SUPREME COURT OF THE UNITED STATES

No. 00–276

UNITED STATES AND DEPARTMENT OF AGRICULTURE, PETITIONERS *v.* UNITED FOODS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June 25, 2001]

JUSTICE STEVENS, concurring.

JUSTICE BREYER has correctly noted that the program at issue in this case, like that in *Glickman* v. *Wileman Brothers & Elliott, Inc.,* 521 U. S. 457 (1997), "does not compel speech itself; it compels the payment of money." *Post,* at 7–8 (dissenting opinion). This fact suffices to distinguish these compelled subsidies from the compelled speech in cases like *West Virginia Bd. of Ed.* v. *Barnette,* 319 U. S. 624 (1943), and *Wooley* v. *Maynard*, 430 U. S. 705 (1977). It does not follow, however, that the First Amendment is not implicated when a person is forced to subsidize speech to which he objects. *Keller* v. *State Bar of Cal.*, 496 U. S. 1, 13–14 (1990). As we held in *Glickman, Keller*, and a number of other cases, such a compelled subsidy is permissible when it is ancillary, or "germane," to a valid cooperative endeavor. The incremental impact on the liberty of a person who has already surrendered far greater liberty to the collective entity (either voluntarily or as a result of permissible compulsion) does not, in my judgment, raise a significant constitutional issue if it is ancillary to the main purpose of the collective program.

This case, however, raises the open question whether such compulsion is constitutional when nothing more than commercial advertising is at stake. The naked imposition

of such compulsion, like a naked restraint on speech itself, seems quite different to me.* We need not decide whether other interests, such as the health or artistic concerns mentioned by JUSTICE BREYER, *post*, at 10, might justify a compelled subsidy like this, but surely the interest in making one entrepreneur finance advertising for the benefit of his competitors, including some who are not required to contribute, is insufficient.

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*The Court has held that the First Amendment is implicated by government regulation of contributions and expenditures for political purposes. *Buckley* v. *Valeo,* 424 U. S. 1 (1976) *(per curiam).* Although it by no means follows that the reasoning in such cases would apply to the regulation of expenditures for advertising, I think it clear that government compulsion to finance objectionable speech imposes a greater restraint on liberty than government regulation of money used to subsidize the speech of others. Even in the commercial speech context, I think it entirely proper for the Court to rely on the First Amendment when evaluating the significance of such compulsion.