/* The full text of the US Supreme Court Opinion in City of Cincinatti vs. Discovery Network follows. This case considers the legality of the prohibition of free standing newsracks for "shoppers" (newspapers consisting of ads) on public property. */

SUPREME COURT OF THE UNITED STATES

CITY OF CINCINNATI v. DISCOVERY NETWORK, INC., et al.

certiorari to the united states court of appeals for the sixth circuit

No. 91-1200. Argued November 9, 1992
Decided March 24, 1993

Stevens, J., delivered the opinion of the Court, in which Blackmun, O'Connor, Scalia, Kennedy, and Souter, JJ., joined. Blackmun, J., filed a concurring opinion. Rehnquist, C. J., filed a dissenting opinion, in which White and Thomas, JJ., joined.

Justice Stevens delivered the opinion of the Court.

Motivated by its interest in the safety and attractive appearance of its streets and sidewalks, the city of Cincinnati has refused to allow respondents to distribute their commercial publications through freestanding newsracks located on public property. The question presented is whether this refusal is consistent with the First Amendment. In agreement with the District Court and the Court of Appeals, we hold that it is not.

I

Respondent, Discovery Network, Inc., is engaged in the business of providing adult educational, recreational, and social programs to individuals in the Cincinnati area. It advertises those programs in a free magazine that it publishes nine times a year. Although these magazines consist primarily of promotional material pertaining to Discovery's courses, they also include some information about current events of general interest. Approximately one third of these magazines are distributed through the 38 newsracks that the city authorized Discovery to place on public property in 1989.

/* Note that the Court will go to great lengths to point out the facts in these cases. The point that the Court is making here is

that fully a third of this publication is distributed on city property and that since the "relative worth" of news paper or other literary material (other than that which is judged pornographic) is not for the state to judge. */

Respondent, Harmon Publishing Company, Inc., publishes and distributes a free magazine that advertises real estate for sale at various locations throughout the United States. The magazine contains listings and photographs of available residential properties in the greater Cincinnati area, and also includes some information about interest rates, market trends, and other real estate matters. In 1989 Harmon received the city's permission to install 24 newsracks at approved locations. About 15% of its distribution in the Cincinnati area is through those devices.

/* Again, although the publication is predominated by "ads" these publications are entitled to the same protection as more conventional media. One of the things which the Court does not state (perhaps it is not part of the record) is that common experience shows that "free" classified ad newspapers and "free" real estate listings are extremely popular reading. In fact, "Shoppers" which have huge classified advertising sections for which there is a charge are best sellers and serve a vital service. People are very interested in buying, selling and swapping. Such publications are clearly as important "news" as any other publication to an interested reader. The fact that the New York Times or the Wall Street Journal carry ads is no more important to determining if they are subject to being part of the "press" and the protections of the first amendment than these magazines incidentally carrying news. Even the lonely phampleteer or someone making newsletters on carbon paper is part of the "marketplace of ideas" and entitled to First Amendment protection. */

In March 1990, the city's Director of Public Works notified each of the respondents that its permit to use dispensing devices on public property was revoked, and ordered the newsracks removed within 30 days. Each notice explained that respondent's publication was a "commercial handbill" within the meaning of 714-1-C of the Municipal Code and therefore 714-23 of the Code prohibited its distribution on public property. Respondents were granted administrative hearings and review by the Sidewalk Appeals Committee. Although the Committee did not modify the city's position, it agreed to allow the dispensing devices to remain in place pending a judicial determination of the constitutionality of its prohibition. Respondents then commenced this litigation in the United States District Court

for the Southern District of Ohio.

After an evidentiary hearing the District Court concluded that "the regulatory scheme advanced by the City of Cincinnati completely prohibiting the distribution of commercial handbills on the public right of way violates the First Amendment." The court found that both publications were -commercial speech- entitled to First Amendment protection because they concerned lawful activity and were not misleading. While it recognized that a city "may regulate publication dispensing devices pursuant to its substantial interest in promoting safety and esthetics on or about the public right of way," the District Court held, relying on Board of Trustees of State Univ. of New York v. Fox, 492 U. S. 469 (1989), that the city had the burden of establishing "a reasonable `fit' between the legislature's ends and the means chosen to accomplish those ends." App. to Pet. for Cert. 23a. (quoting Fox, 492 U. S., at 480). It explained that the -fit- in this case was unreasonable because the number of newsracks dispensing commercial handbills was -minute- compared with the total number (1,500-2,000) on the public right of way, and because they affected public safety in only a minimal way. Moreover, the practices in other communities indicated that the City's safety and esthetic interests could be adequately protected "by regulating the size, shape, number or placement of such devices." App. to Pet. for Cert. 24a.

/* An outright ban is very rarely going to be accepted as a reasonable, time, place or manner restriction, if ever. */

On appeal, the city argued that since a number of courts had held that a complete ban on the use of newsracks dispensing traditional newspapers would be unconstitutional, and that the "Constitution . . . accords a lesser protection to commercial speech than to other constitutionally guaranteed expression," Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York, 447 U. S. 557, 563 (1980), its preferential treatment of newspapers over commercial publications was a permissible method of serving its legitimate interest in ensuring safe streets and regulating visual blight. The Court of Appeals disagreed, holding that the lesser status of commercial speech is relevant only when its regulation was designed either to prevent false or misleading advertising, or to alleviate distinctive adverse effects of the specific speech at issue. Because Cincinnati sought to regulate only the -manner- in which respondents' publications were distributed, as opposed to their content or any harm caused by their content, the court reasoned that respondents' publications had -high value- for purposes of

the Fox -reasonable fit-test. 946 F. 2d, at 471 (italics omitted). Applying that test, the Court of Appeals agreed with the District Court that the burden placed on speech "cannot be justified by the paltry gains in safety and beauty achieved by the ordinance." Ibid. The importance of the Court of Appeals decision, together with the dramatic growth in the use of newsracks throughout the country, prompted our grant of certiorari. 503 U. S. ___ (1992).

II

There is no claim in this case that there is anything unlawful or misleading about the contents of respondents' publications. Moreover, respondents do not challenge their characterization as -commercial speech.- Nor do respondents question the substantiality of the city's interest in safety and esthetics. It was, therefore, proper for the District Court and the Court of Appeals to judge the validity of the city's prohibition under the standard we set forth in Central Hudson and Fox. It was the city's burden to establish a -reasonable fit- between its legitimate interests in safety and esthetics and its choice of a limited and selective prohibition of newsracks as the means chosen to serve those interests.

There is ample support in the record for the conclusion that the city did not -establish the reasonable fit we require.- Fox, 492 U. S., at 480. The ordinance on which it relied was an outdated prohibition against the distribution of any commercial handbills on public property. It was enacted long before any concern about newsracks developed. Its apparent purpose was to prevent the kind of visual blight caused by littering, rather than any harm associated with permanent, freestanding dispensing devices. The fact that the city failed to address its recently developed concern about newsracks by regulating their size, shape, appearance, or number indicates that it has not -carefully calculated- the costs and benefits associated with the burden on speech imposed by its prohibition. The benefit to be derived from the removal of 62 newsracks while about 1,500-2,000 remain in place was considered -minute- by the District Court and -paltry- by the Court of Appeals. We share their evaluation of the -fit- between the city's goal and its method of achieving it.

In seeking reversal, the city argues that it is wrong to focus attention on the relatively small number of newsracks affected by its prohibition, because the city's central concern is with the overall number of newsracks on its sidewalks, rather than with the unattractive appearance of a handful of dispensing

devices. It contends, first, that a categorical prohibition on the use of newsracks to disseminate commercial messages burdens no more speech than is necessary to further its interest in limiting the number of newsracks; and, second, that the prohibition is a valid "time, place, and manner" regulation because it is content-neutral and leaves open ample alternative channels of communication. We consider these arguments in turn.

III

The city argues that there is a close fit between its ban on newsracks dispensing -commercial handbills- and its interest in safety and esthetics because every decrease in the number of such dispensing devices necessarily effects an increase in safety and an improvement in the attractiveness of the cityscape. In the city's view, the prohibition is thus entirely related to its legitimate interests in safety and esthetics.

We accept the validity of the city's proposition, but consider it an insufficient justification for the discrimination against respondents' use of newsracks that are no more harmful than the permitted newsracks, and have only a minimal impact on the overall number of news- racks on the city's sidewalks. The major premise supporting the city's argument is the proposition that commercial speech has only a low value. Based on that premise, the city contends that the fact that assertedly more valuable publications are allowed to use newsracks does not undermine its judgment that its esthetic and safety interests are stronger than the interest in allowing commercial speakers to have similar access to the reading public.
/* The Court need not have accepted the city's proffer of proof that a city devoid of newspaper racks is a prettier city than one that has newsracks. Perhaps since the majority felt that this was a case in which the city was so far out of line that it did not matter is not good as a precedent for the future since a future court may find that cities have a legitimate esthetic interest in preventing the distribution of printed material. (Ouch.) */

We cannot agree. In our view, the city's argument attaches more importance to the distinction between commercial and noncommercial speech than our cases warrant and seriously underestimates the value of commercial speech.

This very case illustrates the difficulty of drawing bright lines that will clearly cabin commercial speech in a distinct category. For respondents' publications share important characteristics with the publications that the city classifies

as -newspapers.- Particularly, they are -commercial handbills- within the meaning of 714-1-C of the city's Code because they contain advertising, a feature that apparently also places ordinary newspapers within the same category. Separate provisions in the code specifically authorize the distribution of -newspapers- on the public right of way, but that term is not defined. Presumably, respondents' publications do not qualify as newspapers because an examination of their content discloses a higher ratio of advertising to other text, such as news and feature stories, than is found in the exempted publications. Indeed, Cincinnati's City Manager has determined that publications that qualify as newspapers and therefore can be distributed by newsrack are those that are published daily and or weekly and -primarily presen[t] coverage of, and commentary on, current events.- App. 230 (emphasis added).

The absence of a categorical definition of the difference between -newspapers' and -commercial handbills- in the city's Code is also a characteristic of our opinions considering the constitutionality of regulations of commercial speech. Fifty years ago, we concluded that the distribution of a commercial handbill was unprotected by the First Amendment, even though half of its content consisted of political protest. Valentine v. Chrestensen, 316 U. S. 52 (1942). A few years later, over Justice Black's dissent, we held that the -commercial feature- of door-to-door solicitation of magazine subscriptions was a sufficient reason for denying First Amendment protection to that activity. Breard v. Alexandria, 341 U. S. 622 (1951). Subsequent opinions, however, recognized that important commercial attributes of various forms of communication do not qualify their entitlement to constitutional protection. Thus, in Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council, Inc., 425 U. S. 748 (1976), we explained:

We begin with several propositions that already are settled or beyond serious dispute. It is clear, for example, that speech does not lose its First Amendment protection because money is spent to project it, as in a paid advertisement of one form or another. Buckley v. Valeo, 424 U. S. 1, 35-59 (1976); Pittsburgh Press Co. v. Human Relations Comm'n, 413 U.S., at 384; New York Times Co. v. Sullivan, 376 U.S., at 266. Speech likewise is protected even though it is carried in a form that is `sold' for profit, Smith v. California, 361 U. S. 147, 150 (1959) (books); Joseph Burstyn, Inc. v. Wilson, 343 U. S. 495, 501 (1952) (motion pictures); Murdock v. Pennsylvania, 319 U.S., at 111 (religious literature), and even though it may involve a solicitation to purchase or otherwise pay or contribute money. New York Times Co. v. Sullivan, supra; NAACP v. Button, 371 U.

S. 415, 429 (1963); Jamison v. Texas, 318 U. S., at 417; Cantwell v. Connecticut, 310 U. S. 296, 306-307 (1940).

-If there is a kind of commercial speech that lacks all First Amendment protection, therefore it must be distinguished by its content. Yet the speech whose content deprives it of protection cannot simply be speech on a commercial subject. No one would contend that our pharmacist may be prevented from being heard on the subject of whether, in general, pharmaceutical prices should be regulated, or their advertisement forbidden. Nor can it be dispositive that a commercial advertisement is noneditorial, and merely reports a fact. Purely factual matter of public interest may claim protection. Bigelow v. Virginia, 421 U. S., at 822; Thornhill v. Alabama, 310 U. S. 88, 102 (1940).- Id., at 761-762. We then held that even speech that does no more than propose a commercial transaction is protected by the First Amendment. Id., at 762.

In later opinions we have stated that speech proposing a commercial transaction is entitled to lesser protection than other constitutionally guaranteed expression, see Ohralik v. Ohio State Bar Assn., 436 U. S. 447, 455-456 (1978). We have also suggested that such lesser protection was appropriate for a somewhat larger category of commercial speech--that is, expression related solely to the economic interests of the speaker and its audience.- Central Hudson Gas & Elec. Corp. v. Public Service Comm'n of New York, 447 U. S., at 561. We did not, however, use that definition in either Bolger v. Youngs Drug Products, 463 U. S. 60 (1983), or in Board of Trustees of State Univ. of New York v. Fox, 492 U. S. 469 (1989).

In the Bolger case we held that a federal statute prohibiting the mailing of unsolicited advertisements for contraceptives could not be applied to the appellee's promotional materials. Most of the appellee's mailings consisted primarily of price and quantity information, and thus fell "within the core notion of commercial speech-`speech which does no more than propose a commercial transaction."' Bolger, 463 U. S., at 66 (quoting Virginia Pharmacy, 425 U. S., at 762, in turn quoting Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations, 413 U. S. 376, 385 (1973)). Relying in part on the appellee's economic motivation, the Court also answered the "closer question- about the proper label for informational pamphlets that were concededly advertisements referring to a specific product, and concluded that they also were -commercial speech." 463 U. S., at 66-67. It is noteworthy that in reaching that conclusion we did not simply apply the broader definition

of commercial speech advanced in Central Hudson- a definition that obviously would have encompassed the mailings- but rather "examined [them] carefully to ensure that speech deserving of greater constitutional protection is not inadvertently suppressed." 463 U. S., at 66. In Fox, we described the category even more narrowly, by characterizing the proposal of a commercial transaction as "the test for identifying commercial speech." 492 U. S., at 473-474 (emphasis added).

Under the Fox test it is clear that much of the material in ordinary newspapers is commercial speech and, conversely, that the editorial content in respondents' promotional publications is not what we have described as core commercial speech. There is no doubt a -common sense- basis for distinguishing between the two, but under both the city's Code and our cases the difference is a matter of degree.

Nevertheless, for the purpose of deciding this case, we assume that all of the speech barred from Cincinnati's sidewalks is what we have labeled "core" commercial speech and that no such speech is found in publications that are allowed to use newsracks. We nonetheless agree with the Court of Appeals that Cincinnati's actions in this case run afoul of the First Amendment. Not only does Cincinnati's categorical ban on commercial newsracks place too much importance on the distinction between commercial and noncommercial speech, but in this case, the distinction bears no relationship whatsoever to the particular interests that the city has asserted. It is therefore an impermissible means of responding to the city's admittedly legitimate interests. Cf. Simon & Schuster, Inc., v. Members of New York State Crime Victims Bd., 502 U. S. ___, ___ (1991) (distinction drawn by Son of Sam law between income derived from criminal's descriptions of his crime and other sources -has nothing to do with- State's interest in transferring proceeds of crime from criminals to victims); Carey v. Brown, 447 U. S. 455, 465 (1980) (State's interest in residential privacy cannot sustain statute permitting labor picketing, but prohibiting nonlabor picketing when -nothing in the content-based labor-nonlabor distinction has any bearing whatsoever on privacy-).

The city has asserted an interest in esthetics, but respondent publishers' newsracks are no greater an eyesore than the newsracks permitted to remain on Cincinnati's sidewalks. Each newsrack, whether containing -newspapers- or -commercial handbills,- is equally unattractive. While there was some testimony in the District Court that commercial publications are distinct from noncommercial publications in their capacity to

proliferate, the evidence of such was exceedingly weak, the Court of Appeals discounted it, 946 F. 2d, at 466-467, and n. 3, and Cincinnati does not reassert that particular argument in this Court. As we have explained, the city's primary concern, as argued to us, is with the aggregate number of newsracks on its streets. On that score, however, all newsracks, regardless of whether they contain commercial or noncommercial publications, are equally at fault. In fact, the newspapers are arguably the greater culprit because of their superior number.

Cincinnati has not asserted an interest in preventing commercial harms by regulating the information distributed by respondent publishers' newsracks, which is, of course, the typical reason why commercial speech can be subject to greater governmental regulation than noncommercial speech. See, e.g., Bolger, 463 U. S., at 81 (Stevens, J., concurring in judgment) ("[T]he commercial aspects of a message may provide a justification for regulation that is not present when the communication has no commercial character"); Ohralik v. Ohio State Bar Assn., 436 U. S. 447, 455-456 (1978) (commercial speech, unlike other varieties of speech, "occurs in an area traditionally subject to government regulation").

A closer examination of one of the cases we have mentioned, Bolger v. Youngs Drug Products, demonstrates the fallacy of the city's argument that a reasonable fit is established by the mere fact that the entire burden imposed on commercial speech by its newsrack policy may in some small way limit the total number of newsracks on Cincinnati's sidewalks. Here, the city contends that safety concerns and visual blight may be addressed by a prohibition that distinguishes between commercial and noncommercial publications that are equally responsible for those problems. In Bolger, however, in rejecting the Government's reliance on its interest in protecting the public from -offensive- speech, "[we] specifically declined to recognize a distinction between commercial and noncommercial speech that would render this interest a sufficient justification for a prohibition of commercial speech." 436 U. S., at 71-72 (citing Carey v. Population Services International, 431 U. S. 678, 701, n. 28 (1977)). Moreover, the fact that the regulation "provide[d] only the most limited incremental support for the interest asserted," 436 U.S., at 73 that it achieved only a "marginal degree of protection," ibid., for that interest- supported our holding that the prohibition was invalid. Finally, in Bolger, as in this case, the burden on commercial speech was imposed by denying the speaker access to one method of distribution "there the United States mails, and

here the placement of newsracks on public property" without interfering with alternative means of access to the audience. As then Justice Rehnquist explained in his separate opinion, that fact did not minimize the significance of the burden:

[T]he Postal Service argues that Youngs can communicate with the public otherwise than through the mail. [This argument falls] wide of the mark. A prohibition on the use of the mails is a significant restriction of First Amendment rights. We have noted that `-[t]he United States may give up the Post Office when it sees fit, but while it carries it on the use of the mails is as much a part of free speech as the right to use our tongues.-' Blount v. Rizzi, 400 U. S., at 416, quoting Milwaukee Social Democratic Publishing Co. v. Burleson, 255 U. S. 407, 437 (1921) (Holmes, J., dissenting). 463 U. S., at 79-80 (footnote omitted).

In a similar vein, even if we assume, arguendo, that the city might entirely prohibit the use of newsracks on public property, as long as this avenue of communication remains open, these devices continue to play a significant role in the dissemination of protected speech.

In the absence of some basis for distinguishing between -newspapers- and -commercial handbills- that is relevant to an interest asserted by the city, we are unwilling to recognize Cincinnati's bare assertion that the -low value- of commercial speech is a sufficient justification for its selective and categorical ban on newsracks dispensing -commercial handbills.- Our holding, however, is narrow. As should be clear from the above discussion, we do not reach the question whether, given certain facts and under certain circumstances, a community might be able to justify differential treatment of commercial and noncommercial newsracks. We simply hold that on this record Cincinnati has failed to make such a showing. Because the distinction Cincinnati has drawn has absolutely no bearing on the interests it has asserted, we have no difficulty concluding, as did the two courts below, that the city has not established the -fit- between its goals and its chosen means that is required by our opinion in Fox. It remains to consider the city's argument that its prohibition is a permissible time, place, and manner regulation.

IV

The Court has held that government may impose reasonable restrictions on the time, place or manner of engaging in

protected speech provided that they are adequately justified -`without reference to the content of the regulated speech.'- Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989), quoting Clark v. Community for Creative Non-Violence, 468 U. S. 288, 293 (1984). Thus, a prohibition against the use of sound trucks emitting -loud and raucous- noise in residential neighborhoods is permissible if it applies equally to music, political speech, and advertising. See generally Kovacs v. Cooper, 336 U.S. 77 (1949). The city contends that its regulation of newsracks qualifies as such a restriction because the interests in safety and esthetics that it serves are entirely unrelated to the content of respondents' publications. Thus, the argument goes, the justification for the regulation is content neutral.

The argument is unpersuasive because the very basis for the regulation is the difference in content between ordinary newspapers and commercial speech. True, there is no evidence that the city has acted with animus toward the ideas contained within respondents' publications, but just last Term we expressly rejected the argument that "discriminatory . . . treatment is suspect under the First Amendment only when the legislature intends to suppress certain ideas." Simon & Schuster v. Members of New York State Crime Victims Bd., 502 U. S., at ___ (slip op., at 10). Regardless of the mens rea of the city, it has enacted a sweeping ban on the use of newsracks that distribute -commercial handbills,- but not -newspapers.- Under the city's newsrack policy, whether any particular newsrack falls within the ban is determined by the content of the publication resting inside that newsrack. Thus, by any commonsense understanding of the term, the ban in this case is -content-based.-

Nor are we persuaded that our statements that the test for whether a regulation is content-based turns on the -justification- for the regulation, see, e.g., Ward, 491 U.S., at 791; Clark, 468 U. S., at 293, compel a different conclusion. We agree with the city that its desire to limit the total number of newsracks is -justified- by its interest in safety and esthetics. The city has not, however, limited the number of newsracks; it has limited (to zero) the number of newsracks distributing commercial publications. As we have explained, there is no justification for that particular regulation other than the city's naked assertion that commercial speech has -low value.- It is the absence of a neutral justification for its selective ban on newsracks that prevents the city from defending its newsrack policy as content-neutral.

By the same reasoning, the city's heavy reliance on Renton

v. Playtime Theatres, Inc., 475 U. S. 41 (1986), is misplaced. In Renton, a city ordinance imposed particular zoning regulations on movie theaters showing adult films. The Court recognized that the ordinance did not fall neatly into the -content-based- or -content-neutral- category in that -the ordinance treats theaters that specialize in adult films differently from other kinds of theaters.- Id., at 47. We upheld the regulation, however, largely because it was justified not by an interest in suppressing adult films, but by the city's concern for the -secondary effects- of such theaters on the surrounding neighborhoods. Id., at 47-49. In contrast to the speech at issue in Renton, there are no secondary effects attributable to respondent publishers' newsracks that distinguish them from the newsracks Cincinnati permits to remain on its sidewalks.

In sum, the city's newsrack policy is neither content-neutral nor, as demonstrated in Part III, supra, -narrowly tailored.- Thus, regardless of whether or not it leaves open ample alternative channels of communication, it cannot be justified as a legitimate time, place, or manner restriction on protected speech.

Cincinnati has enacted a sweeping ban that bars from its sidewalks a whole class of constitutionally protected speech. As did the District Court and the Court of Appeals, we conclude that Cincinnati has failed to justify that policy. The regulation is not a permissible regulation of commercial speech, for on this record it is clear that the interests that Cincinnati has asserted are unrelated to any distinction between -commercial handbills- and -newspapers.- Moreover, because the ban is predicated on the content of the publications distributed by the subject newsracks, it is not a valid time, place, or manner restriction on protected speech. For these reasons, Cincinnati's categorical ban on the distribution, via newsrack, of -commercial handbills- cannot be squared with the dictates of the First Amendment.

The judgment of the Court of Appeals is Affirmed.

Justice Blackmun, concurring.

I agree that Cincinnati's ban on commercial newsracks cannot withstand scrutiny under Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York, 447 U.S. 557 (1980), and Board of Trustees of State University of N.Y. v. Fox, 492 U. S. 469 (1989), and I therefore join the Court's opinion. I write separately because I continue to believe that the analysis

set forth in Central Hudson and refined in Fox affords insufficient protection for truthful, noncoercive commercial speech concerning lawful activities. In Central Hudson, I expressed the view that "intermediate scrutiny is appropriate for a restraint on commercial speech designed to protect consumers from misleading or coercive speech, or a regulation related to the time, place, or manner of commercial speech," but not for a regulation that suppresses truthful commercial speech to serve some other government purpose. 447 U.S., at 573 (opinion concurring in judgment). The present case demonstrates that there is no reason to treat truthful commercial speech as a class that is less -valuable- than noncommercial speech. Respondents' publications, which respectively advertise the availability of residential properties and educational opportunities, are unquestionably -valuable- to those who choose to read them, and Cincinnati's ban on commercial newsracks should be subject to the same scrutiny we would apply to a regulation burdening noncommercial speech. In Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council, Inc., 425 U. S. 748 (1976), this Court held that commercial speech -which does `no more than propose a commercial transaction'- is protected by the First Amendment, id., at 762, quoting Pittsburgh Press Co. v. Human Relations Comm'n, 413 U. S. 376, 385 (1973). In so holding, the Court focused principally on the First Amendment interests of the listener. The Court noted that "the particular consumer's interest in the free flow of commercial information . . . may be as keen, if not keener by far, than his interest in the day's most urgent political debate," 425 U. S., at 763, and that "the free flow of commercial information is indispensable . . . to the proper allocation of resources in a free enterprise system . . . [and] to the formation of intelligent opinions as to how that system ought to be regulated or altered." Id., at 765.
/* A stronger argument then the one advanced by the majority. The price of aspirin may be more important to the actual readers than the abstruse prose found in some parts of more traditional "newspapers." For someone who needs new tires on his or her car, the price of tires is of more immediate moment at times than Congressional votes on anti-trust laws. */

See also Bates v. State Bar of Arizona, 433 U. S. 350, 364 (1977).

The Court recognized, however, that government may regulate commercial speech in ways that it may not regulate protected noncommercial speech. See generally Virginia Pharmacy Bd., 425 U. S., at 770-772. Government may regulate commercial speech to ensure that it is not false, deceptive, or misleading, id., at

771-772, and to ensure that it is not coercive. Ohralik v. Ohio State Bar Assn., 436 U. S. 447, 457 (1978). Government also may prohibit commercial speech proposing unlawful activities. Pittsburgh Press Co. v. Human Relations Comm'n, 413 U. S., at 388. See Bates v. State Bar of Arizona, 433 U. S., at 384. To permit government regulation on these grounds is consistent with this Court's emphasis on the First Amendment interests of the listener in the commercial speech context. A listener has little interest in receiving false, misleading, or deceptive commercial information. See id., at 383 ([T]he public and private benefits from commercial speech derive from confidence in its accuracy and reliability). A listener also has little interest in being coerced into a purchasing decision. See Ohralik v. Ohio State Bar Assn., 436 U. S., at 457 ([I]n-person solicitation may exert pressure and often demands an immediate response, without providing the opportunity for comparison or reflection). Furthermore, to the extent it exists at all, a listener has only a weak interest in learning about commercial opportunities that the criminal law forbids. In sum, the commercial speech that this Court had permitted government to regulate or proscribe was commercial speech that did not "serv[e] individual and societal interests in assuring informed and reliable decisionmaking." Bates v. State Bar of Arizona, 433 U. S., at 364.

So the law stood in 1980 when this Court decided Central Hudson and held that all commercial speech was entitled only to an intermediate level of constitutional protection. The majority in Central Hudson reviewed the Court's earlier commercial speech cases and concluded that the Constitution "accords a lesser protection to commercial speech than to other constitutionally guaranteed expression." 447 U. S., at 563. As a descriptive matter, this statement was correct, since our cases had recognized that commercial speech could be regulated on grounds that protected noncommercial speech could not. See n. 1, supra. This -lesser protection- did not rest, however, on the fact that commercial speech -is of less constitutional moment than other forms of speech,- as the Central Hudson majority asserted. Ibid., at n. 5. Rather, it reflected the fact that the listener's First Amendment interests, from which the protection of commercial speech largely derives, allow for certain specific kinds of government regulation that would not be permitted outside the context of commercial speech.

The Central Hudson majority went on to develop a four- part analysis commensurate with the supposed intermediate status of commercial speech. Under that test, a court reviewing restrictions on commercial speech must first determine whether

the speech concerns a lawful activity and is not misleading. If the speech does not pass this preliminary threshold, then it is not protected by the First Amendment at all. Id., at 566. If it does pass the preliminary threshold, then the government is required to show (1) that the asserted government interest is -substantial,- (2) that the regulation at issue -directly advances- that interest, and (3) that the regulation -is not more extensive than is necessary to serve that interest.- Ibid. The Court refined this test in Board of Trustees of State University of N.Y. v. Fox, 492 U. S., at 480, to clarify that a regulation limiting commercial speech can, in fact, be more extensive than is necessary to serve the government's interest as long as it is not unreasonably so. This intermediate level of scrutiny is a far cry from strict scrutiny, under which the government interest must be -compelling- and the regulation -narrowly tailored- to serve that interest. See, e.g., Austin v. Michigan Chamber of Commerce, 494 U. S. 652, 657 (1990).

In Central Hudson, I concurred only in the Court's judgment because I felt the majority's four-part analysis was -not consistent with our prior cases and [did] not provide adequate protection for truthful, nonmisleading, noncoercive commercial speech.- 447 U. S., at 573. I noted: "Permissible restraints on commercial speech have been limited to measures designed to protect consumers from fraudulent, misleading, or coercive sales techniques." Id., at 574. Under the analysis adopted by the Central Hudson majority, misleading and coercive commercial speech and commercial speech proposing illegal activities are addressed in the first prong of the four-part test. Yet commercial speech that survives the first prong - i.e., that is not misleading or coercive and that concerns lawful activities - is entitled only to an intermediate level of protection. Furthermore, the -substantial- government interest that Central Hudson requires to justify restrictions on commercial speech does not have to be related to protecting against deception or coercion, for Central Hudson itself left open the possibility that the government's substantial interest in energy conservation might justify a more narrowly drawn restriction on truthful advertising that promotes energy consumption. See id., at 569-572.

Thus, it is little wonder that when the city of Cincinnati wanted to remove some newsracks from its streets, it chose to eliminate all the commercial newsracks first although its reasons had nothing to do with either the deceptiveness of particular commercial publications or the particular characteristics of commercial newsracks themselves. First, Cincinnati could rely on this Court's broad statements that

commercial speech -is of less constitutional moment than other forms of speech,- id., at 563, n. 5, and occupies a "subordinate position in the scale of First Amendment values," Ohralik, 436 U.S., at 456. Second, it knew that under Central Hudson its restrictions on commercial speech would be examined with less enthusiasm and with less exacting scrutiny than any restrictions it might impose on other speech. Indeed, it appears that Cincinnati felt it had no choice under this Court's decisions but to burden commercial newsracks more heavily. See Brief for Petitioner 28 ("Cincinnati . . . could run afoul of First Amendment protections afforded noncommercial speech by affording newsrack-type dispensers containing commercial speech like treatment with newsracks containing noncommercial speech").

In this case, Central Hudson's chickens have come home to roost.

The Court wisely rejects Cincinnati's argument that it may single out commercial speech simply because it is "low value" speech, see ante, at 17, and on the facts of this case it is unnecessary to do more. The Court expressly reserves the question whether regulations not directed at the content of commercial speech or adverse effects stemming from that content should be evaluated under the standards applicable to regulations of fully protected speech. Ante, at 5-6, n. 11. I believe the Court should answer that question in the affirmative and hold that truthful, noncoercive commercial speech concerning lawful activities is entitled to full First Amendment protection. As I wrote in Central Hudson, "intermediate scrutiny is appropriate for a restraint on commercial speech designed to protect consumers from misleading or coercive speech, or a regulation related to the time, place, or manner of commercial speech." 447 U. S., at 573. But none of the "commonsense differences," Virginia Pharmacy Bd., 425 U. S., at 771, n. 24, between commercial and other speech "justify relaxed scrutiny of restraints that suppress truthful, nondeceptive, noncoercive commercial speech." Central Hudson, 447 U. S., at 578 (opinion concurring in the judgment).

The commercial publications at issue in this case illustrate the absurdity of treating all commercial speech as less valuable than all noncommercial speech. Respondent Harmon Publishing Company, Inc., publishes and distributes a free magazine containing listings and photographs of residential properties. Like the -For Sale- signs this Court, in Linmark Associates, Inc. v. Willingboro, 431 U.S. 85 (1977), held could not be banned, the information contained in Harmon's publication "bear[s] on one of the most important decisions [individuals]

have a right to make: where to live and raise their families." Id., at 96. Respondent Discovery Network, Inc., advertises the availability of adult educational, recreational, and social programs. Our cases have consistently recognized the importance of education to the professional and personal development of the individual. See, e.g., Brown v. Board of Education, 347 U.S. 483, 493 (1954). The -value- of respondents' commercial speech, at least to those who receive it, certainly exceeds the value of the offensive, though political, slogan displayed on the petitioner's jacket in Cohen v. California, 403 U. S. 15 (1971).

I think it highly unlikely that according truthful, noncoercive commercial speech the full protection of the First Amendment will erode the level of that protection. See post, at 2 (dissenting opinion); Ohralik v. Ohio State Bar Assn., 436 U. S., at 456. I have predicted that "the Court will never provide child pornography or cigarette advertising the level of protection customarily granted political speech." See R.A.V. v. St. Paul, 505 U. S. ___ (1992) (opinion concurring in the judgment). Yet I do not believe that protecting truthful advertising will test this Nation's commitment to the First Amendment to any greater extent than protecting offensive political speech. See, e.g., Texas v. Johnson, 491 U. S. 397 (1989) (flag burning); National Socialist Party of America v. Skokie, 432 U. S. 43 (1977) (Nazi march through Jewish neighborhood); Cohen v. California, 403 U. S. 15 (profane antiwar slogan). The very fact that government remains free, in my view, to ensure that commercial speech is not deceptive or coercive, to prohibit commercial speech proposing illegal activities, and to impose reasonable time, place, or manner restrictions on commercial speech greatly reduces the risk that protecting truthful commercial speech will dilute the level of First Amendment protection for speech generally.

I am heartened by the Court's decision today to reject the extreme extension of Central Hudson's logic, and I hope the Court ultimately will come to abandon Central Hudson's analysis entirely in favor of one that affords full protection for truthful, noncoercive commercial speech about lawful activities.