

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 Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

IBANEZ v. FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, BOARD OF ACCOUNTANCY

CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

No. 93-639. Argued April 19, 1994—Decided June 13, 1994

Petitioner Ibanez is a member of the Florida Bar; she is also a Certified Public Accountant (CPA) licensed by respondent Florida Board of Accountancy (Board), and is authorized by the Certified Financial Planner Board of Standards (CFPBS), a private organization, to use the designation "Certified Financial Planner" (CFP). She referred to these credentials in her advertising and other communication with the public concerning her law practice, placing CPA and CFP next to her name in her yellow pages listing and on her business cards and law offices stationery. Notwithstanding the apparent truthfulness of the communication—it is undisputed that neither her CPA license nor her CFP authorization has been revoked—the Board reprimanded her for engaging in "false, deceptive, and misleading" advertising. The District Court of Appeal of Florida, First District, affirmed.

Held: The Board's decision censuring Ibanez is incompatible with First Amendment restraints on official action. Pp. 5-13.

(a) Ibanez' use of the CPA and CFP designations qualifies as "commercial speech." The State may ban such speech only if it is false, deceptive, or misleading. See, e.g., *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U. S. 626, 638. If it is not, the State can restrict it, but only upon a showing that the restriction directly and materially advances a substantial state interest in a manner no more extensive than necessary to serve that interest. See, e.g., *Central Hudson Gas & Electric v. Public Service Comm'n of N. Y.*, 447 U. S. 557, 564, 566. The State's burden is not slight: It

must demonstrate that the harms it recites are real and that its restrictions will in fact alleviate them to a material degree. See, e.g., *Edenfield v. Fane*, 507 U. S. ___, ___. Measured against these standards, the order reprimanding Ibanez cannot stand. Pp. 5-7.

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(b) The Board asserts that Ibanez' use of the CPA designation on her commercial communications is misleading in that it tells the public she is subject to the Florida Accountancy Act and to the Board's jurisdiction "when she believes and acts as though she is not." This position is insubstantial. Ibanez no longer contests the Board's assertion of jurisdiction over her, and in any event, what she "believes" regarding the reach of the Board's authority is not sanctionable. See *Baird v. State Bar of Arizona*, 491 U. S. 1, 6. Nor can the Board rest on the bare assertion that Ibanez is unwilling to comply with its regulation; it must build its case on specific evidence of noncompliance. It has never even charged Ibanez with an action out of compliance with the governing statutory or regulatory standards. And as long as she holds a currently active CPA license from the Board, it is difficult to see how consumers could be misled by her truthful representation to that effect. Pp. 7-8.

(c) The Board's justifications for disciplining Ibanez based on her use of the CFP designation are not more persuasive. The Board presents no evidence that Ibanez' use of the term "certified" "inherently mislead[s]" by causing the public to infer state approval and recognition. See *Peel v. Attorney Registration and Disciplinary Comm'n of Ill.*, 496 U. S. 91 (attorney's use of designation "Certified Civil Trial Specialist By the National Board of Trial Advocacy" neither actually nor inherently misleading). Nor did the Board advert to key aspects of the designation here at issue—the nature of the authorizing organization and the state of knowledge of the public to whom Ibanez' communications are directed—in reaching its alternative conclusion that the CFP designation is "potentially misleading." On the bare record made in this case, the Board has not shown that the restrictions burden no more of Ibanez' constitutionally protected speech than necessary. Pp. 8-13.

621 So. 2d 435, reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court with respect to Part II-B, and the opinion of the Court with respect to Parts I, II-A, and II-C, in which BLACKMUN, STEVENS, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. O'CONNOR, J., filed an opinion concurring in part and dissenting in part, in which REHNQUIST, C. J., joined.