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COMMERCIAL SPEECH

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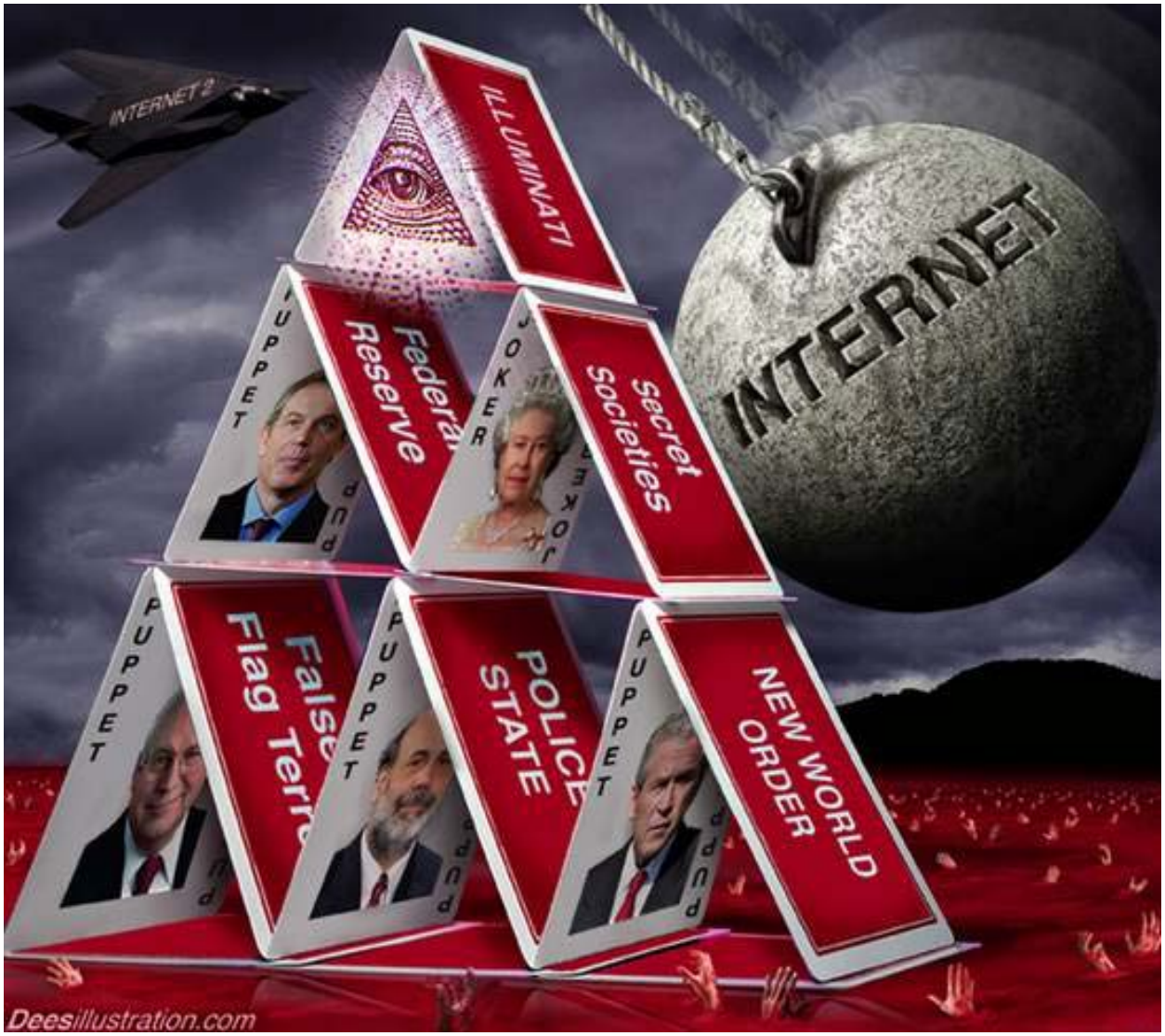

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1 Introduction

This paper will provide a brief overview on the subject of commercial speech. It will describe:

1. Definition of "commercial speech".
2. Protected First Amendment Speech.
3. Origins of government authority to regulate speech generally.
4. Current and historical Supreme Court view of Commercial Speech Doctrine.
5. Situations in which the Commercial Speech Doctrine is it not applicable and why.
6. Application of the First Amendment to Injunctions involving speech.

This memorandum of law is intended to be submitted to a legal pleading and used by persons who are being wrongfully persecuted for their political and religious views by abuses of the commercial speech doctrine.

2 What is "commerce" within the federal sphere?

A precise definition of "commerce" must be established before we can lend meaning to "commercial speech" within the context of federal law. The power to regulate "commerce" is established by Article 1, Section 8, Clause 3 of the Constitution as follows:

> *Constitution, Article 1, Section 8, Clause 3*
>
> *The Congress shall have Power . . .*
>
> *To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;*
> *[Constitution, Article 1, Section 8, Clause 3]*

The above provision is often called "The Commerce Clause" by the courts. Below are few state court rulings on the meaning of "commerce" relative to the federal government:

> *"'Commerce' in the sense in which the word is used in the constitution is co-extensive in its meaning with 'intercourse.'"*
> *[Carson River Lumbering Co. v. Patterson, 33 C. 334 (1867)]*
>
> ---
>
> *"Term 'commerce' as employed in U.S. Const. Art. I §8, is not limited to exchange of commodities only, but includes, as well, 'intercourse' with foreign nations, and between states; and term 'intercourse' includes transportation of passengers."*
> *[People v. Raymond, 34 C. 492 (1868)]*
>
> ---
>
> *"Commerce includes intercourse, navigation, and not traffic alone."*
> *[Lord v. Goodall, Nelson & Perkins S. S. Co., 102 U.S. 541, 26 L.Ed. 224 (1881)]*

The U.S. Supreme Court helped to define what is "commerce" under federal law with the following ruling:

> ***As used in the Constitution, the word 'commerce' is the equivalent of the phrase 'intercourse for the purposes of trade,' and includes transportation, purchase, sale, and exchange of commodities between the citizens of the different states**. And the power to regulate commerce embraces the instruments by which commerce is carried on. Welton v. State of Missouri, 91 U.S. 275 , 280; Addyston Pipe & Steel Co. v. United States, 175 U.S. 211, 241 , 20 S.Ct. 96; Hopkins v. United States, 171 U.S. 578, 597 , 19 S.Ct. 40. In Adair v. United States, 208 U.S. 161, 177 , 28 S.Ct. 277, 281, 13 Ann. Cas. 764, the phrase '**Commerce among the several states' was defined as comprehending 'traffic, intercourse, trade, navigation, communication, the transit of persons, and the transmission of messages by telegraph,-indeed, every species on commercial intercourse among the several states.**' In Veazie et al. v. Moor, 14 How. 568, 573, 574, this court, after saying that the phrase could never be applied to transactions wholly internal, significantly added: 'Nor can it be properly concluded, that, because the products of domestic enterprise in agriculture or manufactures, or in the arts, may ultimately become the subjects of foreign commerce, that the control of the means or the encouragements by which enterprise is fostered and protected, is legitimately within the import of the phrase foreign commerce, or fairly im- [298 U.S. 238, 299] plied in any investiture of the power to regulate such*

commerce. A pretension as far reaching as this, would extend to contracts between citizen and citizen of the same State, would control the pursuits of the planter, the grazier, the manufacturer, the mechanic, the immense operations of the collieries and mines and furnaces of the country; for there is not one of these avocations, the results of which may not become the subjects of foreign commerce, and be borne either by turnpikes, canals, or railroads, from point to point within the several States, towards an ultimate destination, like the one above mentioned.'

The distinction between manufacture and commerce was discussed in Kidd v. Pearson, 128 U.S. 1, 20 , 21 S., 22, 9 S.Ct. 6, 10, and it was said:

> *'No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation-the fashioning of raw materials into a change of form for use. The functions of commerce are different. ... If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that congress would be invested, to the exclusion of the states, with the power to regulate, not only manufacture, but also agriculture, horticulture, stock-raising, domestic fisheries, mining,-in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat-grower of the northwest, and the cotton-planter of the south, plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in congress and [298 U.S. 238, 300] denied to the states, it would follow as an inevitable result that the duty would devolve on congress to regulate all of these delicate, multiform, and vital interests,-interests which in their nature are, and must be, local in all the details of their successful management.'*

And then, as though foreseeing the present controversy, the opinion proceeds:

> *'Any movement towards the establishment of rules of production in this vast country, with its many different climates and opportunities, could only be at the sacrifice of the peculiar advantages of a large part of the localities in it, if not of every one of them. On the other hand, any movement towards the local, detailed, and incongruous legislation required by such an interpretation would be about the widest possible departure from the declared object of the clause in question. Nor this alone. Even in the exercise of the power contended for, congress would be confined to the regulation, not of certain branches of industry, however numerous, but to those instances in each and every branch where the producer contemplated an interstate market. ... A situation more paralyzing to the state governments, and more provocative of conflicts between the general government and the states, and less likely to have been what the framers of the constitution intended, it would be difficult to imagine.'*

Chief Justice Fuller, speaking for this court in United States v. E. C. Knight Co., 156 U.S. 1, 12 , 13 S., 15 S.Ct. 249, 253, said:

> *'Doubtless the power to control the manufacture of a given thing involves, in a certain sense, the control of its disposition, but this is a secondary, and not the primary, sense; and, although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture, and is not a part of it. ... [298 U.S. 238, 301]*
> *'It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for, while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the states as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne, than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality. ...*

> *'The regulation of commerce applies to the subjects of commerce, and not to matters of internal police. Contracts to buy, sell, or exchange goods to be transported among the several states, the transportation and its instrumentalities, and articles bought, sold, or exchanged for the purposes of such transit among the states, or put in the way of transit, may be regulated; but this is because they form part of interstate trade or commerce. The fact that an article is manufactured for export to another state does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article or product passes from the control of the state and belongs to commerce.'*

That commodities produced or manufactured within a state are intended to be sold or transported outside the state does not render their production or manufacture subject to federal regulation under the commerce clause. *As this court said in Coe v. Errol, 116 U.S. 517, 526 , 6 S.Ct. 475, 478, 'Though intended for exportation, they may never be exported,-the owner has a perfect right to change his mind,-and until actually put in motion, for some place out of the state, or committed to the custody of a carrier for transportation to such place, why may they not be regarded as still remaining a part of the general mass of* [298 U.S. 238, 302] *property in the state?' It is true that this was said in respect of a challenged power of the state to impose a tax; but the query is equally pertinent where the question, as here, is with regard to the power of regulation. The case was relied upon in Kidd v. Pearson, supra, 128 U.S. 1 , at page 26, 9 S.Ct. 6, 12. 'The application of the principles above announced,' it was there said, 'to the case under consideration leads to a conclusion against the contention of the plaintiff in error.* ***The police power of a state is as broad and plenary as its taxing power, and property within the state is subject to the operations of the former so long as it is within the regulating restrictions of the latter.'***

In Heisler v. Thomas Colliery Co., 260 U.S. 245, 259 , 260 S., 43 S.Ct. 83, 86, we held that the possibility, or even certainty of exportation of a product or article from a state did not determine it to be in interstate commerce before the commencement of its movement from the state. *To hold otherwise 'would nationalize all industries, it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other states at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet unshorn, and coal yet unmined because they are in varying percentages destined for and surely to be exported to states other than those of their production.'*

*In Oliver Iron Co. v. Lord, 262 U.S. 172, 178 , 43 S.Ct. 526, 529, we said on the authority of numerous cited cases: '****Mining is not interstate commerce, but like manufacturing, is a local business, subject to local regulation and taxation.*** *... ****Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements, and persists even*** [298 U.S. 238, 303] ***though the business be conducted in close connection with interstate commerce.****'*

The same rule applies to the production of oil. 'Such production is essentially a mining operation, and therefore is not a part of interstate commerce, even though the product obtained is intended to be and in fact is immediately shipped in such commerce.' Champlin Refining Co. v. Corporation Commission, 286 U.S. 210, 235 , 52 S.Ct. 559, 565, 86 A.L.R. 403. ***One who produces or manufactures a commodity, subsequently sold and shipped by him in interstate commerce, whether such sale and shipment were originally intended or not, has engaged in two distinct and separate activities. So far as he produces or manufactures a commodity, his business is purely local. So far as he sells and ships, or contracts to sell and ship, the commodity to customers in another state, he engages in interstate commerce. In respect of the former, he is subject only to regulation by the state; in respect of the latter, to regulation only by the federal government.*** *Utah Power & L. Co. v. Pfost, 286 U.S. 165, 182 , 52 S.Ct. 548. Production is not commerce; but a step in preparation for commerce. Chassaniol v. Greenwood, 291 U.S. 584, 587 , 54 S.Ct. 541.*

We have seen that the word 'commerce' is the equivalent of the phrase 'intercourse for the purposes of trade.' *Plainly, the incidents leading up to and culminating in the mining of coal do not constitute such intercourse. The employment of men, the fixing of their wages, hours of labor, and working conditions, the bargaining in respect of these things- whether carried on separately or collectively-each and all constitute intercourse for the purposes of production, not of trade. The latter is a thing apart from the relation of employer and employee, which in all producing occupations is purely local in character. Extraction of coal from the mine is the aim and the completed result of local activities. Commerce in the coal mined is not brought into being by* [298 U.S. 238, 304] *force of these activities, but by negotiations, agreements and circumstances entirely apart from production. Mining brings the subject- matter of commerce into existence. Commerce disposes of it.*

A consideration of the foregoing, and of many cases which might be added to those already cited, renders inescapable the conclusion that ***the effect of the labor provisions of the act, including those in respect of minimum wages, wage agreements, collective bargaining, and the Labor Board and its powers, primarily falls upon production and not upon commerce; and confirms the further resulting conclusion that production is a purely local activity. It follows that none of these essential antecedents of production constitutes a transaction in or forms any part of interstate commerce.*** *Schechter Poultry Corp. v. United States, supra, 295 U.S. 495 , at page 542 et seq., 55 S.Ct. 837, 97 A.L.R. 947. Everything which moves in interstate commerce has had a local origin. Without local production somewhere, interstate commerce, as now carried on, would practically disappear. Nevertheless, the local character of mining, of manufacturing, and of crop growing is a fact, and remains a fact, whatever may be done with the products.*

Certain decisions of this court, superficially considered, seem to lend support to the defense of the act now under review. But upon examination, they will be seen to be inapposite. Thus, Coronado Co. v. United Mine Workers, 268 U.S. 295, 310 , 45 S.Ct. 551, and kindred cases, involved conspiracies to restrain interstate commerce in violation of the Anti-Trust Laws. The acts of the persons involved were local in character; but the intent was to restrain interstate commerce, and the means employed were calculated to carry that intent into effect. Interstate commerce was the direct object of attack; and the restraint of such commerce was the

necessary consequence of the acts and the immediate end in view. Bedford Cut Stone Co. [298 U.S. 238, 305] *v. Journeyman Stone Cutters' Ass'n, 274 U.S. 37, 46 , 47 S.Ct. 522, 54 A.L.R. 791. The applicable law was concerned not with the character of the acts or of the means employed, which might be in and of themselves purely local, but with the intent and direct operation of those acts and means upon interstate commerce. 'The mere reduction in the supply of an article,' this court said in the Coronado Co. Case, supra, 268 U.S. 295 , at page 310, 45 S.Ct. 551, 556, 'to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce. But when the intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the Anti-Trust Act (15 U.S.C.A. 1 et seq.).'*

Another group of cases, of which Swift & Company v. United States, 196 U.S. 375 , 25 S.Ct. 276, is an example, rest upon the circumstance that the acts in question constituted direct interferences with the 'flow' of commerce among the states. In the Swift Case, live stock was consigned and delivered to stockyards-not as a place of final destination, but, as the court said in Stafford v. Wallace, 258 U.S. 495, 516 , 42 S.Ct. 397, 402, 23 A.L.R. 229, 'a throat through which the current flows.' The sales which ensued merely changed the private interest in the subject of the current without interfering with its continuity. Industrial Ass'n of San Francisco v. United States, 268 U.S. 64, 79 , 45 S.Ct. 403. It was nowhere suggested in these cases that the interstate commerce power extended to the growth or production of the things which, after production, entered the flow. If the court had held that the raising of the cattle, which were involved in the Swift Case, including the wages paid to and working conditions of the herders and others employed in the business, could be regulated by Congress, that decision and decisions holding similarly would be in [298 U.S. 238, 306] *point; for it is that situation, and not the one with which the court actually dealt, which here concerns us.*

The distinction suggested is illustrated by the decision in Arkadelphia Co. v. St. Louis S.W.R. Co., 249 U.S. 134 , 150-152, 39 S.Ct. 237. That case dealt with orders of a state commission fixing railroad rates. One of the questions considered was whether certain shipments of rough material from the forest to mills in the same state for manufacture, followed by the forwarding of the finished product to points outside the state, was a continuous movement in interstate commerce. It appeared that when the rough material reached the mills it was manufactured into various articles which were stacked or placed in kilns to dry, the processes occupying several months. Markets for the manufactured articles were almost entirely in other states or in foreign countries. About 95 per cent. of the finished articles was made for outbound shipment. When the rough material was shipped to the mills, it was expected by the mills that this percentage of the finished articles would be so sold and shipped outside the state. And all of them knew and intended that this 95 per cent. of the finished product would be so sold and shipped. This court held that the state order did not interfere with interstate commerce, and that the Swift Case was not in point; as it is not in point here.

The restricted field covered by the Swift and kindred cases is illustrated by the Schechter Case, supra, 295 U.S. 495 , at page 543, 55 S. Ct. 837, 97 A.L.R. 947. There the commodity in question, although shipped from another state, had come to rest in the state of its destination, and, as the court pointed out, was no longer in a current or flow of interstate commerce. The Swift doctrine was rejected as inapposite. In the Schechter Case the flow had ceased. Here it had not begun. The difference is not one of substance. The applicable principle is the same. [298 U.S. 238, 307] *But section 1 (the Preamble) of the act now under review declares that all production and distribution of bituminous coal 'bear upon and directly affect its interstate commerce'; and that regulation thereof is imperative for the protection of such commerce. The contention of the government is that the labor provisions of the act may be sustained in that view.*

That the production of every commodity intended for interstate sale and transportation has some effect upon interstate commerce may be, if it has not already been, freely granted; and we are brought to the final and decisive inquiry, whether here that effect is direct, as the 'Preamble' recites, or indirect. The distinction is not formal, but substantial in the highest degree, as we pointed out in the Schechter Case, supra, 295 U.S. 495 , at page 546 et seq., 55 S.Ct. 837, 850, 97 A.L.R. 947. 'If the commerce clause were construed,' we there said, 'to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people, and the authority of the state over its domestic concerns would exist only by sufferance of the federal government. Indeed, on such a theory, even the development of the state's commercial facilities would be subject to federal control.' It was also pointed out, 295 U.S. 495 , at page 548, 55 S.Ct. 837, 851, 97 A.L.R. 947, that 'the distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system.'

Whether the effect of a given activity or condition is direct or indirect is not always easy to determine. The word 'direct' implies that the activity or condition invoked or blamed shall operate proximately-not mediately, remotely, or collaterally-to produce the effect. It connotes the absence of an efficient intervening agency [298 U.S. 238, 308] *or condition. And the extent of the effect bears no logical relation to its character. The distinction between a direct and an indirect effect turns, not upon the magnitude of either the cause or the effect, but entirely upon the manner in which the effect has been brought about. If the production by one man of a single ton of coal intended for interstate sale and shipment, and actually so sold and shipped, affects interstate commerce indirectly, the effect does not become direct by multiplying the tonnage, or increasing the number of men employed, or adding to the expense or complexities of the business, or by all combined. It is*

> *quite true that rules of law are sometimes qualified by considerations of degree, as the government argues. But the matter of degree has no bearing upon the question here, since that question is not-What is the extent of the local activity or condition, or the extent of the effect produced upon interstate commerce? but-What is the relation between the activity or condition and the effect?*
>
> *Much stress is put upon the evils which come from the struggle between employers and employees over the matter of wages, working conditions, the right of collective bargaining, etc., and the resulting strikes, curtailment, and irregularity of production and effect on prices; and it is insisted that interstate commerce is greatly affected thereby. But, in addition to what has just been said, the conclusive answer is that the evils are all local evils over which the federal government has no legislative control. The relation of employer and employee is a local relation. At common law, it is one of the domestic relations. The wages are paid for the doing of local work. Working conditions are obviously local conditions. The employees are not engaged in or about commerce, but exclusively in producing a commodity. And the controversies and evils, which it is the object of the [298 U.S. 238, 309] act to regulate and minimize, are local controversies and evils affecting local work undertaken to accomplish that local result. Such effect as they may have upon commerce, however extensive it may be, is secondary and indirect. An increase in the greatness of the effect adds to its importance. It does not alter its character.*
> *[Woodruff v. Parham, 75 U.S. (8 Wall.) 123 (1868)]*

3 What is "Commercial Speech"?

We will begin with a definition of the phrase "commercial speech". In researching various legal dictionaries for a definition, we found that there is none. This may be explained by the following comment:

> *"The problem of defining commercial speech continues to bedevil this area of First Amendment doctrine to the present day."*
> *[First Amendment Law In A Nutshell, Second Edition; Jerome A. Barron; West Group, St. Paul, Minn. 2000; ISBN 0-314-22677-X, p. 152]*

Since neither Black's Law Dictionary nor any other legal dictionary we could find defines the term, we have crafted our own definition below to facilitate analysis found in this discussion:

> *Commercial speech: Speech which appeals strictly and narrowly to the economic interests of the speaker and/or the audience. Its sole purpose is to convey information about products or services that are offered for sale in order to facilitate, promote, or encourage a purchase. Most such speech would ordinarily be classified as "advertising". When the information advertising conveyed is false, then a tort has occurred because the audience is being mislead, which constitutes an injury.*

The U.S. Supreme Court, in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976) defined "commercial speech" as speech which:

> *". . .proposes a commercial transaction."*

In *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980), the U.S. Supreme Court broadened the definition of "commercial speech" to include:

> *". . .expression related solely to the economic interests of the speaker and its audience."*

Closely related to the definition of "commercial speech" is a doctrine originated by the U.S. Supreme Court called the "commercial speech doctrine", which prescribes the method by which strictly "commercial speech" may be lawfully regulated by the government.

> ***Commercial speech doctrine**. Speech that was categorized as "commercial" in nature (i.e. speech that advertised a product or service for profit or for business purpose) was formerly not afforded First Amendment freedom of speech protection, and as such could be freely regulated by statutes and ordinances. Valentine v. Chrestensen, 316 U.S. 52, 62 S.Ct. 920, 86 L.Ed. 1262. This doctrine, however, has been essentially abrogated. Pittsburgh Press Co. v. Pittsburgh Comm. on Human Rights, 413 U.S. 376, 93 S.Ct. 2553, 37 L.Ed.2d 669; Bigelow v. Virginia, 421 U.S. 809, 95 S.Ct. 2222, 44 L.Ed.2d 600; Virginia State Brd. of Pharmacy v. Virginia Citizen Council, 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346.*
> *[Black's Law Dictionary, Sixth Edition, p. 271]*

A rationale for the conclusion that commercial speech was not protected speech might be found in the self-government model of the First Amendment. What is protected is what contributes to self-government and, arguably, commercial speech does not.

4 Protection of Commercial Speech

The First Amendment, as applied to the states through the Fourteenth Amendment, protects commercial speech [1] from unwarranted governmental regulation.[2] However, commercial speech [3] enjoys a more limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values, and is subject to modes of regulation that might be impermissible in the realm of noncommercial expression. [4]

Commercial speech receives a limited form of First Amendment protection so long as it concerns a lawful activity and is not misleading or fraudulent; once it is determined that the First Amendment applies to the particular kind of commercial speech at issue, then such speech may be restricted only if the government's interest in doing so is substantial, the restrictions directly advance the government's asserted interest, and the restrictions are no more extensive than necessary to serve that interest.[5] In order to determine whether a government restriction on commercial speech is permissible, a court examines four factors: [6]

1. Whether the expression concerns a lawful activity and is not misleading;
2. Whether the government's interest is substantial;
3. Whether the restriction directly serves the asserted interest; and
4. Whether the restriction is no more extensive than necessary.

Practice guide: The overbreadth doctrine does not apply to commercial speech.

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[1] Bland v. Fessler, 88 F.3d 729, 24 Media L. Rep. (BNA) 2072 (9th Cir. 1996), cert. denied, 117 S. Ct. 513, 136 L. Ed. 2d 403 (U.S. 1996) (a communication that does no more than propose a commercial transaction is "commercial speech").

[2] Central Hudson Gas &Elec. Corp. v. Public Service Commission of New York, 447 U.S. 557, 100 S. Ct. 2343, 65 L. Ed. 2d 341, 6 Media L. Rep. (BNA) 1497, 34 Pub. Util. Rep. 4th (PUR) 178 (1980).

Annotation: Applicability to advertisements of First Amendment's guaranty of free speech and press–federal cases, 37 L. Ed. 2d 1124.

Law Reviews: Reed, Is Commercial Speech Really Less Valuable than Political Speech? On Replacing Values and Categories in First Amendment Jurisprudence. 34 Am Bus LJ 1, Fall, 1996.

Hamilton, The First Amendment Status of Commercial Speech: Why the FCC Regulations Implementing the Telephone Consumer Protection Act of 1991 Are Unconstitutional. 94 Mich LR 2352, June, 1996.

Beyler, Personal Jurisdiction Based on Advertising: The First Amendment and Federal Liberty Issues. 61 Mo LR 61, Winter, 1996.

Keller, The First Amendment and Regulation of Advertising. 954 PLI/Corp 55, September, 1996.

[3] Board of Trustees of State University of New York v. Fox, 492 U.S. 469, 109 S. Ct. 3028, 106 L. Ed. 2d 388, 54 Ed. Law Rep. 61 (1989) (speech involved in products demonstrations in campus dormitory rooms was "commercial speech," for purposes of First Amendment analysis, even though the seller also touched upon other subjects such as being financially responsible and running an efficient home).

[4] U.S. v. Edge Broadcasting Co., 509 U.S. 418, 113 S. Ct. 2696, 125 L. Ed. 2d 345, 21 Media L. Rep. (BNA) 1577 (1993) (the Constitution affords less protection to commercial speech than to other constitutionally guaranteed expressions); Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio, 471 U.S. 626, 105 S. Ct. 2265, 85 L. Ed. 2d 652 (1985); Bolger v. Youngs Drug Products Corp., 463 U.S. 60, 103 S. Ct. 2875, 77 L. Ed. 2d 469 (1983); Central Hudson Gas &Elec. Corp. v. Public Service Commission of New York, 447 U.S. 557, 100 S. Ct. 2343, 65 L. Ed. 2d 341, 6 Media L. Rep. (BNA) 1497, 34 Pub. Util. Rep. 4th (PUR) 178 (1980); Valley Broadcasting Co. v. U.S., 107 F.3d 1328, 25 Media L. Rep. (BNA) 1363 (9th Cir. 1997), petition for cert. filed (U.S. Dec. 22, 1997); Cardtoons, L.C. v. Major League Baseball Players Ass'n, 95 F.3d 959, 24 Media L. Rep. (BNA) 2281, 39 U.S.P.Q.2d (BNA) 1865 (10th Cir. 1996).

[5] Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico, 478 U.S. 328, 106 S. Ct. 2968, 92 L. Ed. 2d 266, 13 Media L. Rep. (BNA) 1033 (1986).

[6] International Dairy Foods Ass'n v. Amestoy, 92 F.3d 67, 24 Media L. Rep. (BNA) 2089 (2d Cir. 1996); Sciarrino v. City of Key West, Fla., 83 F.3d 364 (11th Cir. 1996), cert. denied, 117 S. Ct. 768, 136 L. Ed. 2d 714 (U.S. 1997).