

Commercial Speech and Government Speech

Terms:

Central Hudson Test

Assigned Cases:

Bigelow v. VA; *44 Liquormart v. RI*; *Lorillard Tobacco v. Reilly*; *Bethel School Dist. v. Fraser*, 495; *Rust v. Sullivan*; *Utah Licensed Beverage Association v. Leavitt*

Questions for Reading Assigned Cases:

The *Bigelow*, *44 Liquormart*, *Lorillard Tobacco* and *Utah Licensed Beverage Assoc.* cases all concern products or services that are legal but are often morally disapproved of. How much of the regulation in question in each case is about the commercial aspects of the regulated business, and how much is an attempt to regulate the moral choices of potential customers? Once a business is legal, how much should its advertising be regulated?

Bethel School Dist. v. Fraser and *Rust v. Sullivan* both involve speech that is sponsored by government agencies. How does government sponsorship of speech change the desirability of regulation? Is the government “censoring” speech when it prohibits those who willing accept governmental employment from speaking their mind in their official capacity?

Additional Cases (in addition to those assigned on syllabus):

Central Hudson Gas & Elec. v. Public Service Commission, 447 U.S. 557 (1980). New York prohibited any advertising promoting use of electricity. Supreme Court found in favor of utility company, stating that a “restraint on commercial ‘communication [that] is neither misleading nor related to unlawful activity’ is subject to an intermediate level of scrutiny, and suppression [of speech] is permitted whenever it ‘directly advances’ a ‘substantial’ governmental interest and is ‘not more extensive than is necessary to serve that interest.’”

Pickering v. Board of Education, 391 U.S. 563 (1968). A school board fired a teacher for writing a letter to the editor in a local newspaper criticizing the board's policies. The Supreme Court founding that Pickering’s termination violated his 1st Amendment rights and that “the teacher's interest as a citizen in making public comment must be balanced against the State's interest in promoting the efficiency of its employees' public services.” Public employee speech may be protected so long as it addressed “matters of public concern” rather than strictly internal matters of school operation.