

may be excluded from the first and second categories only for a “compelling” governmental interest, whereas exclusion from the third category need only be “reasonable.”

The Court held that a school system did not create a limited public forum by opening an interschool mail system to use by selected civic groups “that engage in activities of interest and educational relevance to students,” and that, in any event, if a limited public forum had thereby been created a teachers union rivaling the exclusive bargaining representative could still be excluded as not being “of a similar character” to the civic groups.<sup>1441</sup> Less problematic was the Court’s conclusion that utility poles and other municipal property did not constitute a public forum for the posting of signs.<sup>1442</sup> More problematic was the Court’s conclusion that the Combined Federal Campaign, the Federal Government’s forum for coordinated charitable solicitation of federal employees, is not a limited public forum. Exclusion of various advocacy groups from participation in the Campaign was upheld as furthering “reasonable” governmental interests in offering a forum to “traditional health and welfare charities,” avoiding the appearance of governmental favoritism of particular groups or viewpoints, and avoiding disruption of the federal workplace by controversy.<sup>1443</sup> The Court pinpointed the government’s intention as the key to whether a public forum has been created: “The government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a non-traditional forum for public discourse.”<sup>1444</sup> Under this categorical approach, the government has wide discretion in main-

<sup>1441</sup> *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37 (1983). This was a 5–4 decision, with Justice White’s opinion of the Court being joined by Chief Justice Burger and by Justices Blackmun, Rehnquist, and O’Connor, and with Justice Brennan’s dissent being joined by Justices Marshall, Powell, and Stevens. See also *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260 (1988) (student newspaper published as part of journalism class is not a public forum).

<sup>1442</sup> *City Council v. Taxpayers for Vincent*, 466 U.S. 789 (1984) (upholding an outright ban on use of utility poles for signs). The Court noted that “it is of limited utility in the context of this case to focus on whether the tangible property itself should be deemed a public forum.” *Id.* at 815 n.32.

<sup>1443</sup> *Cornelius v. NAACP Legal Defense and Educational Fund*, 473 U.S. 788 (1985). The precedential value of *Cornelius* may be subject to question, because it was decided by 4–3 vote, the non-participating Justices (Marshall and Powell) having dissented in *Perry*. Justice O’Connor wrote the opinion of the Court, joined by Chief Justice Burger and by Justices White and Rehnquist. Justice Blackmun, joined by Justice Brennan, dissented, and Justice Stevens dissented separately.

<sup>1444</sup> 473 U.S. at 802. Justice Blackmun criticized “the Court’s circular reasoning that the CFC is not a limited public forum because the Government intended to limit the forum to a particular class of speakers.” *Id.* at 813–14.