

KENNEDY, J., dissenting

SUPREME COURT OF THE UNITED STATES

Nos. 03–1164 and 03–1165

MIKE JOHANNIS, SECRETARY OF AGRICULTURE,
ET AL., PETITIONERS

03–1164

v.

LIVESTOCK MARKETING ASSOCIATION ET AL.

NEBRASKA CATTLEMEN, INC., ET AL., PETITIONERS
03–1165

v.

LIVESTOCK MARKETING ASSOCIATION ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[May 23, 2005]

JUSTICE KENNEDY, dissenting.

I join JUSTICE SOUTER’s dissenting opinion, which demonstrates with persuasive analysis why the speech at issue here cannot meaningfully be considered government speech at all. I would reserve for another day the difficult First Amendment questions that would arise if the government were to target a discrete group of citizens to pay even for speech that the government does “embrace as publicly as it speaks,” *post*, at 11.