SUPREME COURT OF THE UNITED STATES

Nos. 03–1164 and 03–1165

MIKE JOHANNS, 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 SCALIA delivered the opinion of the Court.

For the third time in eight years, we consider whether a federal program that finances generic advertising to promote an agricultural product violates the First Amendment. In these cases, unlike the previous two, the dispositive question is whether the generic advertising at issue is the Government's own speech and therefore is exempt from First Amendment scrutiny.

I

A

The Beef Promotion and Research Act of 1985 (Beef Act or Act), 99 Stat. 1597, announces a federal policy of promoting the marketing and consumption of "beef and beef products," using funds raised by an assessment on cattle

sales and importation. 7 U. S. C. §2901(b). The statute directs the Secretary of Agriculture to implement this policy by issuing a Beef Promotion and Research Order (Beef Order or Order), §2903, and specifies four key terms it must contain: The Secretary is to appoint a Cattlemen's Beef Promotion and Research Board (Beef Board or Board), whose members are to be a geographically representative group of beef producers and importers, nominated by trade associations. §2904(1). The Beef Board is to convene an Operating Committee, composed of 10 Beef Board members and 10 representatives named by a federation of state beef councils. §2904(4)(A). The Secretary is to impose a $1-per-head assessment (or "checkoff") on all sales or importation of cattle and a comparable assessment on imported beef products. §2904(8). And the assessment is to be used to fund beef-related projects, including promotional campaigns, designed by the Operating Committee and approved by the Secretary. §§2904(4)(B), (C).

The Secretary promulgated the Beef Order with the specified terms. The assessment is collected primarily by state beef councils, which then forward the proceeds to the Beef Board. 7 CFR §1260.172(a)(5) (2004).[1] The Operating Committee proposes projects to be funded by the checkoff, including promotion and research. §1260.167(a). The Secretary or his designee (see §§2.22(a)(1)(viii)(X), 2.79(a)(8)(xxxii)) approves each project and, in the case of promotional materials, the content of each communication. §§1260.168(e), 1260.169; App. 114, 143.

The Beef Order was promulgated in 1986 on a temporary basis, subject to a referendum among beef producers

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[1] In most cases, only 50 cents per head is remitted to the Beef Board, because the Beef Act and Beef Order allow domestic producers to deduct from their $1 assessment up to 50 cents in voluntary contributions to their state beef councils. 7 U. S. C. §2904(8)(C); 7 CFR §1260.172(a)(3) (2004).

on whether to make it permanent. 7 U. S. C. §§2903, 2906(a). In May 1988, a large majority voted to continue it. Since that time, more than $1 billion has been collected through the checkoff, 132 F. Supp. 2d 817, 820 (SD 2001), and a large fraction of that sum has been spent on promotional projects authorized by the Beef Act—many using the familiar trademarked slogan "Beef. It's What's for Dinner." App. 50. In fiscal year 2000, for example, the Beef Board collected over $48 million in assessments and spent over $29 million on domestic promotion. The Board also funds overseas marketing efforts; market and food-science research, such as evaluations of the nutritional value of beef; and informational campaigns for both consumers and beef producers. See 7 U. S. C. §§2902(6), (9), (15), 2904(4)(B).

Many promotional messages funded by the checkoff (though not all, see App. 52–53) bear the attribution "Funded by America's Beef Producers." *E.g., id.,* at 50–51. Most print and television messages also bear a Beef Board logo, usually a check-mark with the word "BEEF." *E.g.*, *id.,* at 50–52.

B

Respondents are two associations whose members collect and pay the checkoff, and several individuals who raise and sell cattle subject to the checkoff. *Id.,* at 17–19. They sued the Secretary, the Department of Agriculture, and the Board in Federal District Court on a number of constitutional and statutory grounds not before us—in particular, that the Board impermissibly used checkoff funds to send communications supportive of the beef program to beef producers. 132 F. Supp. 2d, at 823. Petitioners in No. 03–1165, a state beef producers' association and two individual producers, intervened as defendants to argue in support of the program. The District Court granted a limited preliminary injunction, which forbade

the continued use of checkoff funds to laud the beef program or to lobby for governmental action relating to the checkoff. *Id.,* at 832.

While the litigation was pending, we held in *United States* v. *United Foods, Inc.,* 533 U. S. 405 (2001), that a mandatory checkoff for generic mushroom advertising violated the First Amendment. Noting that the mushroom program closely resembles the beef program,[2] respondents amended their complaint to assert a First Amendment challenge to the use of the beef checkoff for promotional activity. 207 F. Supp. 2d 992, 996 (SD 2002); App. 30–32. Respondents noted that the advertising promotes beef as a generic commodity, which, they contended, impedes their efforts to promote the superiority of, *inter alia*, American beef, grain-fed beef, or certified Angus or Hereford beef.

After a bench trial, the District Court ruled for respondents on their First Amendment claim. It declared that the Beef Act and Beef Order unconstitutionally compel respondents to subsidize speech to which they object, and rejected the Government's contention that the checkoff survives First Amendment scrutiny because it funds only government speech. 207 F. Supp. 2d, at 1002–1007. The court entered a permanent injunction barring any further collection of the beef checkoff, even from producers willing to pay (allowing continued collection of voluntary checkoffs, the court thought, would require "rewrit[ing]" the Beef Act). *Id.,* at 1007–1008. Believing that the cost of calculating the share of the checkoff attributable to the

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[2] The Department of Agriculture oversees similar programs of promotional advertising, funded by checkoffs, for a number of other agricultural commodities. See 7 CFR §1205.10 *et seq.* (2004) (cotton); §1207.301 *et seq.* (potatoes); §1210.301 *et seq.* (watermelons); §1215.1 *et seq.* (popcorn); §1216.1 *et seq.* (peanuts); §1218.1 *et seq.* (blueberries); §1219.1 *et seq.* (Hass avocados); §1220.101 *et seq.* (soybeans); §1230.1 *et seq.* (pork); §1240.1 *et seq.* (honey); §1250.301 *et seq.* (eggs); §1280.101 *et seq.* (lamb).

compelled subsidy would be too great, the court also declined to order a refund of checkoff funds already collected. *Ibid.* Finally, the court made permanent its earlier injunction against "producer communications" praising the beef program or seeking to influence governmental policy. *Id.,* at 1008. The court did not rule on respondents' other claims, but certified its resolution of the First Amendment claim as final pursuant to Federal Rule of Civil Procedure 54(b). 207 F. Supp. 2d, at 1008.

The Court of Appeals for the Eighth Circuit affirmed. 335 F. 3d 711 (2003). Unlike the District Court, the Court of Appeals did not dispute that the challenged advertising is government speech; instead, it held that government speech status is relevant only to First Amendment challenges to the speech's *content*, not to challenges to its compelled *funding*. See *id.,* at 720–721. Compelled funding of speech, it held, may violate the First Amendment even if the speech in question is the government's. *Ibid.*

We granted certiorari. 541 U. S. 1062 (2004).

II

We have sustained First Amendment challenges to allegedly compelled expression in two categories of cases: true "compelled speech" cases, in which an individual is obliged personally to express a message he disagrees with, imposed by the government; and "compelled subsidy" cases, in which an individual is required by the government to subsidize a message he disagrees with, expressed by a private entity. We have not heretofore considered the First Amendment consequences of government-compelled subsidy of the government's own speech.

We first invalidated an outright compulsion of speech in *West Virginia Bd. of Ed.* v. *Barnette,* 319 U. S. 624 (1943). The State required every schoolchild to recite the Pledge of Allegiance while saluting the American flag, on pain of expulsion from the public schools. We held that the First

Amendment does not "le[ave] it open to public authorities to compel [a person] to utter" a message with which he does not agree. *Id.,* at 634. Likewise, in *Wooley* v. *Maynard,* 430 U. S. 705 (1977), we held that requiring a New Hampshire couple to bear the State's motto, "Live Free or Die," on their cars' license plates was an impermissible compulsion of expression. Obliging people to "use their private property as a 'mobile billboard' for the State's ideological message" amounted to impermissible compelled expression. *Id.,* at 715.

The reasoning of these compelled-speech cases has been carried over to certain instances in which individuals are compelled not to speak, but to subsidize a private message with which they disagree. Thus, although we have upheld state-imposed requirements that lawyers be members of the state bar and pay its annual dues, and that public-school teachers either join the labor union representing their "shop" or pay "service fees" equal to the union dues, we have invalidated the use of the compulsory fees to fund speech on political matters. See *Keller* v. *State Bar of Cal.,* 496 U. S. 1 (1990); *Abood* v. *Detroit Bd. of Ed.,* 431 U. S. 209 (1977). Bar or union speech with such content, we held, was not germane to the regulatory interests that justified compelled membership, and accordingly, making those who disagreed with it pay for it violated the First Amendment. See *Keller, supra,* at 15–16; *Abood, supra,* at 234–235.

These latter cases led us to sustain a compelled-subsidy challenge to an assessment very similar to the beef checkoff, imposed to fund mushroom advertising. *United Foods, supra;* see 335 F. 3d, at 717 ("[W]e agree with the district court that '[t]he beef checkoff is, in all material respects, identical to the mushroom checkoff'" at issue in *United Foods*). Deciding the case on the assumption that the advertising was private speech, not government speech,

see 533 U. S., at 416–417,[3] we concluded that *Abood* and *Keller* were controlling. As in those cases, mushroom producers were obliged by "law or necessity" to pay the checkoff; although *Abood* and *Keller* would permit the mandatory fee if it were "germane" to a "broader regulatory scheme," in *United Foods* the only regulatory purpose was the funding of the advertising. 533 U. S., at 413, 415–416.

In all of the cases invalidating exactions to subsidize speech, the speech was, or was presumed to be, that of an entity other than the government itself. See *Keller*, *supra*, at 11, 15–16; *Abood*, *supra*, at 212–213; *United Foods, supra,* at 416–417; see also *Board of Regents of Univ. of Wis. System* v. *Southworth,* 529 U. S. 217, 229, 230 (2000) (because "[t]he University ha[s] disclaimed that the speech is its own," *Abood* and *Keller* "provide the beginning point for our analysis"); cf. *Rosenberger* v. *Rector and Visitors of Univ. of Va.,* 515 U. S. 819, 851–852 (1995) (O'CONNOR, J., concurring) (university's Student Activities Fund likely does not unconstitutionally compel speech because it "represents not government resources . . . but a fund that simply belongs to the students"). Our compelled-subsidy cases have consistently respected the principle that "[c]ompelled support of a private association is fundamentally different from

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[3] In *United Foods*, the Court distinguished (and the dissent relied on) *Glickman* v. *Wileman Brothers & Elliott, Inc.,* 521 U. S. 457 (1997), which upheld the use of mandatory assessments to fund generic advertising promoting California tree fruit. In *Glickman*, as in *United Foods*, the Government did not argue that the advertising was permissible government speech. See 521 U. S., at 482, n. 2 (SOUTER, J., dissenting) (noting that the Government had waived any such argument). Rather, the Government contended, and we agreed, that compelled support for generic advertising was legitimately part of the Government's "collectivist" centralization of the market for tree fruit. *Id.,* at 475 (opinion of the Court). Here, as in *United Foods,* "there is no broader regulatory system in place" that collectivizes aspects of the beef market unrelated to speech, so *Glickman* is not controlling. 533 U. S., at 415.

compelled support of government." *Abood, supra*, at 259, n. 13 (Powell, J., concurring in judgment). "Compelled support of government"—even those programs of government one does not approve—is of course perfectly constitutional, as every taxpayer must attest. And some government programs involve, or entirely consist of, advocating a position. "The government, as a general rule, may support valid programs and policies by taxes or other exactions binding on protesting parties. Within this broader principle it seems inevitable that funds raised by the government will be spent for speech and other expression to advocate and defend its own policies." *Southworth,* 529 U. S.*,* at 229. We have generally assumed, though not yet squarely held, that compelled funding of government speech does not alone raise First Amendment concerns. See *ibid.; Keller*, *supra*, at 12–13; *Rosenberger*, *supra*, at 833; see also *Wooley, supra*, at 721 (REHNQUIST, J., dissenting).

III

Respondents do not seriously dispute these principles, nor do they contend that, as a general matter, their First Amendment challenge requires them to show only that their checkoff dollars pay for speech with which they disagree. Rather, they assert that the challenged promotional campaigns differ dispositively from the type of government speech that, our cases suggest, is not susceptible to First Amendment challenge. They point to the role of the Beef Board and its Operating Committee in designing the promotional campaigns, and to the use of a mandatory assessment on beef producers to fund the advertising. We consider each in turn.

A

The Secretary of Agriculture does not write ad copy himself. Rather, the Beef Board's promotional campaigns

are designed by the Beef Board's Operating Committee, only half of whose members are Beef Board members appointed by the Secretary. (All members of the Operating Committee are subject to *removal* by the Secretary. 7 CFR §1260.213 (2004).) Respondents contend that speech whose content is effectively controlled by a nongovernmental entity—the Operating Committee—cannot be considered "government speech." We need not address this contention, because we reject its premise: The message of the promotional campaigns is effectively controlled by the Federal Government itself.[4]

The message set out in the beef promotions is from beginning to end the message established by the Federal Government.[5] Congress has directed the implementation of a "coordinated program" of promotion, "including paid advertising, to advance the image and desirability of beef and beef products." 7 U. S. C. §§2901(b), 2902(13). Congress and the Secretary have also specified, in general terms, what the promotional campaigns shall contain, see, *e.g.*, §2904(4)(B)(i) (campaigns "shall . . . take into account" different types of beef products), and what they shall not,

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[4] We therefore need not label the Operating Committee as "governmental" or "nongovernmental." The entity to which assessments are remitted is the Beef Board, all of whose members are appointed by the Secretary pursuant to law. The Operating Committee's only relevant involvement is ancillary—it designs the promotional campaigns, which the Secretary supervises and approves—and its status as a state actor thus is not directly at issue.

[5] The principal dissent suggests that if this is so, then the Government has adopted at best a mixed message, because it also promulgates dietary guidelines that, if followed, would discourage excessive consumption of beef. *Post,* at 8, n. 5 (opinion of SOUTER, J.); see also *post,* at 1 (GINSBURG, J., concurring in judgment). Even if we agreed that the protection of the government-speech doctrine must be forfeited whenever there is inconsistency in the message, we would nonetheless accord the protection here. The beef promotions are perfectly compatible with the guidelines' message of moderate consumption—the ads do not insist that beef is also What's for Breakfast, Lunch, and Midnight Snack.

see, *e.g.*, 7 CFR §1260.169(d) (2004) (campaigns shall not, without prior approval, refer "to a brand or trade name of any beef product"). Thus, Congress and the Secretary have set out the overarching message and some of its elements, and they have left the development of the remaining details to an entity whose members are answerable to the Secretary (and in some cases appointed by him as well).

Moreover, the record demonstrates that the Secretary exercises final approval authority over every word used in every promotional campaign. All proposed promotional messages are reviewed by Department officials both for substance and for wording, and some proposals are rejected or rewritten by the Department. App. 114, 118–121, 274–275. Nor is the Secretary's role limited to final approval or rejection: officials of the Department also attend and participate in the open meetings at which proposals are developed. *Id.,* at 111–112.

This degree of governmental control over the message funded by the checkoff distinguishes these cases from *Keller*. There the state bar's communicative activities to which the plaintiffs objected were not prescribed by law in their general outline and not developed under official government supervision. Indeed, many of them consisted of lobbying the state legislature on various issues. See 496 U. S., at 5, and n. 2. When, as here, the government sets the overall message to be communicated and approves every word that is disseminated, it is not precluded from relying on the government-speech doctrine merely because it solicits assistance from nongovernmental sources in developing specific messages.

B

Respondents also contend that the beef program does not qualify as "government speech" because it is funded by a targeted assessment on beef producers, rather than by

general revenues. This funding mechanism, they argue, has two relevant effects: it gives control over the beef program not to politically accountable legislators, but to a narrow interest group that will pay no heed to respondents' dissenting views, and it creates the perception that the advertisements speak for beef producers such as respondents.

We reject the first point. The compelled-*subsidy* analysis is altogether unaffected by whether the funds for the promotions are raised by general taxes or through a targeted assessment. Citizens may challenge compelled support of private speech, but have no First Amendment right not to fund government speech. And that is no less true when the funding is achieved through targeted assessments devoted exclusively to the program to which the assessed citizens object. Cf. *United States* v. *Lee,* 455 U. S. 252, 260 (1982) ("There is no principled way . . . to distinguish between general taxes and those imposed under the Social Security Act" in evaluating the burden on the right to free exercise of religion). The First Amendment does not confer a right to pay one's taxes into the general fund, because the injury of compelled funding (as opposed to the injury of compelled speech) does not stem from the Government's mode of accounting. Cf. *Bowen* v. *Roy,* 476 U. S. 693, 700 (1986) ("The Free Exercise Clause . . . does not afford an individual a right to dictate the conduct of the Government's internal procedures"); *id.,* at 716–717 (STEVENS, J., concurring in part and concurring in result).

Some of our cases have justified compelled funding of government speech by pointing out that government speech is subject to democratic accountability. See, *e.g., Abood,* 431 U. S., at 259, n. 13 (Powell, J., concurring in judgment); *Southworth,* 529 U. S., at 235. But our references to "traditional political controls," *id.,* at 229, do not signify that the First Amendment duplicates the Appropriations Clause, U. S. Const., Art. I, §9, cl. 7, or that

every instance of government speech must be funded by a line item in an appropriations bill. Here, the beef advertisements are subject to political safeguards more than adequate to set them apart from private messages. The program is authorized and the basic message prescribed by federal statute, and specific requirements for the promotions' content are imposed by federal regulations promulgated after notice and comment. The Secretary of Agriculture, a politically accountable official, oversees the program, appoints and dismisses the key personnel, and retains absolute veto power over the advertisements' content, right down to the wording.[6] And Congress, of course, retains oversight authority, not to mention the ability to reform the program at any time. No more is required.[7]

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[6] Congress also required a referendum among producers before permanently implementing the checkoff, and allowed the Secretary to call another referendum upon demand of a "representative group" comprising 10 percent of cattle producers. 7 U. S. C. §§2906(a)–(b). Even before they amended their complaint to challenge the checkoff as compelled speech, respondents were seeking in this litigation to force such a referendum. See 207 F. Supp. 2d 992, 995 (SD 2002).

[7] The principal dissent finds some "First Amendment affront" in all compelled funding of government speech—and when, it says, "a targeted assessment . . . makes the First Amendment affront more galling, . . . greater care is required to assure that the political process can practically respond to limit the compulsion." *Post,* at 7. That greater care consists, the dissent says, of a requirement that government speech funded by a targeted assessment must identify government as the speaker. *Post,* at 8–9. The dissent cites no prior practice, no precedent, and no authority for this highly refined elaboration—not even anyone who has ever before thought of it. It is more than we think can be found within "Congress shall make no law . . . abridging the freedom of speech." Of course, nothing in the Beef Act or Beef Order prevents the government from identifying itself as sponsor of the ads—much less requires *concealment* of the ads' provenance—so even if it were correct, this theory would not sustain the judgment below, which altogether enjoined the Act and the Order. But the correct focus is not on whether the ads' audience realizes the government is speak-

As to the second point, respondents' argument proceeds as follows: They contend that crediting the advertising to "America's Beef Producers" impermissibly uses not only their money but also their seeming endorsement to promote a message with which they do not agree. Communications cannot be "government speech," they argue, if they are attributed to someone other than the government; and the person to whom they are attributed, when he is, by compulsory funding, made the unwilling instrument of communication, may raise a First Amendment objection.

We need not determine the validity of this argument—which relates to compelled *speech* rather than compelled *subsidy*[8]—with regard to respondents' facial challenge. Since neither the Beef Act nor the Beef Order *requires*

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ing, but on the compelled assessment's purported interference with respondents' First Amendment rights. As we hold today, respondents enjoy no right not to fund government speech—whether by broad-based taxes or targeted assessments, and whether or not the reasonable viewer would identify the speech as the government's. If a viewer would identify the speech as *respondents'*, however, the analysis would be different. See *infra,* at 13–14, and n. 8.

[8]The principal dissent conflates the two concepts into something it describes as citizens' "presumptive autonomy as speakers to decide what to say and what to pay for others to say." *Post,* at 7. As we discuss in the text, there might be a valid objection if "those singled out to pay the tax are closely linked with the expression" (*post,* at 7) in a way that makes them appear to endorse the government message. But this compelled-speech argument (like the *Wooley* and *Barnette* opinions on which it draws) differs substantively from the compelled-subsidy analysis. The latter invalidates an exaction not because being forced to pay for speech that is unattributed violates personal autonomy, but because being forced to fund someone else's private speech unconnected to any legitimate government purpose violates personal autonomy. *Supra*, at 6 (discussing *Keller* and *Abood*). Such a violation does not occur when the exaction funds government speech. Apportioning the burden of funding government operations (including speech) through taxes and other levies does not violate autonomy simply because individual taxpayers feel "singled out" or find the exaction "galling," *post,* at 7, and n. 4.

attribution, neither can be the cause of any possible First Amendment harm. The District Court's order enjoining the enforcement of the Act and the Order thus cannot be sustained on this theory.

On some set of facts, this second theory might (again, we express no view on the point) form the basis for an as-applied challenge—if it were established, that is, that individual beef advertisements were attributed to respondents. The record, however, includes only a stipulated sampling of these promotional materials, see App. 47, and none of the exemplars provides any support for this attribution theory except for the tagline identifying the funding. Respondents apparently presented no other evidence of attribution at trial, and the District Court made no factual findings on the point. Indeed, in the only trial testimony on the subject that any party has identified, an employee of one of the respondent associations said he did *not* think the beef promotions would be attributed to his group.[9] Whether the *individual* respondents who are beef producers would be associated with speech labeled as coming from "America's Beef Producers" is a question on which the trial record is altogether silent. We have only the funding tagline itself, a trademarked term[10] that,

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[9] An employee of respondent Western Organization of Resource Councils (WORC) testified as follows:

"Q When someone would see an ad that says, 'Beef, it's what's for dinner,' do you believe anyone looks at that ad and says that message is coming from WORC?

"A I don't think so.

"Q . . . [D]o you have any basis to actually believe that any of these messages promoted by the Cattlemen's Beef Board are attributed to WORC as an organization?

. . . . . .

"A No, I don't think so." Tr. 46–47.

[10] The phrase "America's Beef Producers" has apparently been trademarked by the Board since 1999, see http://tarr.uspto.gov/servlet/tarr?regser=registration&entry=2352917 (as visited May 20, 2005, and

standing alone, is not sufficiently specific to convince a reasonable factfinder that any particular beef producer, or all beef producers, would be tarred with the content of each trademarked ad.[11] We therefore conclude that on the record before us an as-applied First Amendment challenge to the individual advertisements affords no basis on which to sustain the Eighth Circuit's judgment, even in part.

* * *

Respondents' complaint asserted a number of other grounds for declaring the Beef Act, the Beef Order, or both invalid in their entirety. The District Court, having enjoined the Act and the Order on the basis of the First Amendment, had no occasion to address these other grounds. Respondents may now proceed on these other claims.

The judgment of the Court of Appeals is vacated, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

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available in Clerk of Court's case file), and some promotional materials are attributed to "America's Beef Producers℠." Other promotional materials in the record, however, bear other attributions (such as a notice identifying the Beef Board as the copyright holder, or the apparently untrademarked phrase "Funded by America's Veal Producers through the Beef Checkoff"). App. 52.

[11] "America's Beef Producers" might be thought more plausibly to refer to a particular organization of beef producers, and such an organization might have a valid First Amendment objection if the ads' message were incorrectly attributed to it. Cf. *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.,* 515 U. S. 557, 572–573 (1995). But neither of the respondent groups claims that it would be mistaken for "America's Beef Producers," see n. 9, *supra,* and none of the individual respondents claims to be injured because of his membership in an organization. Rather, respondents claim that "America's Beef Producers" is precise enough to identify the speech as coming from Robert Thullner, John Smith, Ernie Mertz, and the other respondents who are American beef producers.