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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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DAVIS *v.* FEDERAL ELECTION COMMISSION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 07–320. Argued April 22, 2008—Decided June 26, 2008

Federal-law limits on the amount of contributions a House of Representatives candidate and his authorized committee may receive from an individual, and the amount his party may devote to coordinated campaign expenditures, 2 U. S. C. §§441a(a)(1)(A), (a)(3)(A), (c), and (d), normally apply equally to all competitors for a seat and their authorized committees. However, §319(a) of the Bipartisan Campaign Reform Act of 2002 (BCRA), 2 U. S. C. §441a–1(a), part of the so-called "Millionaire's Amendment," fundamentally alters this scheme when, as a result of a candidate's expenditure of personal funds, the "opposition personal funds amount" (OPFA) exceeds $350,000. The OPFA is a statistic comparing competing candidates' personal expenditures and taking account of certain other fundraising. When a "self-financing" candidate's personal expenditure causes the OPFA to pass $350,000, a new, asymmetrical regulatory scheme comes into play. The self-financing candidate remains subject to the normal limitations, but his opponent, the "non-self-financing" candidate, may receive individual contributions at treble the normal limit from individuals who have reached the normal limit on aggregate contributions, and may accept coordinated party expenditures without limit. See §§441a–1(a)(1)(A)–(C). Because calculating the OPFA requires certain information about the self-financing candidate's campaign assets and personal expenditures, §319(b) requires him to file an initial "declaration of intent" revealing the amount of personal funds the candidate intends to spend in excess of $350,000, and to make additional disclosures to the other candidates, their national parties, and the Federal Election Commission (FEC) as his personal expenditures exceed certain benchmarks.

Appellant Davis, a candidate for a House seat in 2004 and 2006

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who lost both times to the incumbent, notified the FEC for the 2006 election, in compliance with §319(b), that he intended to spend $1 million in personal funds. After the FEC informed him it had reason to believe he had violated §319 by failing to report personal expenditures during the 2004 campaign, he filed this suit for a declaration that §319 is unconstitutional and an injunction preventing the FEC from enforcing the section during the 2006 election. The District Court concluded *sua sponte* that Davis had standing, but rejected his claims on the merits and granted the FEC summary judgment.

Held:

1. This Court has jurisdiction to hear Davis' appeal. Pp. 6–10.

(a) Davis has standing to challenge §319(b)'s disclosure requirements. When he filed suit, he had already declared his 2006 candidacy and had been forced by §319(b) to disclose to his opponent that he intended to spend more than $350,000 in personal funds. He also faced the imminent threat that he would have to follow up on that disclosure with further notifications once he passed the $350,000 mark. Securing a declaration that §319(b) is unconstitutional and an injunction against its enforcement would have spared him from making those disclosures and also would have removed the real threat that the FEC would pursue an enforcement action based on alleged §319(b) violations during his 2004 campaign. Davis also has standing to challenge §319(a)'s asymmetrical contribution limits. The standing inquiry focuses on whether the party invoking jurisdiction had the requisite stake in the outcome when the suit was filed, see, *e.g., Friends of Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 180, and a party facing prospective injury has standing where the threatened injury is real, immediate, and direct, see, *e.g., Los Angeles* v. *Lyons*, 461 U. S. 95, 102. Davis faced the requisite injury from §319(a) when he filed suit: He had already declared his candidacy and his intent to spend more than $350,000 of personal funds in the general election campaign whose onset was rapidly approaching. Section 319(a) would shortly burden his personal expenditure by allowing his opponent to receive contributions on more favorable terms, and there was no indication that his opponent would forgo that opportunity. Pp. 6–8.

(b) The FEC's argument that the Court lacks jurisdiction because Davis' claims are moot also fails. In *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc. (WRTL)*, 551 U. S. ___, this Court rejected a very similar claim of mootness, finding that the case "fit comfortably within the established exception to mootness for disputes capable of repetition, yet evading review." *Id.,* at ___. That "exception applies where '(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration; and (2) there is a reasonable

expectation that the same complaining party will be subject to the same action again.' " *Ibid.* First, despite BCRA's command that the case be expedited to the greatest possible extent and Davis' request that his case be resolved before the 2006 election, the case could not be resolved before the 2006 election. See *id.,* at ___. Second, the FEC has conceded that Davis' §319(a) claim would be capable of repetition if he planned to self-finance another bid for a House seat, and he subsequently made a public statement expressing his intent to do so. See *id.,* at ___ . Pp. 8–9.

2. Sections 319(a) and (b) violate the First Amendment. If §319(a)'s elevated contribution limits applied across the board to all candidates, Davis would have no constitutional basis for challenging them. Section 319(a), however, raises the limits only for non-self-financing candidates and only when the self-financing candidate's expenditure of personal funds causes the OPFA threshold to be exceeded. This Court has never upheld the constitutionality of a law that imposes different contribution limits for candidates competing against each other, and it agrees with Davis that this scheme impermissibly burdens his First Amendment right to spend his own money for campaign speech. In *Buckley* v. *Valeo*, 424 U. S. 1, the Court soundly rejected a cap on a candidate's expenditure of personal funds to finance campaign speech, holding that a "candidate . . . has a First Amendment right to . . . vigorously and tirelessly . . . advocate his own election," and that a cap on personal expenditures imposes "a substantial," "clea[r,]" and "direc[t]" restraint on that right, *id.,* at 52–53. It found the cap at issue not justified by "[t]he primary governmental interest" in "the prevention of actual and apparent corruption of the political process," *id.,* at 53, or by "[t]he ancillary interest in equalizing the relative financial resources of candidates competing for elective office," *id.,* at 54. *Buckley* is instructive here. While BCRA does not impose a cap on a candidate's expenditure of personal funds, it imposes an unprecedented penalty on any candidate who robustly exercises that First Amendment right, requiring him to choose between the right to engage in unfettered political speech and subjection to discriminatory fundraising limitations. The resulting drag on First Amendment rights is not constitutional simply because it attaches as a consequence of a statutorily imposed choice. *Id.,* at 54–57, and n. 65, distinguished. The burden is not justified by any governmental interest in eliminating corruption or the perception of corruption, see *id.,* at 53. Nor can an interest in leveling electoral opportunities for candidates of different personal wealth justify §319(a)'s asymmetrical limits, see *id.,* at 56–57. The Court has never recognized this interest as a legitimate objective and doing so would have ominous implications for the voters' authority to evaluate the strengths of candidates

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competing for office. Finally, the Court rejects the Government's argument that §319(a) is justified because it ameliorates the deleterious effects resulting from the tight limits federal election law places on individual campaign contributions and coordinated party expenditures. Whatever this argument's merits as an original matter, it is fundamentally at war with *Buckley*'s analysis of expenditure and contributions limits, which this Court has applied in subsequent cases. Pp. 10–17.

(c) Because §319(a) is unconstitutional, §319(b)'s disclosure requirements, which were designed to implement the asymmetrical contribution limits, are as well. "[C]ompelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment," *Buckley,* 424 U. S., at 64, so the Court closely scrutinizes such requirements, *id.,* at 75. For significant encroachments to survive, there must be "a 'relevant correlation' or 'substantial relation' between the governmental interest and the information required to be disclosed" and the governmental interest must reflect the seriousness of the burden on First Amendment rights. *Ibid.* Given §319(a)'s unconstitutionality, the burden imposed by the §319(b) requirements cannot be justified. P. 18.

501 F. Supp. 2d 22, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, and THOMAS, JJ., joined, and in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined as to Part II. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which SOUTER, GINSBURG, and BREYER, JJ., joined as to Part II. GINSBURG, J., filed an opinion concurring in part and dissenting in part, in which BREYER, J., joined.