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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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DAVENPORT ET AL. *v*. WASHINGTON EDUCATION ASSOCIATION

CERTIORARI TO THE SURPEME COURT OF WASHINGTON

No. 05–1589. Argued January 10, 2007—Decided June 14, 2007*

The National Labor Relations Act permits States to regulate their labor relationships with public employees. Many States authorize public-sector unions to negotiate agency-shop agreements that entitle a union to levy fees on employees who are not union members but whom the union represents in collective bargaining. However, the First Amendment prohibits public-sector unions from using objecting nonmembers' fees for ideological purposes not germane to the union's collective-bargaining duties, *Abood* v. *Detroit Bd. of Ed.*, 431 U. S. 209, 235–236, and such unions must therefore observe various procedural requirements to ensure that an objecting nonmember can keep his fees from being used for such purposes, *Teachers* v. *Hudson*, 475 U. S. 292, 304–310. Washington State allows public-sector unions to charge nonmembers an agency fee equivalent to membership dues and to have the employer collect that fee through payroll deductions. An initiative approved by state voters (hereinafter §760) requires a union to obtain the nonmembers' affirmative authorization before using their fees for election-related purposes. Respondent, a public-sector union, sent a "*Hudson* packet" to all nonmembers twice a year detailing their right to object to the use of fees for nonchargeable expenditures; respondent held any disputed fees in escrow until the *Hudson* process was complete. In separate lawsuits, petitioners alleged that respondent had failed to obtain the affirmative authorization required by §760 before spending nonmembers' agency fees for electoral purposes. In No. 05–1657, the trial court found a §760 vio-

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*Together with No. 05–1657, *Washington* v. *Washington Education Association,* also on certiorari to the same court.

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lation and awarded the State monetary and injunctive relief. In No. 05–1589, another judge held that §760 provided a private right of action, certified a class of nonmembers, and stayed the proceedings pending interlocutory appeal. The State Supreme Court held that although a nonmember's failure to object after receiving the *Hudson* packet did not satisfy §760's affirmative-authorization requirement, that requirement violated the First Amendment.

Held: It does not violate the First Amendment for a State to require its public-sector unions to receive affirmative authorization from a nonmember before spending that nonmember's agency fees for election-related purposes. Pp. 5–13.

(a) It is undeniably unusual for a government agency to give a private entity the power to tax government employees. The notion that §760's modest limitation upon that extraordinary benefit violates the First Amendment is counterintuitive, because it is undisputed that Washington could have restricted public-sector agency fees to the portion of union dues devoted to collective bargaining, or even eliminated them entirely. Washington's far less restrictive limitation on respondent's authorization to exact money from government employees is of no greater constitutional concern. P. 5.

(b) The State Supreme Court extended this Court's agency-fee cases well beyond their proper ambit in concluding that those cases, having balanced the constitutional rights of unions and nonmembers, required a nonmember to shoulder the burden of objecting before a union can be barred from spending his fees for purposes impermissible under *Abood*. The agency-fee cases did not balance constitutional rights in such a manner because unions have no constitutional entitlement to nonmember-employees' fees. The Court has never suggested that the First Amendment is implicated whenever governments limit a union's entitlement to agency fees above and beyond what *Abood* and *Hudson* require. The constitutional floor for unions' collection and spending of agency fees is not also a constitutional ceiling for state-imposed restrictions. *Hudson*'s admonition that "'dissent is not to be presumed,'" 475 U. S., at 306, n. 16, means only that it would be improper for a court to enjoin the expenditures of all nonmembers' agency fees when a narrower remedy could satisfy statutory or constitutional limitations. Pp. 5–7.

(c) Contrary to respondent's argument, §760 is not unconstitutional under this Court's campaign-finance cases. For First Amendment purposes, it is immaterial that §760 restricts a union's use of funds only after they are within the union's possession. The fees are in the union's possession only because Washington and its union-contracting government agencies have compelled their employees to pay those fees. The campaign-finance cases deal instead with gov-

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ernmental restrictions on how a regulated entity may spend money that has come into its possession without such coercion. Pp. 7–8.

(d) While content-based speech regulations are presumptively invalid, see, *e.g., R. A. V.* v. *St. Paul*, 505 U. S. 377, 382, strict scrutiny is unwarranted when the risk that the government may drive ideas or viewpoints from the marketplace is attenuated, such as when the government acts in a capacity other than as regulator. Thus, the government can make content-based distinctions when subsidizing speech, see, *e.g., Regan* v. *Taxation With Representation of Wash.*, 461 U. S. 540, 548–550, and can exclude speakers based on reasonable, viewpoint-neutral subject-matter grounds when permitting speech on government property that is a nonpublic forum, see, *e.g., Cornelius* v. *NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 799–800, 806. The principle underlying those cases is applicable here. Washington voters did not impermissibly distort the marketplace of ideas when they placed a reasonable, viewpoint-neutral limitation on the State's authorization. They were seeking to protect the integrity of the election process, and their restriction was thus limited to the state-created harm that they sought to remedy. The First Amendment did not compel them to limit public-sector unions' extraordinary entitlement to nonmembers' agency fees more broadly than necessary to vindicate that concern. Pp. 8–11.

(e) Section 760 is constitutional as applied to public-sector unions. There is no need in these cases to consider its application to private-sector unions. Pp. 11–13.

No. 05–1589 and No. 05–1657, 156 Wash. 2d 543, 130 P. 3d 352, vacated and remanded.

SCALIA, J., delivered the opinion of the Court, Parts I and II–A and the second paragraph of footnote 2 of which were unanimous, and the remainder of which was joined by STEVENS, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ. BREYER, J., filed an opinion concurring in part and concurring in the judgment, in which ROBERTS, C. J., and ALITO, J., joined.