

Syllabus

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

Syllabus

JOHANNNS, SECRETARY OF AGRICULTURE, ET AL. *v.*
LIVESTOCK MARKETING ASSOCIATION ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT

No. 03–1164. Argued December 8, 2004—Decided May 23, 2005*

The Beef Promotion and Research Act of 1985 (Beef Act) establishes a federal policy of promoting and marketing beef and beef products. The Secretary of Agriculture has implemented the Act through a Beef Promotion and Research Order (Order), which creates a Cattlemen’s Beef Promotion and Research Board (Beef Board) and an Operating Committee, and imposes an assessment, or “checkoff,” on all sales and importation of cattle. The assessment funds, among other things, beef promotional campaigns approved by the Operating Committee and the Secretary. Respondents, associations whose members pay the checkoff and individuals whose cattle are subject to the checkoff, challenged the program on First Amendment grounds, relying on *United States v. United Foods, Inc.*, 533 U. S. 405, in which this Court invalidated a mandatory checkoff that funded mushroom advertising. The District Court found that the Beef Act and Order unconstitutionally compel respondents to subsidize speech to which they object. Affirming, the Eighth Circuit held that compelled funding of speech may violate the First Amendment even when it is the government’s speech.

Held: Because the beef checkoff funds the Government’s own speech, it is not susceptible to a First Amendment compelled-subsidy challenge. Pp. 5–15.

(a) This Court has sustained First Amendment challenges in “compelled-subsidy” cases, in which the government requires an individ-

*Together with No. 03–1165, *Nebraska Cattlemen, Inc., et al. v. Livestock Marketing Association et al.*, also on certiorari to the same court.

Syllabus

ual to subsidize a private message he disagrees with. See *Keller v. State Bar of Cal.*, 496 U. S. 1; *Abood v. Detroit Bd. of Ed.*, 431 U. S. 209. *Keller* and *Abood* led the Court to sustain a compelled-subsidy challenge to an assessment whose only purpose was to fund mushroom advertising. *United Foods*, *supra*, at 413, 415–416. However, the speech in *United Foods*, *Keller*, and *Abood* was found, or presumed, to be private. The compelled-subsidy cases have consistently respected the principle that compelled support of private speech differs from compelled support of government speech. The Court has generally assumed, though not squarely held, that such funding of government speech does not alone raise First Amendment concerns. Pp. 5–8.

(b) Respondents argue that the speech here is not government speech because it is controlled by nongovernmental entities, *i.e.*, the Beef Board and Operating Committee. In fact, the message is effectively controlled by the Federal Government. Congress and the Secretary have set out the overarching message and some of the campaign’s elements, and have left the development of the remaining details to the Operating Committee, half of whose members are appointed by the Secretary and all of whom are subject to removal by the Secretary. The Secretary also has final approval authority over every word in every promotional campaign, and his subordinates attend and participate in meetings at which proposals are developed. By contrast, in *Keller* the compelled subsidy funded communicative activities that were not prescribed by law or developed under official government supervision. Nor does the Order’s funding mechanism affect the compelled-subsidy analysis. That citizens have no First Amendment right not to fund government speech is no less true when, as here, the funding is achieved through targeted assessments devoted to a program to which some assessed citizens object, rather than through general taxes. The Court need not address respondents’ argument that the advertisements, most of which are credited to “America’s Beef Producers,” give the impression that respondents endorse their message. Neither the Beef Act nor the Order requires attribution of the ads to “America’s Beef Producers” or to anyone else, so neither can be facially invalid on this theory, and the record contains no evidence from which to conclude that the ads’ message would be associated with respondents. Pp. 8–15.

(c) Respondents may proceed with their other challenges to the Beef Act and Order, which the District Court did not reach. P. 15.

335 F. 3d 711, vacated and remanded.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O’CONNOR, THOMAS, and BREYER, JJ., joined. THOMAS, J., and

Syllabus

BREYER, J., filed concurring opinions. GINSBURG, J., filed an opinion concurring in the judgment. KENNEDY, J., filed a dissenting opinion. SOUTER, J., filed a dissenting opinion, in which STEVENS and KENNEDY, JJ., joined.