent exhibitions at the park, the city had created a forum for private speech in the form of monuments. Brief for Respondent in Pleasant Grove City v. Summum, O.T. 2008, No. 07–665, pp. 2–3, 30–36.

This Court rejected the organization's argument. We held that the city had not "provid[ed] a forum for private speech" with respect to monuments. Summum, 555 U.S., at 470, 129 S.Ct. 1125. Rather, the city, even when "accepting a privately donated monument and placing it on city property," had "engage[d] in expressive conduct." Id., at 476, 129 S.Ct. 1125. The speech at issue, this Court decided, was "best viewed as a form of government speech" and "therefore [was] not subject to scrutiny under the Free Speech Clause." Id., at 464, 129 S.Ct. 1125.

We based our conclusion on several factors. First, history shows that "[g]overnments have long used monuments to speak to the public." Id., at 470, 129 S.Ct. 1125. Thus, we observed that "[w]hen a government entity arranges for the construction of a monument, it does so because it wishes to convey some thought or instill some feeling in those who see the structure." Ibid.

Second, we noted that it "is not common for property owners to open up their property for the installation of permanent monuments that convey a message with which they do not wish to be associated." Id., at 471, 129 S.Ct. 1125. As a result, "persons who observe donated monuments routinely—and reasonably—interpret them as conveying some message on the property owner's behalf." Ibid. And "observers" of such monuments, as a consequence, ordinarily "appreciate the identity of the speaker." Ibid.

Third, we found relevant the fact that the city maintained control over the selection of monuments. We thought it "fair to say that throughout our Nation's history, the general government practice with respect to donated monuments has been one of selective receptivity." Ibid. And we observed that the city government in Summum " 'effectively controlled' the messages sent by the monuments in the [p]ark by exercising 'final approval authority' over their selection." Id., at 473, 129 S.Ct. 1125.

In light of these and a few other relevant considerations, the Court concluded that the expression at issue was government speech. See id., at 470–472, 129 S.Ct. 1125. And, in reaching that

conclusion, the Court rejected the premise that the involvement of private parties in designing the monuments was sufficient to prevent the government from controlling which monuments it placed in its own public park. See id., at 470–471, 129 S.Ct. 1125. Cf. Rust, supra, at 192–196, 111 S.Ct. 1759 (upholding a federal regulation limiting speech in a Government-funded program where the program was established and administered by private parties).

B

Our analysis in Summum leads us to the conclusion that here, too, government speech is at issue. First, the history of license plates shows that, insofar as license plates have conveyed more than state names and vehicle identification numbers, they long have communicated messages from the States. Cf. 555 U.S., at 470, 129 S.Ct. 1125 ("Governments have long used monuments to speak to the public"). In 1917, Arizona became the first State to display a graphic on its plates. J. Fox, License Plates of the United States 15 (1997) (Fox); J. Minard & T. Stentiford, A Moving History 56 (2004) (Minard). The State presented a depiction of the head of a Hereford steer. Fox 15; Minard 56. In the years since, New Hampshire plates have featured the profile of the "Old Man of the Mountain," Massachusetts plates have included a representation of the Commonwealth's famous codfish, and Wyoming plates have displayed a rider atop a bucking bronco. Minard 60, 61, 66.

In 1928, Idaho became the first State to include a slogan on its plates. The 1928 Idaho plate proclaimed "Idaho Potatoes" and featured an illustration of a brown potato, onto which the license plate number was superimposed in green. Id., at 61. The brown potato did not catch on, but slogans on license plates did. Over the years, state plates have included the phrases "North to the Future" (Alaska), "Keep Florida Green" (Florida), "Hoosier Hospitality" (Indiana), "The Iodine Products State" (South Carolina), "Green Mountains" (Vermont), and "America's Dairyland" (Wisconsin). Fox 13, 29, 39, 91, 101, 109. States have used license plate slogans to urge action, to promote tourism, and to tout local industries.

Texas, too, has selected various messages to communicate through its license plate designs. By 1919, Texas had begun to display the Lone Star emblem on its plates. Texas Department of Transportation, The History of Texas License Plates 9, 11 (1999). In 1936, the State's general-issue plates featured the first slogan on Texas license plates: the word "Centennial." Id., at 20. In 1968, Texas plates promoted a San Antonio event by including the phrase "Hemisfair 68." Id., at 46. In 1977, Texas replaced the Lone Star with a small silhouette of the State. Id., at 63. And in 1995, Texas plates celebrated "150 Years of Statehood." Id., at 101. Additionally, the Texas Legislature has specifically authorized specialty plate designs stating, among other things, "Read to Succeed," "Houston Livestock Show and Rodeo," "Texans Conquer Cancer," and "Girl Scouts." Tex. Transp. Code Ann. §§ 504.607, 504.613, 504.620, 504.622. This kind of state speech has appeared on Texas plates for decades.

Second, Texas license plate designs "are often closely identified in the public mind with the [State]." Summum, supra, at 472, 129 S.Ct. 1125. Each Texas license plate is a government article serving the governmental purposes of vehicle registration and identification. The governmental nature of the plates is clear from their faces: The State places the name "TEXAS" in large letters at the top of every plate. Moreover, the State requires Texas vehicle owners to display license plates, and every Texas license plate is issued by the State. See § 504.943. Texas also owns the designs on its license plates, including the designs that Texas adopts on the basis of proposals made by private individuals and organizations. See § 504.002(3). And Texas dictates the manner in which drivers may dispose of

unused plates. See § 504.901(c). See also § 504.008(g) (requiring that vehicle owners return unused specialty plates to the State).

Texas license plates are, essentially, government IDs. And issuers of ID "typically do not permit" the placement on their IDs of "message[s] with which they do not wish to be associated." Summum, 555 U.S., at 471, 129 S.Ct. 1125. Consequently, "persons who observe" designs on IDs "routinely—and reasonably—interpret them as conveying some message on the [issuer's] behalf." Ibid.

Indeed, a person who displays a message on a Texas license plate likely intends to convey to the public that the State has endorsed that message. If not, the individual could simply display the message in question in larger letters on a bumper sticker right next to the plate. But the individual prefers a license plate design to the purely private speech expressed through bumper stickers. That may well be because Texas's license plate designs convey government agreement with the message displayed.

Third, Texas maintains direct control over the messages conveyed on its specialty plates. Texas law provides that the State "has sole control over the design, typeface, color, and alphanumeric pattern for all license plates." § 504.005. The Board must approve every specialty plate design proposal before the design can appear on a Texas plate. 43 Tex. Admin. Code §§ 217.45(i)(7)-(8), 217.52(b). And the Board and its predecessor have actively exercised this authority. Texas asserts, and SCV concedes, that the State has rejected at least a dozen proposed designs. Reply Brief 10; Tr. of Oral Arg. 49–51. Accordingly, like the city government in Summum, Texas "has 'effectively controlled' the messages [conveyed] by exercising 'final approval authority' over their selection." 555 U.S., at 473, 129 S.Ct. 1125 (quoting Johanns, 544 U.S., at 560–561, 125 S.Ct. 2055).

This final approval authority allows Texas to choose how to present itself and its constituency. Thus, Texas offers plates celebrating the many educational institutions attended by its citizens. See Tex. Transp. Code Ann. § 504.615. But it need not issue plates deriding schooling. Texas offers plates that pay tribute to the Texas citrus industry. See § 504.626. But it need not issue plates praising Florida's oranges as far better. And Texas offers plates that say "Fight Terrorism." See § 504.647. But it need not issue plates promoting al Qaeda.

These considerations, taken together, convince us that the specialty plates here in question are similar enough to the monuments in Summum to call for the same result. That is not to say that every element of our discussion in Summum is relevant here. For instance, in Summum we emphasized that monuments were "permanent" and we observed that "public parks can accommodate only a limited number of permanent monuments." 555 U.S., at 464, 470, 478, 129 S.Ct. 1125. We believed that the speech at issue was government speech rather than private speech in part because we found it "hard to imagine how a public park could be opened up for the installation of permanent monuments by every person or group wishing to engage in that form of expression." Id., at 479, 129 S.Ct. 1125. Here, a State could theoretically offer a much larger number of license plate designs, and those designs need not be available for time immemorial.

But those characteristics of the speech at issue in Summum were particularly important because the government speech at issue occurred in public parks, which are traditional public forums for "the delivery of speeches and the holding of marches and demonstrations" by private citizens. Id., at 478, 129 S.Ct. 1125. By contrast, license plates are not traditional public forums for private speech.

And other features of the designs on Texas's specialty license plates indicate that the message conveyed by those designs is conveyed on behalf of the government. Texas, through its Board, selects each design featured on the State's specialty license plates. Texas presents these designs on government-mandated, government-controlled, and government-issued IDs that have traditionally been used as a medium for government speech. And it places the designs directly below the large letters identifying "TEXAS" as the issuer of the IDs. "The [designs] that are accepted, therefore, are meant to convey and have the effect of conveying a government message, and they thus constitute government speech." Id., at 472, 129 S.Ct. 1125.

C

SCV believes that Texas's specialty license plate designs are not government speech, at least with respect to the designs (comprising slogans and graphics) that were initially proposed by private parties. According to SCV, the State does not engage in expressive activity through such slogans and graphics, but rather provides a forum for private speech by making license plates available to display the private parties' designs. We cannot agree.

We have previously used what we have called "forum analysis" to evaluate government restrictions on purely private speech that occurs on government property. Cornelius v. NAACP Legal Defense & Ed. Fund, Inc., 473 U.S. 788, 800, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985). But forum analysis is misplaced here. Because the State is speaking on its own behalf, the First Amendment strictures that attend the various types of government-established forums do not apply.

The parties agree that Texas's specialty license plates are not a "traditional public forum," such as a street or a park, "which ha[s] immemorially been held in trust for the use of the public and, time out of mind, ha[s] been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." Perry Ed. Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 45–46, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983) (internal quotation marks omitted). "The Court has rejected the view that traditional public forum status extends beyond its historic confines." Arkansas Ed. Television Comm'n v. Forbes, 523 U.S. 666, 678, 118 S.Ct. 1633, 140 L.Ed.2d 875 (1998). And state-issued specialty license plates lie far beyond those confines.

It is equally clear that Texas's specialty plates are neither a " 'designated public forum,' " which exists where "government property that has not traditionally been regarded as a public forum is intentionally opened up for that purpose," Summum, supra, at 469, 129 S.Ct. 1125, nor a "limited public forum," which exists where a government has "reserv [ed a forum] for certain groups or for the discussion of certain topics," Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). A government "does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse." Cornelius, 473 U.S., at 802, 105 S.Ct. 3439. And in order "to ascertain whether [a government] intended to designate a place not traditionally open to assembly and debate as a public forum," this Court "has looked to the policy and practice of the government" and to "the nature of the property and its compatibility with expressive activity." Ibid.

Texas's policies and the nature of its license plates indicate that the State did not intend its specialty license plates to serve as either a designated public forum or a limited public forum. First, the State exercises final authority over each specialty license plate design. This authority militates against a determination that Texas has created a public forum. See id., at 803–804, 105 S.Ct. 3439 (explaining

that a school mail system was not a public forum because "[t]he practice was to require permission from the individual school principal before access to the system to communicate with teachers was granted"). Second, Texas takes ownership of each specialty plate design, making it particularly untenable that the State intended specialty plates to serve as a forum for public discourse. Finally, Texas license plates have traditionally been used for government speech, are primarily used as a form of government ID, and bear the State's name. These features of Texas license plates indicate that Texas explicitly associates itself with the speech on its plates.

For similar reasons, we conclude that Texas's specialty license plates are not a "nonpublic for[um]," which exists "[w]here the government is acting as a proprietor, managing its internal operations." International Soc. for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672, 678–679, 112 S.Ct. 2701, 120 L.Ed.2d 541 (1992). With respect to specialty license plate designs, Texas is not simply managing government property, but instead is engaging in expressive conduct. As we have described, we reach this conclusion based on the historical context, observers' reasonable interpretation of the messages conveyed by Texas specialty plates, and the effective control that the State exerts over the design selection process. Texas's specialty license plate designs "are meant to convey and have the effect of conveying a government message." Summum, 555 U.S., at 472, 129 S.Ct. 1125. They "constitute government speech." Ibid.

The fact that private parties take part in the design and propagation of a message does not extinguish the governmental nature of the message or transform the government's role into that of a mere forum-provider. In Summum, private entities "financed and donated monuments that the government accept[ed] and display[ed] to the public." Id., at 470–471, 129 S.Ct. 1125. Here, similarly, private parties propose designs that Texas may accept and display on its license plates. In this case, as in Summum, the "government entity may exercise [its] freedom to express its views" even "when it receives assistance from private sources for the purpose of delivering a government-controlled message." Id., at 468, 129 S.Ct. 1125. And in this case, as in Summum, forum analysis is inapposite. See id., at 480, 129 S.Ct. 1125.

Of course, Texas allows many more license plate designs than the city in Summum allowed monuments. But our holding in Summum was not dependent on the precise number of monuments found within the park. Indeed, we indicated that the permanent displays in New York City's Central Park also constitute government speech. See id., at 471–472, 129 S.Ct. 1125. And an amicus brief had informed us that there were, at the time, 52 such displays. See Brief for City of New York in Pleasant Grove City v. Summum, O.T. 2008, No. 07–665, p. 2. Further, there may well be many more messages that Texas wishes to convey through its license plates than there were messages that the city in Summum wished to convey through its monuments. Texas's desire to communicate numerous messages does not mean that the messages conveyed are not Texas's own.

Additionally, the fact that Texas vehicle owners pay annual fees in order to display specialty license plates does not imply that the plate designs are merely a forum for private speech. While some nonpublic forums provide governments the opportunity to profit from speech, see, e.g., Lehman v. Shaker Heights, 418 U.S. 298, 299, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974) (plurality opinion), the existence of government profit alone is insufficient to trigger forum analysis. Thus, if the city in Summum had established a rule that organizations wishing to donate monuments must also pay fees to assist in park maintenance, we do not believe that the result in that case would have been any different. Here, too, we think it sufficiently clear that Texas is speaking through its specialty license plate

designs, such that the existence of annual fees does not convince us that the specialty plates are a nonpublic forum.

Finally, we note that this case does not resemble other cases in which we have identified a nonpublic forum. This case is not like Perry Ed. Assn., where we found a school district's internal mail system to be a nonpublic forum for private speech. See 460 U.S., at 48–49, 103 S.Ct. 948. There, it was undisputed that a number of private organizations, including a teachers' union, had access to the mail system. See id., at 39–40, 103 S.Ct. 948. It was therefore clear that private parties, and not only the government, used the system to communicate. Here, by contrast, each specialty license plate design is formally approved by and stamped with the imprimatur of Texas.

Nor is this case like Lehman, where we found the advertising space on city buses to be a nonpublic forum. See R.A.V. v. St. Paul, 505 U.S. 377, 390, n. 6, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992) (identifying Lehman as a case about a nonpublic forum). There, the messages were located in a context (advertising space) that is traditionally available for private speech. And the advertising space, in contrast to license plates, bore no indicia that the speech was owned or conveyed by the government.

Nor is this case like Cornelius, where we determined that a charitable fundraising program directed at federal employees constituted a nonpublic forum. See 473 U.S., at 804–806, 105 S.Ct. 3439. That forum lacked the kind of history present here. The fundraising drive had never been a medium for government speech. Instead, it was established "to bring order to [a] solicitation process" which had previously consisted of ad hoc solicitation by individual charitable organizations. Id., at 792, 805, 105 S.Ct. 3439. The drive "was designed to minimize ... disruption to the [federal] workplace," id., at 805, 105 S.Ct. 3439, not to communicate messages from the government. Further, the charitable solicitations did not appear on a government ID under the government's name. In contrast to the instant case, there was no reason for employees to "interpret [the solicitation] as conveying some message on the [government's] behalf." Summum, 555 U.S., at 471, 129 S.Ct. 1125.

IV

Our determination that Texas's specialty license plate designs are government speech does not mean that the designs do not also implicate the free speech rights of private persons. We have acknowledged that drivers who display a State's selected license plate designs convey the messages communicated through those designs. See Wooley v. Maynard, 430 U.S. 705, 717, n. 15, 715, 97 S.Ct. 1428, 51 L.Ed.2d 752 (1977) (observing that a vehicle "is readily associated with its operator" and that drivers displaying license plates "use their private property as a 'mobile billboard' for the State's ideological message"). And we have recognized that the First Amendment stringently limits a State's authority to compel a private party to express a view with which the private party disagrees. See id., at 715, 97 S.Ct. 1428; Hurley v. Irish–American Gay, Lesbian and Bisexual Group of Boston, 515 U.S. 557, 573, 115 S.Ct. 2338, 132 L.Ed.2d 487 (1995); West Virginia Bd. of Ed. v. Barnette, 319 U.S. 624, 642, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943). But here, compelled private speech is not at issue. And just as Texas cannot require SCV to convey "the State's ideological message," Wooley, supra, at 715, 97 S.Ct. 1428, SCV cannot force Texas to include a Confederate battle flag on its specialty license plates.

* * *

For the reasons stated, we hold that Texas's specialty license plate designs constitute government speech and that Texas was consequently entitled to refuse to issue plates featuring SCV's

proposed design. Accordingly, the judgment of the United States Court of Appeals for the Fifth Circuit is

Reversed.

Justice ALITO, with whom THE CHIEF JUSTICE, Justice SCALIA, and Justice KENNEDY join, dissenting.

The Court's decision passes off private speech as government speech and, in doing so, establishes a precedent that threatens private speech that government finds displeasing. Under our First Amendment cases, the distinction between government speech and private speech is critical. The First Amendment "does not regulate government speech," and therefore when government speaks, it is free "to select the views that it wants to express." Pleasant Grove City v. Summum, 555 U.S. 460, 467–468, 129 S.Ct. 1125, 172 L.Ed.2d 853 (2009). By contrast, "[i]n the realm of private speech or expression, government regulation may not favor one speaker over another." Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 828, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995).

Unfortunately, the Court's decision categorizes private speech as government speech and thus strips it of all First Amendment protection. The Court holds that all the privately created messages on the many specialty plates issued by the State of Texas convey a government message rather than the message of the motorist displaying the plate. Can this possibly be correct?

Here is a test. Suppose you sat by the side of a Texas highway and studied the license plates on the vehicles passing by. You would see, in addition to the standard Texas plates, an impressive array of specialty plates. (There are now more than 350 varieties.) You would likely observe plates that honor numerous colleges and universities. You might see plates bearing the name of a high school, a fraternity or sorority, the Masons, the Knights of Columbus, the Daughters of the American Revolution, a realty company, a favorite soft drink, a favorite burger restaurant, and a favorite NASCAR driver.

As you sat there watching these plates speed by, would you really think that the sentiments reflected in these specialty plates are the views of the State of Texas and not those of the owners of the cars? If a car with a plate that says "Rather Be Golfing" passed by at 8:30 am on a Monday morning, would you think: "This is the official policy of the State—better to golf than to work?" If you did your viewing at the start of the college football season and you saw Texas plates with the names of the University of Texas's out-of-state competitors in upcoming games—Notre Dame, Oklahoma State, the University of Oklahoma, Kansas State, Iowa State—would you assume that the State of Texas was officially (and perhaps treasonously) rooting for the Longhorns' opponents? And when a car zipped by with a plate that reads "NASCAR—24 Jeff Gordon," would you think that Gordon (born in California, raised in Indiana, resides in North Carolina)1 is the official favorite of the State government?

The Court says that all of these messages are government speech. It is essential that government be able to express its own viewpoint, the Court reminds us, because otherwise, how would it promote its programs, like recycling and vaccinations? Ante, at 2245 – 2246. So when Texas issues a "Rather Be Golfing" plate, but not a "Rather Be Playing Tennis" or "Rather Be Bowling" plate, it is furthering a state policy to promote golf but not tennis or bowling. And when Texas allows motorists to obtain a Notre Dame license plate but not a University of Southern California plate, it is taking sides in that long-time rivalry.

This capacious understanding of government speech takes a large and painful bite out of the First Amendment. Specialty plates may seem innocuous. They make motorists happy, and they put money in a State's coffers. But the precedent this case sets is dangerous. While all license plates unquestionably contain some government speech (e.g., the name of the State and the numbers and/or letters identifying the vehicle), the State of Texas has converted the remaining space on its specialty plates into little mobile billboards on which motorists can display their own messages. And what Texas did here was to reject one of the messages that members of a private group wanted to post on some of these little billboards because the State thought that many of its citizens would find the message offensive. That is blatant viewpoint discrimination.

If the State can do this with its little mobile billboards, could it do the same with big, stationary billboards? Suppose that a State erected electronic billboards along its highways. Suppose that the State posted some government messages on these billboards and then, to raise money, allowed private entities and individuals to purchase the right to post their own messages. And suppose that the State allowed only those messages that it liked or found not too controversial. Would that be constitutional?

What if a state college or university did the same thing with a similar billboard or a campus bulletin board or dorm list serve? What if it allowed private messages that are consistent with prevailing views on campus but banned those that disturbed some students or faculty? Can there be any doubt that these examples of viewpoint discrimination would violate the First Amendment? I hope not, but the future uses of today's precedent remain to be seen.

I
A

Specialty plates like those involved in this case are a recent development. License plates originated solely as a means of identifying vehicles. . . .

It was not until 1989 that anything that might be considered a message was featured regularly on Texas plates. The words "The Lone Star State" were added "as a means of bringing favorable recognition to Texas." Id., at 82.

Finally, in the late 1990's, license plates containing a small variety of messages, selected by the State, became available for the first time. Id., at 101. These messages included slogans like "Read to Succeed," "Keep Texas Beautiful," "Animal Friendly," "Big Bend National Park," "Houston Livestock Show and Rodeo," and "Lone Star Proud." Id., at 101, 113. Also issued in the 1990's were plates bearing the names of colleges and universities, and some plates (e.g., "State of the Arts," "State Capitol Restoration") were made available to raise funds for special purposes. Id., 101.

Once the idea of specialty plates took hold, the number of varieties quickly multiplied, and today, we are told, Texas motorists can choose from more than 350 messages, including many designs proposed by nonprofit groups or by individuals and for-profit businesses through the State's third-party vendor. Brief for Respondents at 2; see also Texas Department of Motor Vehicles, online at http://www.txdmv.gov/motorists/license-plates/specialty-license-plates (all Internet materials as visited June 12, 2015, and available in Clerk of Court's case file); http://www.myplates.com.

Drivers can select plates advertising organizations and causes like 4–H, the Boy Scouts, the American Legion, Be a Blood Donor, the Girl Scouts, Insure Texas Kids, Mothers Against Drunk Driving, Marine Mammal Recovery, Save Texas Ocelots, Share the Road, Texas Reads, Texas Realtors ("I am a Texas Realtor"), the Texas State Rifle Association ("WWW.TSRA.COM"), the Texas Trophy Hunters Association, the World Wildlife Fund, the YMCA, and Young Lawyers.

There are plates for fraternities and sororities and for in-state schools, both public (like Texas A & M and Texas Tech) and private (like Trinity University and Baylor). An even larger number of schools from out-of-state are honored: Arizona State, Brigham Young, Florida State, Michigan State, Alabama, and South Carolina, to name only a few.

There are political slogans, like "Come and Take It" and "Don't Tread on Me," and plates promoting the citrus industry and the "Cotton Boll." Commercial businesses can have specialty plates, too. There are plates advertising Remax ("Get It Sold with Remax"), Dr. Pepper ("Always One of a Kind"), and Mighty Fine Burgers.

B

The Texas Division of Sons of Confederate Veterans (SCV) is an organization composed of descendants of Confederate soldiers. The group applied for a Texas specialty license plate in 2009 and again in 2010. Their proposed design featured a controversial symbol, the Confederate battle flag, surrounded by the words "Sons of Confederate Veterans 1896" and a gold border. App. 29. The Texas Department of Motor Vehicles Board (or Board) invited public comments and considered the plate design at a meeting in April 2011. At that meeting, one board member was absent, and the remaining eight members deadlocked on whether to approve the plate. The Board thus reconsidered the plate at its meeting in November 2011. This time, many opponents of the plate turned out to voice objections. The Board then voted unanimously against approval and issued an order stating:

> "The Board has considered the information and finds it necessary to deny this plate design application, specifically the confederate flag portion of the design, because public comments have shown that many members of the general public find the design offensive, and because such comments are reasonable. The Board finds that a significant portion of the public associate the confederate flag with organizations advocating expressions of hate directed toward people or groups that is demeaning to those people or groups." Id., at 64–65.

The Board also saw "a compelling public interest in protecting a conspicuous mechanism for identification, such as a license plate, from degrading into a possible public safety issue." Id., at 65. And it thought that the public interest required rejection of the plate design because the controversy surrounding the plate was so great that "the design could distract or disturb some drivers to the point of being unreasonably dangerous." Ibid.

At the same meeting, the Board approved a Buffalo Soldiers plate design by a 5–to–3 vote. Proceeds from fees paid by motorists who select that plate benefit the Buffalo Soldier National Museum in Houston, which is "dedicated primarily to preserving the legacy and honor of the African American soldier." Buffalo Soldier National Museum, online at http://www.buffalosoldiermuseum.com. "Buffalo Soldiers" is a nickname that was originally given to black soldiers in the Army's 10th Cavalry Regiment, which was formed after the Civil War, and the name was later used to describe other black soldiers. W. Leckie & S. Leckie, The Buffalo Soldiers: A Narrative of the Black Cavalry in

the West 21, 26–27 (2003). The original Buffalo Soldiers fought with distinction in the Indian Wars, but the "Buffalo Soldiers" plate was opposed by some Native Americans. One leader commented that he felt " 'the same way about the Buffalo Soldiers' " as African–Americans felt about the Confederate flag. Scharrer, Specialty License Plates can Bring in Revenue, But Some Stir Up Controversy, Houston Chronicle, Nov. 26, 2011, P.B2. " 'When we see the U.S. Cavalry uniform,' " he explained, " 'we are forced to relive an American holocaust.' " Ibid.

II

A

Relying almost entirely on one precedent—Pleasant Grove City v. Summum, 555 U.S. 460, 129 S.Ct. 1125, 172 L.Ed.2d 853—the Court holds that messages that private groups succeed in placing on Texas license plates are government messages. The Court badly misunderstands Summum.

In Summum, a private group claimed the right to erect a large stone monument in a small city park. Id., at 464, 129 S.Ct. 1125. The 2.5–acre park contained 15 permanent displays, 11 of which had been donated by private parties. Ibid. The central question concerned the nature of the municipal government's conduct when it accepted privately donated monuments for placement in its park: Had the city created a forum for private speech, or had it accepted donated monuments that expressed a government message? We held that the monuments represented government speech, and we identified several important factors that led to this conclusion.

First, governments have long used monuments as a means of expressing a government message. As we put it, "[s]ince ancient times, kings, emperors, and other rulers have erected statues of themselves to remind their subjects of their authority and power." Id., at 470, 129 S.Ct. 1125. Here in the United States, important public monuments like the Statue of Liberty, the Washington Monument, and the Lincoln Memorial, express principles that inspire and bind the Nation together. Thus, long experience has led the public to associate public monuments with government speech.

Second, there is no history of landowners allowing their property to be used by third parties as the site of large permanent monuments that do not express messages that the landowners wish to convey. See id., at 471, 129 S.Ct. 1125. While "[a] great many of the monuments that adorn the Nation's public parks were financed with private funds or donated by private parties," "cities and other jurisdictions take some care in accepting donated monuments" and select those that "conve[y] a government message." Id., at 471–472, 129 S.Ct. 1125. We were not presented in Summum with any examples of public parks that had been thrown open for private groups or individuals to put up whatever monuments they desired.

Third, spatial limitations played a prominent part in our analysis. See id., at 478–479, 129 S.Ct. 1125. "[P]ublic parks can accommodate only a limited number of permanent monuments," and consequently permanent monuments "monopolize the use of the land on which they stand and interfere permanently with other uses of public space." Ibid. Because only a limited number of monuments can be built in any given space, governments do not allow their parks to be cluttered with monuments that do not serve a government purpose, a point well understood by those who visit parks and view the monuments they contain.

These characteristics, which rendered public monuments government speech in Summum, are not present in Texas's specialty plate program.

. . .

III

What Texas has done by selling space on its license plates is to create what we have called a limited public forum. It has allowed state property (i.e., motor vehicle license plates) to be used by private speakers according to rules that the State prescribes. Cf. Good News Club v. Milford Central School, 533 U.S. 98, 106–107, 121 S.Ct. 2093, 150 L.Ed.2d 151 (2001). Under the First Amendment, however, those rules cannot discriminate on the basis of viewpoint. See Rosenberger, 515 U.S., at 829, 115 S.Ct. 2510 (quoting Cornelius v. NAACP Legal Defense & Ed. Fund, Inc., 473 U.S. 788, 806, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985)). But that is exactly what Texas did here. The Board rejected Texas SCV's design, "specifically the confederate flag portion of the design, because public comments have shown that many members of the general public find the design offensive, and because such comments are reasonable." App. 64. These statements indisputably demonstrate that the Board denied Texas SCV's design because of its viewpoint.

The Confederate battle flag is a controversial symbol. To the Texas Sons of Confederate Veterans, it is said to evoke the memory of their ancestors and other soldiers who fought for the South in the Civil War. See id., at 15–16. To others, it symbolizes slavery, segregation, and hatred. Whatever it means to motorists who display that symbol and to those who see it, the flag expresses a viewpoint. The Board rejected the plate design because it concluded that many Texans would find the flag symbol offensive. That was pure viewpoint discrimination.

If the Board's candid explanation of its reason for rejecting the SCV plate were not alone sufficient to establish this point, the Board's approval of the Buffalo Soldiers plate at the same meeting dispels any doubt. The proponents of both the SCV and Buffalo Soldiers plates saw them as honoring soldiers who served with bravery and honor in the past. To the opponents of both plates, the images on the plates evoked painful memories. The Board rejected one plate and approved the other.

Like these two plates, many other specialty plates have the potential to irritate and perhaps even infuriate those who see them. Texas allows a plate with the words "Choose Life," but the State of New York rejected such a plate because the message " '[is] so incredibly divisive,' " and the Second Circuit recently sustained that decision. Children First Foundation, Inc. v. Fiala, —— F.3d ——, ——, 2015 WL 2444501, *18 (C.A.2, May 22, 2015). Texas allows a specialty plate honoring the Boy Scouts, but the group's refusal to accept gay leaders angers some. Virginia, another State with a proliferation of specialty plates, issues plates for controversial organizations like the National Rifle Association, controversial commercial enterprises (raising tobacco and mining coal), controversial sports (fox hunting), and a professional sports team with a controversial name (the Washington Redskins). Allowing States to reject specialty plates based on their potential to offend is viewpoint discrimination.

The Board's decision cannot be saved by its suggestion that the plate, if allowed, "could distract or disturb some drivers to the point of being unreasonably dangerous." App. 65. This rationale cannot withstand strict scrutiny. Other States allow specialty plates with the Confederate Battle Flag, and Texas has not pointed to evidence that these plates have led to incidents of road rage or accidents. Texas does not ban bumper stickers bearing the image of the Confederate battle flag. Nor does it ban any of the many other bumper stickers that convey political messages and other messages that are

capable of exciting the ire of those who loathe the ideas they express. Cf. Good News Club, supra, at 111–112, 121 S.Ct. 2093

Messages that are proposed by private parties and placed on Texas specialty plates are private speech, not government speech. Texas cannot forbid private speech based on its viewpoint. That is what it did here. Because the Court approves this violation of the First Amendment, I respectfully dissent.

To be added at page 1190, following *Marsh v. Chambers*:

Town of Greece, N.Y. v. Galloway
134 S. Ct. 1811 (2014)

Justice KENNEDY delivered the opinion of the Court, except as to Part II–B.*

The Court must decide whether the town of Greece, New York, imposes an impermissible establishment of religion by opening its monthly board meetings with a prayer. It must be concluded, consistent with the Court's opinion in *Marsh v. Chambers,* 463 U.S. 783, 103 S.Ct. 3330, 77 L.Ed.2d 1019 (1983), that no violation of the Constitution has been shown.

I

Greece, a town with a population of 94,000, is in upstate New York. *** In 1999, the newly elected town supervisor, John Auberger, decided to replicate the prayer practice he had found meaningful while serving in the county legislature. Following the roll call and recitation of the Pledge of Allegiance, Auberger would invite a local clergyman to the front of the room to deliver an invocation. *** The town followed an informal method for selecting prayer givers, all of whom were unpaid volunteers. *** Its leaders maintained that a minister or layperson of any persuasion, including an atheist, could give the invocation. But nearly all of the congregations in town were Christian; and from 1999 to 2007, all of the participating ministers were too.

Greece neither reviewed the prayers in advance of the meetings nor provided guidance as to their tone or content, in the belief that exercising any degree of control over the prayers would infringe both the free exercise and speech rights of the ministers. *Id.*, at 22a. The town instead left the guest clergy free to compose their own devotions. The resulting prayers often sounded both civic and religious themes. Typical were invocations that asked the divinity to abide at the meeting and bestow blessings on the community:

> "Lord we ask you to send your spirit of servanthood upon all of us gathered here this evening to do your work for the benefit of all in our community. We ask you to bless our elected and appointed officials so they may deliberate with wisdom and act with courage. Bless the members of our community who come here to speak before the board so they may state their cause with honesty and humility.... Lord we ask you to bless us all, that everything we do here tonight will move you to welcome us one day into your kingdom as good and faithful servants. We ask this in the name of our brother Jesus. Amen." *Id.*, at 45a.

Some of the ministers spoke in a distinctly Christian idiom; and a minority invoked religious holidays, scripture, or doctrine, as in the following prayer:

> "Lord, God of all creation, we give you thanks and praise for your presence and action in the world. We look with anticipation to the celebration of Holy Week and Easter. It is in the solemn events of next week that we find the very heart and center of our Christian faith. We acknowledge the saving sacrifice of Jesus Christ on the cross. We draw strength, vitality, and confidence from his resurrection at Easter.... We pray for peace in the world, an end to terrorism, violence, conflict, and war. We pray for stability, democracy, and good government in those countries in which our armed forces are now serving, especially in Iraq and Afghanistan.... Praise and glory be yours, O Lord, now and forever more. Amen." *Id.,* at 88a–89a.

Respondents Susan Galloway and Linda Stephens attended town board meetings to speak about issues of local concern, and they objected that the prayers violated their religious or philosophical views. At one meeting, Galloway admonished board members that she found the prayers "offensive," "intolerable," and an affront to a "diverse community." Complaint in No. 08–cv–6088 (WDNY), ¶ 66. After respondents complained that Christian themes pervaded the prayers, to the exclusion of citizens who did not share those beliefs, the town invited a Jewish layman and the chairman of the local Baha'i temple to deliver prayers. A Wiccan priestess who had read press reports about the prayer controversy requested, and was granted, an opportunity to give the invocation.

Galloway and Stephens brought suit in the United States District Court for the Western District of New York. They alleged that the town violated the First Amendment's Establishment Clause by preferring Christians over other prayer givers and by sponsoring sectarian prayers, such as those given "in Jesus' name." 732 F.Supp.2d 195, 203 (2010). They did not seek an end to the prayer practice, but rather requested an injunction that would limit the town to "inclusive and ecumenical" prayers that referred only to a "generic God" and would not associate the government with any one faith or belief. *Id.,* at 210, 241.

The District Court on summary judgment upheld the prayer practice as consistent with the First Amendment, but *** [t]he Court of Appeals for the Second Circuit reversed. 681 F.3d 20, 34 (2012). It held that some aspects of the prayer program, viewed in their totality by a reasonable observer, conveyed the message that Greece was endorsing Christianity. The town's failure to promote the prayer opportunity to the public, or to invite ministers from congregations outside the town limits, all but "ensured a Christian viewpoint." *Id.,* at 30–31. ***Finally, the court found it relevant that guest clergy sometimes spoke on behalf of all present at the meeting, as by saying "let us pray," or by asking audience members to stand and bow their heads: "The invitation ... to participate in the prayer ... placed audience members who are nonreligious or adherents of non-Christian religion in the awkward position of either participating in prayers invoking beliefs they did not share or appearing to show disrespect for the invocation." *Ibid.* That board members bowed their heads or made the sign of the cross further conveyed the message that the town endorsed Christianity. The Court of Appeals emphasized that it was the "interaction of the facts present in this case," rather than any single element, that rendered the prayer unconstitutional. *Id.,* at 33.

Having granted certiorari to decide whether the town's prayer practice violates the Establishment Clause, 569 U.S. ——, 133 S.Ct. 2388, 185 L.Ed.2d 1103 (2013), the Court now reverses the judgment of the Court of Appeals.

II

In *Marsh v. Chambers,* 463 U.S. 783, 103 S.Ct. 3330, the Court found no First Amendment violation in the Nebraska Legislature's practice of opening its sessions with a prayer delivered by a

chaplain paid from state funds. The decision concluded that legislative prayer, while religious in nature, has long been understood as compatible with the Establishment Clause. As practiced by Congress since the framing of the Constitution, legislative prayer lends gravity to public business, reminds lawmakers to transcend petty differences in pursuit of a higher purpose, and expresses a common aspiration to a just and peaceful society. See *Lynch v. Donnelly,* 465 U.S. 668, 693, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984) (O'Connor, J., concurring); cf. A. Adams & C. Emmerich, A Nation Dedicated to Religious Liberty 83 (1990). The Court has considered this symbolic expression to be a "tolerable acknowledgement of beliefs widely held," *Marsh,* 463 U.S., at 792, 103 S.Ct. 3330, rather than a first, treacherous step towards establishment of a state church.

Marsh is sometimes described as "carving out an exception" to the Court's Establishment Clause jurisprudence, because it sustained legislative prayer without subjecting the practice to "any of the formal 'tests' that have traditionally structured" this inquiry. *Id.,* at 796, 813, 103 S.Ct. 3330 (Brennan, J., dissenting). The Court in *Marsh* found those tests unnecessary because history supported the conclusion that legislative invocations are compatible with the Establishment Clause. *** *Marsh* stands for the proposition that it is not necessary to define the precise boundary of the Establishment Clause where history shows that the specific practice is permitted. Any test the Court adopts must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change. *County of Allegheny, supra,* at 670, 109 S.Ct. 3086 (opinion of KENNEDY, J.). ***A test that would sweep away what has so long been settled would create new controversy and begin anew the very divisions along religious lines that the Establishment Clause seeks to prevent. See *Van Orden v. Perry,* 545 U.S. 677, 702–704, 125 S.Ct. 2854, 162 L.Ed.2d 607 (2005) (BREYER, J., concurring in judgment).

The Court's inquiry, then, must be to determine whether the prayer practice in the town of Greece fits within the tradition long followed in Congress and the state legislatures. Respondents assert that the town's prayer exercise falls outside that tradition and transgresses the Establishment Clause for two independent but mutually reinforcing reasons. First, they argue that *Marsh* did not approve prayers containing sectarian language or themes, such as the prayers offered in Greece that referred to the "death, resurrection, and ascension of the Savior Jesus Christ," App. 129a, and the "saving sacrifice of Jesus Christ on the cross," *id.,* at 88a. Second, they argue that the setting and conduct of the town board meetings create social pressures that force nonadherents to remain in the room or even feign participation in order to avoid offending the representatives who sponsor the prayer and will vote on matters citizens bring before the board. The sectarian content of the prayers compounds the subtle coercive pressures, they argue, because the nonbeliever who might tolerate ecumenical prayer is forced to do the same for prayer that might be inimical to his or her beliefs.

A

Respondents maintain that prayer must be nonsectarian, or not identifiable with any one religion; and they fault the town for permitting guest chaplains to deliver prayers that "use overtly Christian terms" or "invoke specifics of Christian theology." Brief for Respondents 20. *** They argue that prayer which contemplates "the workings of the Holy Spirit, the events of Pentecost, and the belief that God 'has raised up the Lord Jesus' and 'will raise us, in our turn, and put us by His side' " would be impermissible, as would any prayer that reflects dogma particular to a single faith tradition. *Id.,* at 34 (quoting App. 89a and citing *id.,* at 56a, 123a, 134a).

An insistence on nonsectarian or ecumenical prayer as a single, fixed standard is not consistent with the tradition of legislative prayer outlined in the Court's cases. The Court found the prayers in *Marsh* consistent with the First Amendment not because they espoused only a generic theism but because our history and tradition have shown that prayer in this limited context could "coexis[t] with the principles of disestablishment and religious freedom." 463 U.S., at 786, 103 S.Ct. 3330. The Congress that drafted the First Amendment would have been accustomed to invocations containing

explicitly religious themes of the sort respondents find objectionable. *** The decidedly Christian nature of these prayers must not be dismissed as the relic of a time when our Nation was less pluralistic than it is today. Congress continues to permit its appointed and visiting chaplains to express themselves in a religious idiom. It acknowledges our growing diversity not by proscribing sectarian content but by welcoming ministers of many creeds. ***

The contention that legislative prayer must be generic or nonsectarian derives from dictum in *County of Allegheny*, 492 U.S. 573, 109 S.Ct. 3086***. There the Court held that a crèche placed on the steps of a county courthouse to celebrate the Christmas season violated the Establishment Clause because it had "the effect of endorsing a patently Christian message." *Id.*, at 601, 109 S.Ct. 3086. Four dissenting Justices disputed that endorsement could be the proper test, as it likely would condemn a host of traditional practices that recognize the role religion plays in our society, among them legislative prayer and the "forthrightly religious" Thanksgiving proclamations issued by nearly every President since Washington. *Id.*, at 670–671, 109 S.Ct. 3086. The Court sought to counter this criticism by recasting *Marsh* to permit only prayer that contained no overtly Christian references:

> "However history may affect the constitutionality of nonsectarian references to religion by the government, history cannot legitimate practices that demonstrate the government's allegiance to a particular sect or creed.... The legislative prayers involved in *Marsh* did not violate this principle because the particular chaplain had 'removed all references to Christ.' " *Id.*, at 603 [109 S.Ct. 3086] (quoting *Marsh, supra*, at 793, n. 14 [103 S.Ct. 3330]; footnote omitted).

This proposition is irreconcilable with the facts of *Marsh* and with its holding and reasoning. *Marsh* nowhere suggested that the constitutionality of legislative prayer turns on the neutrality of its content. *** *Marsh* did not suggest that Nebraska's prayer practice would have failed had the chaplain not acceded to the legislator's request. Nor did the Court imply the rule that prayer violates the Establishment Clause any time it is given in the name of a figure deified by only one faith or creed. See *Van Orden*, 545 U.S., at 688, n. 8, 125 S.Ct. 2854 (recognizing that the prayers in *Marsh* were "often explicitly Christian" and rejecting the view that this gave rise to an establishment violation). To the contrary, the Court instructed that the "content of the prayer is not of concern to judges," provided "there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief." 463 U.S., at 794–795, 103 S.Ct. 3330.

To hold that invocations must be nonsectarian would force the legislatures that sponsor prayers and the courts that are asked to decide these cases to act as supervisors and censors of religious speech, a rule that would involve government in religious matters to a far greater degree than is the case under the town's current practice of neither editing or approving prayers in advance nor criticizing their content after the fact. *** It would be but a few steps removed from that prohibition for legislatures to require chaplains to redact the religious content from their message in order to make it acceptable for the public sphere. Government may not mandate a civic religion that stifles any but the most generic reference to the sacred any more than it may prescribe a religious orthodoxy. ***

*** Because it is unlikely that prayer will be inclusive beyond dispute, it would be unwise to adopt what respondents think is the next-best option: permitting those religious words, and only those words, that are acceptable to the majority, even if they will exclude some. *Torcaso v. Watkins*, 367 U.S. 488, 495, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961). The First Amendment is not a majority rule, and government may not seek to define permissible categories of religious speech. Once it invites prayer into the public sphere, government must permit a prayer giver to address his or her own God or gods as conscience dictates, unfettered by what an administrator or judge considers to be nonsectarian.

In rejecting the suggestion that legislative prayer must be nonsectarian, the Court does not imply that no constraints remain on its content. The relevant constraint derives from its place at the

opening of legislative sessions, where it is meant to lend gravity to the occasion and reflect values long part of the Nation's heritage. Prayer that is solemn and respectful in tone, that invites lawmakers to reflect upon shared ideals and common ends before they embark on the fractious business of governing, serves that legitimate function. If the course and practice over time shows that the invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion, many present may consider the prayer to fall short of the desire to elevate the purpose of the occasion and to unite lawmakers in their common effort. That circumstance would present a different case than the one presently before the Court.

The tradition reflected in *Marsh* permits chaplains to ask their own God for blessings of peace, justice, and freedom that find appreciation among people of all faiths. That a prayer is given in the name of Jesus, Allah, or Jehovah, or that it makes passing reference to religious doctrines, does not remove it from that tradition. These religious themes provide particular means to universal ends. Prayer that reflects beliefs specific to only some creeds can still serve to solemnize the occasion, so long as the practice over time is not "exploited to proselytize or advance any one, or to disparage any other, faith or belief." *Marsh*, 463 U.S., at 794–795, 103 S.Ct. 3330. ***

Respondents point to other invocations that disparaged those who did not accept the town's prayer practice. One guest minister characterized objectors as a "minority" who are "ignorant of the history of our country," *id.*, at 108a, while another lamented that other towns did not have "God-fearing" leaders, *id.*, at 79a. Although these two remarks strayed from the rationale set out in *Marsh*, they do not despoil a practice that on the whole reflects and embraces our tradition. Absent a pattern of prayers that over time denigrate, proselytize, or betray an impermissible government purpose, a challenge based solely on the content of a prayer will not likely establish a constitutional violation. *Marsh*, indeed, requires an inquiry into the prayer opportunity as a whole, rather than into the contents of a single prayer. 463 U.S., at 794–795, 103 S.Ct. 3330.

Finally, the Court disagrees with the view taken by the Court of Appeals that the town of Greece contravened the Establishment Clause by inviting a predominantly Christian set of ministers to lead the prayer. The town made reasonable efforts to identify all of the congregations located within its borders and represented that it would welcome a prayer by any minister or layman who wished to give one. That nearly all of the congregations in town turned out to be Christian does not reflect an aversion or bias on the part of town leaders against minority faiths. So long as the town maintains a policy of nondiscrimination, the Constitution does not require it to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing. The quest to promote "a 'diversity' of religious views" would require the town "to make wholly inappropriate judgments about the number of religions [it] should sponsor and the relative frequency with which it should sponsor each," *Lee*, 505 U.S., at 617, 112 S.Ct. 2649 (Souter, J., concurring), a form of government entanglement with religion that is far more troublesome than the current approach.

B

Respondents further seek to distinguish the town's prayer practice from the tradition upheld in *Marsh* on the ground that it coerces participation by nonadherents. They and some *amici* contend that prayer conducted in the intimate setting of a town board meeting differs in fundamental ways from the invocations delivered in Congress and state legislatures, where the public remains segregated from legislative activity and may not address the body except by occasional invitation. Citizens attend town meetings, on the other hand, to accept awards; speak on matters of local importance; and petition the board for action that may affect their economic interests, such as the granting of permits, business licenses, and zoning variances. Respondents argue that the public may feel subtle pressure to participate in prayers that violate their beliefs in order to please the board members from whom they are about to seek a favorable ruling. In their view the fact that board members in small towns know many of their constituents by name only increases the pressure to conform.

It is an elemental First Amendment principle that government may not coerce its citizens "to support or participate in any religion or its exercise." *County of Allegheny,* 492 U.S., at 659, 109 S.Ct. 3086 (KENNEDY, J., concurring in judgment in part and dissenting in part); see also *Van Orden,* 545 U.S., at 683, 125 S.Ct. 2854 (plurality opinion) (recognizing that our "institutions must not press religious observances upon their citizens"). On the record in this case the Court is not persuaded that the town of Greece, through the act of offering a brief, solemn, and respectful prayer to open its monthly meetings, compelled its citizens to engage in a religious observance. The inquiry remains a fact-sensitive one that considers both the setting in which the prayer arises and the audience to whom it is directed.

The prayer opportunity in this case must be evaluated against the backdrop of historical practice. As a practice that has long endured, legislative prayer has become part of our heritage and tradition, part of our expressive idiom, similar to the Pledge of Allegiance, inaugural prayer, or the recitation of "God save the United States and this honorable Court" at the opening of this Court's sessions. See *Lynch,* 465 U.S., at 693, 104 S.Ct. 1355 (O'Connor, J., concurring). It is presumed that the reasonable observer is acquainted with this tradition and understands that its purposes are to lend gravity to public proceedings and to acknowledge the place religion holds in the lives of many private citizens, not to afford government an opportunity to proselytize or force truant constituents into the pews. *** That many appreciate these acknowledgments of the divine in our public institutions does not suggest that those who disagree are compelled to join the expression or approve its content. *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943).

The principal audience for these invocations is not, indeed, the public but lawmakers themselves, who may find that a moment of prayer or quiet reflection sets the mind to a higher purpose and thereby eases the task of governing. The District Court in *Marsh* described the prayer exercise as "an internal act" directed at the Nebraska Legislature's "own members," *Chambers v. Marsh,* 504 F.Supp. 585, 588 (D.Neb.1980), rather than an effort to promote religious observance among the public. *** To be sure, many members of the public find these prayers meaningful and wish to join them. But their purpose is largely to accommodate the spiritual needs of lawmakers and connect them to a tradition dating to the time of the Framers. ***

The analysis would be different if town board members directed the public to participate in the prayers, singled out dissidents for opprobrium, or indicated that their decisions might be influenced by a person's acquiescence in the prayer opportunity. *** Although board members themselves stood, bowed their heads, or made the sign of the cross during the prayer, they at no point solicited similar gestures by the public. Respondents point to several occasions where audience members were asked to rise for the prayer. These requests, however, came not from town leaders but from the guest ministers, who presumably are accustomed to directing their congregations in this way and might have done so thinking the action was inclusive, not coercive. *** Respondents suggest that constituents might feel pressure to join the prayers to avoid irritating the officials who would be ruling on their petitions, but this argument has no evidentiary support. Nothing in the record indicates that town leaders allocated benefits and burdens based on participation in the prayer, or that citizens were received differently depending on whether they joined the invocation or quietly declined. ***

In their declarations in the trial court, respondents stated that the prayers gave them offense and made them feel excluded and disrespected. Offense, however, does not equate to coercion. Adults often encounter speech they find disagreeable; and an Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of contrary religious views in a legislative forum, especially where, as here, any member of the public is welcome in turn to offer an invocation reflecting his or her own convictions. *** If circumstances arise in which the pattern and practice of ceremonial, legislative prayer is alleged to be a means to coerce or intimidate others, the objection can be addressed in the regular course. *** But in the general course legislative bodies do not

engage in impermissible coercion merely by exposing constituents to prayer they would rather not hear and in which they need not participate. ***

This case can be distinguished from the conclusions and holding of *Lee v. Weisman,* 505 U.S. 577, 112 S.Ct. 2649, 120 L.Ed.2d 467. There the Court found that, in the context of a graduation where school authorities maintained close supervision over the conduct of the students and the substance of the ceremony, a religious invocation was coercive as to an objecting student. *Id.,* at 592–594, 112 S.Ct. 2649; see also *Santa Fe Independent School Dist.,* 530 U.S., at 312, 120 S.Ct. 2266. *** Nothing in the record suggests that members of the public are dissuaded from leaving the meeting room during the prayer, arriving late, or even, as happened here, making a later protest. In this case, as in *Marsh,* board members and constituents are "free to enter and leave with little comment and for any number of reasons." *Lee, supra,* at 597, 112 S.Ct. 2649. Should nonbelievers choose to exit the room during a prayer they find distasteful, their absence will not stand out as disrespectful or even noteworthy. And should they remain, their quiet acquiescence will not, in light of our traditions, be interpreted as an agreement with the words or ideas expressed. Neither choice represents an unconstitutional imposition as to mature adults, who "presumably" are "not readily susceptible to religious indoctrination or peer pressure." *Marsh,* 463 U.S., at 792, 103 S.Ct. 3330 (internal quotation marks and citations omitted).

* * *

The town of Greece does not violate the First Amendment by opening its meetings with prayer that comports with our tradition and does not coerce participation by nonadherents. The judgment of the U.S. Court of Appeals for the Second Circuit is reversed.

It is so ordered.

***

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

For centuries now, people have come to this country from every corner of the world to share in the blessing of religious freedom. Our Constitution promises that they may worship in their own way, without fear of penalty or danger, and that in itself is a momentous offering. Yet our Constitution makes a commitment still more remarkable—that however those individuals worship, they will count as full and equal American citizens. ***

I respectfully dissent from the Court's opinion because I think the Town of Greece's prayer practices violate that norm of religious equality—the breathtakingly generous constitutional idea that our public institutions belong no less to the Buddhist or Hindu than to the Methodist or Episcopalian. *** The practice at issue here differs from the one sustained in *Marsh* because Greece's town meetings involve participation by ordinary citizens, and the invocations given—directly to those citizens—were predominantly sectarian in content. Still more, Greece's Board did nothing to recognize religious diversity: In arranging for clergy members to open each meeting, the Town never sought (except briefly when this suit was filed) to involve, accommodate, or in any way reach out to adherents of non-Christian religions. So month in and month out for over a decade, prayers steeped in only one faith, addressed toward members of the public, commenced meetings to discuss local affairs and distribute government benefits. In my view, that practice does not square with the First Amendment's promise that every citizen, irrespective of her religion, owns an equal share in her government.

***

II

***B

Let's count the ways in which [the facts in *Marsh* and the facts here] diverge. First, the governmental proceedings at which the prayers occur differ significantly in nature and purpose. The Nebraska Legislature's floor sessions—like those of the U.S. Congress and other state assemblies—are of, by, and for elected lawmakers. Members of the public take no part in those proceedings; any few

who attend are spectators only, watching from a high-up visitors' gallery. *** Greece's town meetings, by contrast, revolve around ordinary members of the community. *** [T]he meetings, both by design and in operation, allow citizens to actively participate in the Town's governance—sharing concerns, airing grievances, and both shaping the community's policies and seeking their benefits.

Second, *** the prayers in these two settings have different audiences. In the Nebraska Legislature, the chaplain spoke to, and only to, the elected representatives. *** The same is true in the U.S. Congress and, I suspect, in every other state legislature. ***

The very opposite is true in Greece: Contrary to the majority's characterization, the prayers there are directed squarely at the citizens. Remember that the chaplain of the month stands with his back to the Town Board; his real audience is the group he is facing—the 10 or so members of the public, perhaps including children. And he typically addresses those people, as even the majority observes, as though he is "directing [his] congregation." *** In essence, the chaplain leads, as the first part of a town meeting, a highly intimate (albeit relatively brief) prayer service, with the public serving as his congregation.

And third, the prayers themselves differ in their content and character. *Marsh* characterized the prayers in the Nebraska Legislature as "in the Judeo–Christian tradition," and stated, as a relevant (even if not dispositive) part of its analysis, that the chaplain had removed all explicitly Christian references at a senator's request. 463 U.S., at 793, n. 14, 103 S.Ct. 3330. And as the majority acknowledges, *Marsh* hinged on the view that "that the prayer opportunity ha[d] [not] been exploited to proselytize or advance any one ... faith or belief"; had it been otherwise, the Court would have reached a different decision. 463 U.S., at 794–795, 103 S.Ct. 3330.

But no one can fairly read the prayers from Greece's Town meetings as anything other than explicitly Christian—constantly and exclusively so. From the time Greece established its prayer practice in 1999 until litigation loomed nine years later, all of its monthly chaplains were Christian clergy. And after a brief spell surrounding the filing of this suit (when a Jewish layman, a Wiccan priestess, and a Baha'i minister appeared at meetings), the Town resumed its practice of inviting only clergy from neighboring Protestant and Catholic churches. *** The monthly chaplains appear almost always to assume that everyone in the room is Christian (and of a kind who has no objection to government-sponsored worship). The Town itself has never urged its chaplains to reach out to members of other faiths, or even to recall that they might be present. And accordingly, few chaplains have made any effort to be inclusive; none has thought even to assure attending members of the public that they need not participate in the prayer session. Indeed, as the majority forthrightly recognizes, when the plaintiffs here began to voice concern over prayers that excluded some Town residents, one pastor pointedly thanked the Board "[o]n behalf of all God-fearing people" for holding fast, and another declared the objectors "in the minority and ... ignorant of the history of our country." App. 137a, 108a.

C

***

None of this means that Greece's town hall must be religion- or prayer-free. "[W]e are a religious people," *Marsh* observed, 463 U.S., at 792, 103 S.Ct. 3330, and prayer draws some warrant from tradition in a town hall, as well as in Congress or a state legislature. What the circumstances here demand is the recognition that we are a pluralistic people too. When citizens of all faiths come to speak to each other and their elected representatives in a legislative session, the government must take especial care to ensure that the prayers they hear will seek to include, rather than serve to divide. No more is required—but that much is crucial—to treat every citizen, of whatever religion, as an equal participant in her government.

***

When the citizens of this country approach their government, they do so only as Americans, not as members of one faith or another. And that means that even in a partly legislative body, they should not confront government-sponsored worship that divides them along religious lines. I believe, for all the reasons I have given, that the Town of Greece betrayed that promise. I therefore respectfully dissent from the Court's decision.

To be added at page 1267, following *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*:

Burwell v. Hobby Lobby Stores, Inc.,
13-354, 2014 WL 2921709 (U.S. June 30, 2014).

Justice ALITO delivered the opinion of the Court.

We must decide in these cases whether the Religious Freedom Restoration Act of 1993 (RFRA), 107 Stat. 1488, 42 U.S.C. § 2000bb *et seq*., permits the United States Department of Health and Human Services (HHS) to demand that three closely held corporations provide health-insurance coverage for methods of contraception that violate the sincerely held religious beliefs of the companies' owners. We hold that the regulations that impose this obligation violate RFRA, which prohibits the Federal Government from taking any action that substantially burdens the exercise of religion unless that action constitutes the least restrictive means of serving a compelling government interest.

***

As this description of our reasoning shows, our holding is very specific. We do not hold, that for-profit corporations and other commercial enterprises can "opt out of any law (saving only tax laws) they judge incompatible with their sincerely held religious beliefs." Nor do we hold that such corporations have free rein to take steps that impose "disadvantages ... on others" or that require "the general public [to] pick up the tab." And we certainly do not hold or suggest that "RFRA demands accommodation of a for-profit corporation's religious beliefs no matter the impact that accommodation may have..."

***

I

A

Congress enacted RFRA in 1993... three years after this Court's decision in *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), which ... held that, under the First Amendment, "neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling governmental interest." *City of Boerne v. Flores*, 521 U.S. 507, 514, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997).

Congress responded to *Smith* by enacting RFRA. *** RFRA provides that "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability." § 2000bb–1(a). If the Government substantially burdens a person's exercise of religion, under the Act that person is entitled to an exemption from the rule unless the Government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." § 2000bb–1(b).

***

[In 2000,] Congress passed the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 114 Stat. 803, 42 U.S.C. § 2000cc *et seq*. ***In RLUIPA, in an obvious effort to effect a complete separation from First Amendment case law, Congress deleted the reference to the First Amendment and defined the "exercise of religion" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." § 2000cc–5(7)(A). And Congress mandated that this concept "be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." § 2000cc–3(g).

B

At issue in these cases are HHS regulations promulgated under the Patient Protection and Affordable Care Act of 2010(ACA), 124 Stat. 119. ACA generally requires employers with 50 or more

full-time employees to offer "a group health plan or group health insurance coverage" that provides "minimum essential coverage." 26 U.S.C. § 5000A(f)(2); §§ 4980H(a), (c)(2). ***[I]f a covered employer provides group health insurance but its plan fails to comply with ACA's group-health-plan requirements, the employer may be required to pay $100 per day for each affected "individual." §§ 4980D(a)-(b). And if the employer decides to stop providing health insurance altogether and at least one full-time employee enrolls in a health plan and qualifies for a subsidy on one of the government-run ACA exchanges, the employer must pay $2,000 per year for each of its full-time employees. §§ 4980H(a), (c)(1).

Unless an exception applies, ACA requires an employer's group health plan or group-health-insurance coverage to furnish "preventive care and screenings" for women without "any cost sharing requirements." 42 U.S.C. § 300gg–13(a)(4). ***Congress authorized the Health Resources and Services Administration (HRSA), a component of HHS,*** [which] in turn consulted the Institute of Medicine, a nonprofit group of volunteer advisers, in determining which preventive services to require. See 77 Fed.Reg. 8725–8726 (2012).

The [Women's Preventive Services] Guidelines provide that nonexempt employers are generally required to provide "coverage, without cost sharing" for "[a]ll Food and Drug Administration [(FDA)] approved contraceptive methods, sterilization procedures, and patient education and counseling." 77 Fed.Reg. 8725 (internal quotation marks omitted). ***[F]our of those [contraceptive] methods (those specifically at issue in these cases) may have the effect of preventing an already fertilized egg from developing any further by inhibiting its attachment to the uterus. HHS also authorized the HRSA to establish exemptions from the contraceptive mandate for "religious employers." 45 CFR § 147.131(a). That category encompasses "churches, their integrated auxiliaries, and conventions or associations of churches," as well as "the exclusively religious activities of any religious order." In its Guidelines, HRSA exempted these organizations from the requirement to cover contraceptive services. See http:// hrsa.gov/womensguidelines.

In addition, HHS has effectively exempted certain religious nonprofit organizations, described under HHS regulations as "eligible organizations," from the contraceptive mandate. See 45 CFR § 147.131(b); 78 Fed.Reg. 39874 (2013). An "eligible organization" means a nonprofit organization that "holds itself out as a religious organization" and "opposes providing coverage for some or all of any contraceptive services required to be covered ... on account of religious objections." 45 CFR § 147.131(b). *** In addition to these exemptions for religious organizations, ACA exempts a great many employers from most of its coverage requirements.

***

II

A

***

Fifty years ago, Norman Hahn*** started Conestoga Wood Specialties,*** organized under Pennsylvania law as a for-profit corporation. The Hahns exercise sole ownership of the closely held business.

***As explained in Conestoga's board-adopted "Statement on the Sanctity of Human Life," the Hahns believe [as Christians] that "human life begins at conception." 724 F.3d 377, 382, and n. 5 (C.A.3 2013) (internal quotation marks omitted). ***The Hahns have accordingly excluded from the group-health-insurance plan they offer to their employees certain contraceptive methods that they consider to be abortifacients. *Id.,* at 382.

The Hahns and Conestoga sued HHS and other federal officials and agencies under RFRA and the Free Exercise Clause of the First Amendment. ***The District Court denied a preliminary injunction, see 917 F.Supp.2d, at 419, and the Third Circuit affirmed in a divided opinion, holding that

"for-profit, secular corporations cannot engage in religious exercise" within the meaning of RFRA or the First Amendment. 724 F.3d, at 381.***

B

***Forty-five years ago, David Green started an arts-and-crafts store that has grown into a nationwide chain called Hobby Lobby, organized as a for-profit corporation under Oklahoma law. ***Though these two businesses have expanded over the years, they remain closely held.... *Ibid.*

Hobby Lobby's statement of purpose commits the Greens to "[h]onoring the Lord in all [they] do by operating the company in a manner consistent with Biblical principles." App. in No. 13–354, pp. 134–135 (complaint). ***Like the Hahns, the Greens believe that life begins at conception and that it would violate their religion to facilitate access to contraceptive drugs or devices that operate after that point. 723 F.3d, at 1122. They specifically object to the same *** contraceptive methods as the Hahns. *Id.*, at 1125. Hobby Lobby sued HHS and other federal agencies and officials to challenge the contraceptive mandate under RFRA and the Free Exercise Clause. ***Contrary to the conclusion of the Third Circuit, the Tenth Circuit held that the Greens' two for-profit businesses are "persons" within the meaning of RFRA and therefore may bring suit under that law.

***We granted certiorari. 571 U.S. ——, 134 S.Ct. 678, 187 L.Ed.2d 544 (2013).

III

A

RFRA prohibits the "Government [from] substantially burden[ing] *a person's* exercise of religion even if the burden results from a rule of general applicability" unless the Government "demonstrates that application of the burden to *the person*—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §§ 2000bb–1(a), (b) (emphasis added). The first question that we must address is whether this provision applies to regulations that govern the activities of for-profit corporations like Hobby Lobby.

*** [I]n *Braunfeld* v. *Brown,* 366 U.S. 599, 81 S.Ct. 1144, 6 L.Ed.2d 563 (1961) (plurality opinion) five Orthodox Jewish merchants who ran small retail businesses in Philadelphia challenged a Pennsylvania Sunday closing law as a violation of the Free Exercise Clause. ***The Court entertained their claim (although it ruled against them on the merits), and if a similar claim were raised today under RFRA against a jurisdiction still subject to the Act (for example, the District of Columbia, see 42 U.S.C. § 2000bb–2(2)), the merchants would be entitled to be heard. According to HHS, however, if these merchants chose to incorporate their businesses—without in any way changing the size or nature of their businesses—they would forfeit all RFRA (and free-exercise) rights. ***By enacting RFRA, Congress went far beyond what this Court has held is constitutionally required.

***Congress provided protection for people like the Hahns and Greens by employing a familiar legal fiction: It included corporations within RFRA's definition of "persons." But it is important to keep in mind that the purpose of this fiction is to provide protection for human beings. A corporation is simply a form of organization used by human beings to achieve desired ends. *** [P]rotecting the free-exercise rights of corporations like Hobby Lobby, Conestoga, and Mardel protects the religious liberty of the humans who own and control those companies. ***

B

1

***Under the Dictionary Act, "the wor[d] 'person' ... include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." *Ibid.* ***Thus, unless there is something about the RFRA context that "indicates otherwise," the Dictionary Act provides a quick, clear, and affirmative answer to the question whether the companies involved in these cases may be heard.

We see nothing in RFRA that suggests a congressional intent to depart from the Dictionary Act definition, and HHS makes little effort to argue otherwise. ***HHS concedes that a nonprofit corporation can be a "person" within the meaning of RFRA. See Brief for HHS in No. 13–354, at 17; Reply Brief in No. 13–354, at 7–8.

This concession effectively dispatches any argument that the term "person" as used in RFRA does not reach the closely held corporations involved in these cases, *** [as] no conceivable definition of the term includes natural persons and nonprofit corporations, but not for-profit corporations. ***

2

The principal argument advanced by HHS and the principal dissent regarding RFRA protection for Hobby Lobby, Conestoga, and Mardel focuses not on the statutory term "person," but on the phrase "exercise of religion." According to HHS and the dissent, these corporations are not protected by RFRA because they cannot exercise religion. Neither HHS nor the dissent, however, provides any persuasive explanation for this conclusion.

***The corporate form alone cannot provide the explanation because, as we have pointed out, HHS concedes that nonprofit corporations can be protected by RFRA. The dissent suggests that nonprofit corporations are special because furthering their religious "autonomy ... often furthers individual religious freedom as well." ***But this principle applies equally to for-profit corporations: Furthering their religious freedom also "furthers individual religious freedom." ***

If the corporate form is not enough, what about the profit-making objective? *** As the Court explained, *** the "exercise of religion" involves "not only belief and profession but the performance of (or abstention from) physical acts" that are "engaged in for religious reasons." *Smith,* 494 U.S., at 877, 110 S.Ct. 1595. Business practices that are compelled or limited by the tenets of a religious doctrine fall comfortably within that definition. Thus, a law that "operates so as to make the practice of ... religious beliefs more expensive" in the context of business activities imposes a burden on the exercise of religion. *Braunfeld, supra,* at 605, 81 S.Ct. 1144. ***

Some lower court judges have suggested that RFRA does not protect for-profit corporations because the purpose of such corporations is simply to make money. This argument flies in the face of modern corporate law. "Each American jurisdiction today either expressly or by implication authorizes corporations to be formed under its general corporation act for *any lawful purpose* or business." 1 J. Cox & T. Hazen, Treatise of the Law of Corporations § 4:1, p. 224 (3d ed. 2010) (emphasis added) ***. For-profit corporations, with ownership approval, support a wide variety of charitable causes, and it is not at all uncommon for such corporations to further humanitarian and other altruistic objectives. *** If for-profit corporations may pursue such worthy objectives, there is no apparent reason why they may not further religious objectives as well.

***3**

HHS and the principal dissent make one additional argument in an effort to show that a for-profit corporation cannot engage in the "exercise of religion" within the meaning of RFRA: HHS argues that RFRA did no more than codify this Court's pre-*Smith* Free Exercise Clause precedents, and because none of those cases squarely held that a for-profit corporation has free-exercise rights, RFRA does not confer such protection. This argument has many flaws.

First, nothing in the text of RFRA as originally enacted suggested that the statutory phrase "exercise of religion under the First Amendment" was meant to be tied to this Court's pre-*Smith* interpretation of that Amendment. When first enacted, RFRA defined the "exercise of religion" to mean "the exercise of religion under the First Amendment"—not the exercise of religion as recognized only by then-existing Supreme Court precedents. 42 U.S.C. § 2000bb–2(4) (1994 ed.). When Congress wants to link the meaning of a statutory provision to a body of this Court's case law, it knows how to do so. See, *e.g.,* Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2254(d)(1) (authorizing habeas relief from a state-court decision that "was contrary to, or involved an

unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States").

Second, if the original text of RFRA was not clear enough on this point—and we think it was—the amendment of RFRA through RLUIPA surely dispels any doubt. *** Third, the one pre-*Smith* case involving the free-exercise rights of a for-profit corporation suggests, if anything, that for-profit corporations possess such rights. In *Gallagher v. Crown Kosher Super Market of Mass., Inc.*, 366 U.S. 617, 81 S.Ct. 1122, 6 L.Ed.2d 536 (1961), the Massachusetts Sunday closing law was challenged by a kosher market that was organized as a for-profit corporation, by customers of the market, and by a rabbi. The Commonwealth argued that the corporation lacked "standing" to assert a free-exercise claim, but not one member of the Court expressed agreement with that argument. *** It is quite a stretch to argue that RFRA, a law enacted to provide very broad protection for religious liberty, left for-profit corporations unprotected simply because in *Gallagher*—the only pre-*Smith* case in which the issue was raised—a majority of the Justices did not find it necessary to decide whether the kosher market's corporate status barred it from raising a free-exercise claim.

Finally, the results would be absurd if RFRA merely restored this Court's pre-*Smith* decisions in ossified form and did not allow a plaintiff to raise a RFRA claim unless that plaintiff fell within a category of plaintiffs one of whom had brought a free-exercise claim that this Court entertained in the years before *Smith.*

***

4

Finally, HHS contends that Congress could not have wanted RFRA to apply to for-profit corporations because it is difficult as a practical matter to ascertain the sincere "beliefs" of a corporation. HHS goes so far as to raise the specter of "divisive, polarizing proxy battles over the religious identity of large, publicly traded corporations such as IBM or General Electric." Brief for HHS in No. 13–356, at 30.

These cases, however, do not involve publicly traded corporations, and it seems unlikely that the sort of corporate giants to which HHS refers will often assert RFRA claims. *** In any event, we have no occasion in these cases to consider RFRA's applicability to such companies. The companies in the cases before us are closely held corporations, each owned and controlled by members of a single family, and no one has disputed the sincerity of their religious beliefs.

HHS has also provided no evidence that the purported problem of determining the sincerity of an asserted religious belief moved Congress to exclude for-profit corporations from RFRA's protection. On the contrary, the scope of RLUIPA shows that Congress was confident of the ability of the federal courts to weed out insincere claims. RLUIPA applies to "institutionalized persons," a category that consists primarily of prisoners, and by the time of RLUIPA's enactment, the propensity of some prisoners to assert claims of dubious sincerity was well documented. Nevertheless, after our decision in *City of Boerne*, Congress enacted RLUIPA to preserve the right of prisoners to raise religious liberty claims. If Congress thought that the federal courts were up to the job of dealing with insincere prisoner claims, there is no reason to believe that Congress limited RFRA's reach out of concern for the seemingly less difficult task of doing the same in corporate cases.

*** For all these reasons, we hold that a federal regulation's restriction on the activities of a for-profit closely held corporation must comply with RFRA.

IV

Because RFRA applies in these cases, we must next ask whether the HHS contraceptive mandate "substantially burden[s]" the exercise of religion. 42 U.S.C. § 2000bb–1(a). We have little trouble concluding that it does.

A

As we have noted, the Hahns and Greens have a sincere religious belief that life begins at conception. *** By requiring the Hahns and Greens and their companies to arrange for such coverage, the HHS mandate demands that they engage in conduct that seriously violates their religious beliefs.

If the Hahns and Greens and their companies do not yield to this demand, the economic consequences will be severe. If the companies continue to offer group health plans that do not cover the contraceptives at issue, they will be taxed $100 per day for each affected individual. 26 U.S.C. § 4980D. For Hobby Lobby, the bill could amount to $1.3 million per day or about $475 million per year. ***

It is true that the plaintiffs could avoid these assessments by dropping insurance coverage altogether and thus forcing their employees to obtain health insurance on one of the exchanges established under ACA. But if at least one of their full-time employees were to qualify for a subsidy on one of the government-run exchanges, this course would also entail substantial economic consequences. The companies could face penalties of $2,000 per employee each year. § 4980H. These penalties would amount to roughly $26 million for Hobby Lobby, $1.8 million for Conestoga, and $800,000 for Mardel.

B

*** In sum, we refuse to sustain the challenged regulations on the ground—never maintained by the Government—that dropping insurance coverage eliminates the substantial burden that the HHS mandate imposes. We doubt that the Congress that enacted RFRA—or, for that matter, ACA—would have believed it a tolerable result to put family-run businesses to the choice of violating their sincerely held religious beliefs or making all of their employees lose their existing healthcare plans.

C

In taking the position that the HHS mandate does not impose a substantial burden on the exercise of religion, HHS's main argument (echoed by the principal dissent) is basically that the connection between what the objecting parties must do (provide health-insurance coverage for four methods of contraception that may operate after the fertilization of an egg) and the end that they find to be morally wrong (destruction of an embryo) is simply too attenuated. Brief for HHS in 13–354, pp. 31–34; *post*, at ——— – ———. HHS and the dissent note that providing the coverage would not itself result in the destruction of an embryo; that would occur only if an employee chose to take advantage of the coverage and to use one of the four methods at issue. *Ibid.*

This argument dodges the question that RFRA presents (whether the HHS mandate imposes a substantial burden on the ability of the objecting parties to conduct business in accordance with *their religious beliefs*) and instead addresses a very different question that the federal courts have no business addressing (whether the religious belief asserted in a RFRA case is reasonable). The Hahns and Greens believe that providing the coverage demanded by the HHS regulations is connected to the destruction of an embryo in a way that is sufficient to make it immoral for them to provide the coverage. *** [In] these cases, the Hahns and Greens and their companies sincerely believe that providing the insurance coverage demanded by the HHS regulations lies on the forbidden side of the line, and it is not for us to say that their religious beliefs are mistaken or insubstantial. Instead, our "narrow function ... in this context is to determine" whether the line drawn reflects "an honest conviction," *id*., at 716, 101 S.Ct. 1425, and there is no dispute that it does. ***

V

Since the HHS contraceptive mandate imposes a substantial burden on the exercise of religion, we must move on and decide whether HHS has shown that the mandate both "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb–1(b).

A

*** We will assume that the interest in guaranteeing cost-free access to the four challenged contraceptive methods is compelling within the meaning of RFRA, and we will proceed to consider the final prong of the RFRA test, *i.e.*, whether HHS has shown that the contraceptive mandate is "the least restrictive means of furthering that compelling governmental interest." § 2000bb–1(b)(2).

B

The least-restrictive-means standard is exceptionally demanding, see *City of Boerne*, 521 U.S., at 532, 117 S.Ct. 2157, and it is not satisfied here. HHS has not shown that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting parties in these cases. ***

The most straightforward way of doing this would be for the Government to assume the cost of providing the four contraceptives at issue to any women who are unable to obtain them under their health-insurance policies due to their employers' religious objections. This would certainly be less restrictive of the plaintiffs' religious liberty, and HHS has not shown, see § 2000bb–1(b)(2), that this is not a viable alternative. ***

*** [Further], HHS has already established an accommodation for nonprofit organizations with religious objections. We do not decide today whether an approach of this type complies with RFRA for purposes of all religious claims. At a minimum, however, it does not impinge on the plaintiffs' religious belief that providing insurance coverage for the contraceptives at issue here violates their religion, and it serves HHS's stated interests equally well. ***

C

***The principal dissent raises the possibility that discrimination in hiring, for example on the basis of race, might be cloaked as religious practice to escape legal sanction. \Our decision today provides no such shield. The Government has a compelling interest in providing an equal opportunity to participate in the workforce without regard to race, and prohibitions on racial discrimination are precisely tailored to achieve that critical goal.

***In its final pages, the principal dissent reveals that its fundamental objection to the claims of the plaintiffs is an objection to RFRA itself. The dissent worries about forcing the federal courts to apply RFRA to a host of claims made by litigants seeking a religious exemption from generally applicable laws, and the dissent expresses a desire to keep the courts out of this business. *** In making this plea, the dissent reiterates a point made forcefully by the Court in *Smith.* 494 U.S., at 888–889, 110 S.Ct. 1595 (applying the *Sherbert* test to all free-exercise claims "would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind"). But Congress, in enacting RFRA, took the position that "the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests." 42 U.S.C. § 2000bb(a)(5). The wisdom of Congress's judgment on this matter is not our concern. Our responsibility is to enforce RFRA as written, and under the standard that RFRA prescribes, the HHS contraceptive mandate is unlawful.

The contraceptive mandate, as applied to closely held corporations, violates RFRA. Our decision on that statutory question makes it unnecessary to reach the First Amendment claim raised by Conestoga and the Hahns.

The judgment of the Tenth Circuit in No. 13–354 is affirmed; the judgment of the Third Circuit in No. 13–356 is reversed, and that case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice KENNEDY, concurring.

*** In our constitutional tradition, freedom means that all persons have the right to believe or strive to believe in a divine creator and a divine law. For those who choose this course, free exercise is

essential in preserving their own dignity and in striving for a self-definition shaped by their religious precepts. Free exercise in this sense implicates more than just freedom of belief. See *Cantwell v. Connecticut,* 310 U.S. 296, 303, 60 S.Ct. 900, 84 L.Ed. 1213 (1940). It means, too, the right to express those beliefs and to establish one's religious (or nonreligious) self-definition in the political, civic, and economic life of our larger community. But in a complex society and an era of pervasive governmental regulation, defining the proper realm for free exercise can be difficult. In these cases the plaintiffs deem it necessary to exercise their religious beliefs within the context of their own closely held, for-profit corporations. They claim protection under RFRA, the federal statute discussed with care and in detail in the Court's opinion.

*** "[T]he American community is today, as it long has been, a rich mosaic of religious faiths." *Town of Greece v. Galloway,* 572 U.S. ——, ——, 134 S.Ct. 1811, 1849, —— L.Ed.2d —— (2014) (KAGAN, J., dissenting). Among the reasons the United States is so open, so tolerant, and so free is that no person may be restricted or demeaned by government in exercising his or her religion. Yet neither may that same exercise unduly restrict other persons, such as employees, in protecting their own interests, interests the law deems compelling. In these cases the means to reconcile those two priorities are at hand in the existing accommodation the Government has designed, identified, and used for circumstances closely parallel to those presented here. RFRA requires the Government to use this less restrictive means. As the Court explains, this existing model, designed precisely for this problem, might well suffice to distinguish the instant cases from many others in which it is more difficult and expensive to accommodate a governmental program to countless religious claims based on an alleged statutory right of free exercise. ***

For these reasons and others put forth by the Court, I join its opinion.

Justice GINSBURG, with whom Justice Sotomayor joins, and with whom Justice BREYER and Justice KAGAN join as to all but Part III–C–1, dissenting.

*** The Court does not pretend that the First Amendment's Free Exercise Clause demands religion-based accommodations so extreme, for our decisions leave no doubt on that score. Instead, the Court holds that Congress, in the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb *et seq.,* dictated the extraordinary religion-based exemptions today's decision endorses. In the Court's view, RFRA demands accommodation of a for-profit corporation's religious beliefs no matter the impact that accommodation may have on third parties who do not share the corporation owners' religious faith—in these cases, thousands of women employed by Hobby Lobby and Conestoga or dependents of persons those corporations employ. Persuaded that Congress enacted RFRA to serve a far less radical purpose, and mindful of the havoc the Court's judgment can introduce, I dissent.

I

*** There is an overriding interest, I believe, in keeping the courts "out of the business of evaluating the relative merits of differing religious claims," *Lee,* 455 U.S., at 263, n. 2, 102 S.Ct. 1051 (Stevens, J., concurring in judgment), or the sincerity with which an asserted religious belief is held. Indeed, approving some religious claims while deeming others unworthy of accommodation could be "perceived as favoring one religion over another," the very "risk the Establishment Clause was designed to preclude." *Ibid.* The Court, I fear, has ventured into a minefield, cf. *Spencer v. World Vision, Inc.,* 633 F.3d 723, 730 (C.A.9 2010) (O'Scannlain, J., concurring), by its immoderate reading of RFRA. I would confine religious exemptions under that Act to organizations formed "for a religious purpose," "engage[d] primarily in carrying out that religious purpose," and not "engaged ... substantially in the exchange of goods or services for money beyond nominal amounts." See *id.,* at 748 (Kleinfeld, J., concurring). ***

Note: In **Holt v. Hobbs**, 135 S.Ct. 853 (2015), the Supreme Court applied the Religious Land Use and Institutionalized Persons Act (RLUIPA) to unanimously invalidate a state prison grooming policy which prohibited a Muslim prisoner from wearing a half inch beard as required by his religious beliefs. In his opinion for the Court, Justice Alito ruled that the policy (1) substantially burdened the prisoner's exercise of religion, (2) did not further the compelling interest of preventing prisoner's from hiding contraband, and (3) was not the least restrictive means for preventing prisoner's from hiding contraband or disguising their identities.