

## 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**

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UNITED STATES ET AL. *v.* UNITED FOODS, INC.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE SIXTH CIRCUIT

No. 00–276. Argued April 17, 2001– Decided June 25, 2001

The Mushroom Promotion, Research, and Consumer Information Act mandates that fresh mushroom handlers pay assessments used primarily to fund advertisements promoting mushroom sales. Respondent refused to pay the assessment, claiming that it violates the First Amendment. It filed a petition challenging the assessment with the Secretary of Agriculture, and the United States filed an enforcement action in the District Court. After the administrative appeal was denied, respondent sought review in the District Court, which consolidated the two cases. In granting the Government summary judgment, the court found dispositive the decision in *Glickman v. Wileman Brothers & Elliott, Inc.*, 521 U. S. 457, that the First Amendment was not violated when agricultural marketing orders, as part of a larger regulatory marketing scheme, required producers of California tree fruit to pay assessments for product advertising. The Sixth Circuit reversed, holding that *Glickman* did not control because the mandated payments in this case were not part of a comprehensive statutory agricultural marketing program.

*Held:* The assessment requirement violates the First Amendment. Pp. 2–11.

(a) Even viewing the expression here as commercial speech, there is no basis under *Glickman* or this Court's other precedents to sustain the assessments. The First Amendment may prevent the government from, *inter alia*, compelling individuals to pay subsidies for speech to which they object. See *Abood v. Detroit Bd. of Ed.*, 431 U. S. 209; *Keller v. State Bar of Cal.*, 496 U. S. 1. Such precedents provide the beginning point for analysis here. Respondent wants to convey the message that its brand of mushrooms is superior to those grown by other producers, and it objects to being charged for a contrary mes-

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sage which seems to be favored by a majority of producers. First Amendment values are at serious risk if the government can compel a citizen or group of citizens to subsidize speech on the side that it favors; and there is no apparent principle distinguishing out of hand minor debates about whether a branded mushroom is better than just any mushroom. Thus, the compelled funding here must pass First Amendment scrutiny. Pp. 3–5.

(b) The program sustained in *Glickman* differs from the one at issue here in a fundamental respect: The mandated assessments for speech in that case were ancillary to a more comprehensive program restricting marketing autonomy. This Court stressed in *Glickman* that the entire regulatory program must be considered in resolving a case. There, California tree fruits were marketed under detailed marketing orders that had displaced competition to such an extent that they had an antitrust exemption; the Court presumed that the producers compelled to contribute funds for cooperative advertising were bound together and required by statute to market their products according to cooperative rules. Those important features are not present here. Most of the funds at issue are used for generic advertising; and there are no marketing orders regulating mushroom production and sales, no antitrust exemption, and nothing preventing individual producers from making their own marketing decisions. Mushroom growers are not forced to associate as a group that makes cooperative decisions. Although respondent is required simply to support speech by others, not to utter speech itself, that mandated support is contrary to the First Amendment principles set forth in cases involving expression by groups which include persons who object to the speech but, nevertheless, must remain group members by law or necessity. See, *e.g.*, *Abood*, *supra*, *Keller*, *supra*. Properly applied, *Abood*'s rule protecting against compelled assessments for some speech requires this scheme to be invalidated. Before addressing whether a conflict with freedom of belief exists, the threshold inquiry must be whether there is some state imposed obligation making group membership less than voluntary; for it is only the overriding associational purpose which allows any compelled subsidy for speech in the first place. In *Abood*, *Keller*, and *Glickman*, the objecting members were required to associate for purposes other than the compelled subsidies for speech. Here, however, the only program the Government contends the assessments serve is the very advertising scheme in question. Were it sufficient to say speech is germane to itself, *Abood*'s and *Keller*'s limits would be empty of meaning and significance. No corollary to *Glickman*'s cooperative marketing structure exists here; the expression respondent is required to support is not germane to an association's purpose independent from the speech

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itself; and *Abood's* rationale extends to the party who objects to the compelled support for this speech. There is also no suggestion here that the assessments are necessary to make voluntary advertisements nonmisleading for consumers. *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U. S. 626, distinguished. Because the Government did not raise in the Sixth Circuit its theory that this case is permissible government speech, this Court will not entertain that argument here. Pp. 5–11.

197 F. 3d 221, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, SCALIA, SOUTER, and THOMAS, JJ., joined. STEVENS, J., and THOMAS, J., filed concurring opinions. BREYER, J., filed a dissenting opinion, in which GINSBURG, J., joined, and in which O'CONNOR, J., joined as to Parts I and III.