

GINSBURG, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

Nos. 03–1164 and 03–1165

MIKE JOHANNNS, 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 GINSBURG, concurring in the judgment.

I resist ranking the promotional messages funded under the Beef Promotion and Research Act of 1985, 7 U. S. C. §2901 *et seq.*, but not attributed to the Government, as government speech, given the message the Government conveys in its own name. See, *e.g.*, U. S. Dept. of Health and Human Services and U. S. Dept. of Agriculture, Dietary Guidelines for Americans 2005, pp. 69, 30, available at <http://www.healthierus.gov/dietaryguidelines/dga2005/document> (as visited May 18, 2005, and available in Clerk of Court’s case file) (noting that “[*t*]rans fatty acids . . . are present in foods that come from ruminant animals (*e.g.*, cattle and sheep)” and recommending that Americans “[l]imit intake of fats and oils high in saturated and/or *trans* fatty acids”); *post*, at 9, n. 7 (SOUTER, J., dissenting). I remain persuaded, however, that the assessments in these cases, as in *United States v. United Foods, Inc.*, 533 U. S. 405 (2001), and *Glickman v. Wileman*

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Brothers & Elliott, Inc., 521 U. S. 457 (1997), qualify as permissible economic regulation. See *United Foods*, 533 U. S., at 425 (BREYER, J., dissenting). For that reason, I concur in the judgment.