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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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ARKANSAS EDUCATIONAL TELEVISION COMMISSION *v.* FORBES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 96–779. Argued October 8, 1997– Decided May 18, 1998

Petitioner Arkansas Educational Television Commission (AETC), a state-owned public television broadcaster, sponsored a debate between the major party candidates for the 1992 election in Arkansas' Third Congressional District. When AETC denied the request of respondent Forbes, an independent candidate with little popular support, for permission to participate in the debate, Forbes filed this suit, claiming, *inter alia*, that he was entitled to participate under the First Amendment. The jury made express findings that Forbes' exclusion had not been influenced by political pressure or disagreement with his views. The District Court entered judgment for AETC. The Eighth Circuit reversed, holding that the debate was a public forum to which all ballot-qualified candidates had a presumptive right of access. Applying strict scrutiny, the court determined that AETC's assessment of Forbes' "political viability" was neither a compelling nor a narrowly tailored reason for excluding him.

Held: AETC's exclusion of Forbes from the debate was consistent with the First Amendment. Pp. 4–16.

(a) Unlike most other public television programs, candidate debates are subject to scrutiny under this Court's public forum doctrine. Having first arisen in the context of streets and parks, the doctrine should not be extended in a mechanical way to the different context of television broadcasting. Broad rights of access for outside speakers would be antithetical, as a general rule, to the editorial discretion that broadcasters must exercise to fulfill their journalistic purpose and statutory obligations. For two reasons, however, candidate debates present the narrow exception to the rule. First, unlike AETC's other broadcasts, the debate was by design a forum for candidates' political

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speech. Consistent with the long tradition of such debates, AETC's implicit representation was that the views expressed were those of the candidates, not its own. The debate's very purpose was to allow the expression of those views with minimal intrusion by the broadcaster. Second, candidate debates are of exceptional significance in the electoral process. Deliberation on candidates' positions and qualifications is integral to our system of government, and electoral speech may have its most profound and widespread impact when it is disseminated through televised debates. Thus, the special characteristics of candidate debates support the conclusion that the AETC debate was a forum of some type. The question of what type must be answered by reference to this Court's public forum precedents. Pp. 4–9.

(b) For the Court's purposes, it will suffice to employ the categories of speech fora already established in the case law. The Court has identified three types of fora: the traditional public forum, the public forum created by government designation, and the nonpublic forum. *Cornelius* v. *NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 802. Traditional public fora are defined by the objective characteristics of the property, such as whether, "by long tradition or by government fiat," the property has been "devoted to assembly and debate." *Perry Ed. Assn.*, 460 U. S., at 45. The government can exclude a speaker from a traditional public forum only when the exclusion is necessary to serve a compelling state interest and is narrowly drawn to achieve that interest. *Cornelius, supra,* at 800. Designated public fora are created by purposeful governmental action opening a nontraditional public forum for expressive use by the general public or by a particular class of speakers. *E.g., International Soc. for Krishna Consciousness, Inc.* v. *Lee,* 505 U. S. 672, 678 *(ISKCON).* If the government excludes a speaker who falls within the class to which such a forum is made generally available, its action is subject to strict scrutiny. *E.g., Cornelius, supra,* at 802. Property that is not a traditional public forum or a designated public forum is either a nonpublic forum or not a forum at all. *ISKCON, supra,* at 678–679. Access to a nonpublic forum can be restricted if the restrictions are reasonable and are not an effort to suppress expression merely because public officials oppose the speaker's views. *Cornelius, supra,* at 800. Pp. 9–10.

(c) The AETC debate was a nonpublic forum. The parties agree that it was not a traditional public forum, and it was not a designated public forum under this Court's precedents. Those cases demonstrate, *inter alia,* that the government does not create a designated public forum when it does no more than reserve eligibility for access to a forum to a particular class of speakers, whose members must then, as individuals, "obtain permission," *Cornelius,* 473 U. S., at 804,

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to use it. Contrary to the Eighth Circuit's assertion, AETC did not make its debate generally available to candidates for the congressional seat at issue. Instead, it reserved eligibility for participation to candidates for that seat (as opposed to some other seat), and then made candidate-by-candidate determinations as to which of the eligible candidates would participate in the debate. Such "selective access," unsupported by evidence of a purposeful designation for public use, does not create a public forum, but indicates that the debate was a nonpublic forum. *Id.*, at 805. Pp. 10–14.

(d) AETC's decision to exclude Forbes was a reasonable, viewpoint-neutral exercise of journalistic discretion consistent with the First Amendment. The record demonstrates beyond dispute that Forbes was excluded not because of his viewpoint, but because he had not generated appreciable public interest. There is no serious argument that AETC did not act in good faith in this case. Pp. 14–16.

93 F. 3d 497, reversed.

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