SUPREME COURT OF UNITED STATES

Jeffrey Cole Bigelow

Vs.

Commonwealth of Virginia

No. 73—1309.

Argued Dec. 18, 1974.

Decided June 16, 1975.

Mr. Justice BLACKMUN delivered the opinion of the Court.

An advertisement carried in appellant's newspaper led to his conviction for a violation of a Virginia statute that made it a misdemeanor, by the sale or circulation of any publication, to encourage or prompt the procuring of an abortion. The issue here is whether the editor-appellant's First Amendment rights were unconstitutionally abridged by the statute. The First Amendment, of course, is applicable to the States through the Fourteenth Amendment. Schneider v. State, [1939] USSC 134; 308 U.S. 147, 160[1939] USSC 134; , 60 S.Ct. 146, 150[1939] USSC 134; , 84 L.Ed. 155 (1939).

* The Virginia Weekly was a newspaper published by the Virginia Weekly Associates of Charlottesville. It was issued in that city and circulated in Albemarle County, with particular focus on the campus of the University of Virginia. Appellant, Jeffrey C. Bigelow, was a director and the managing editor and responsible officer of the newspaper.

On February 8, 1971, the Weekly's Vol. V, No. 6, was published and circulated under the direct responsibility of the appellant. On page 2 of that issue was the following advertisement:

'UNWANTED PREGNANCY LET US HELP YOU

Abortions are now legal in New York There are no residency requirements. FOR IMMEDIATE PLACEMENT IN ACCREDITED HOSPITALS AND CLINICS AT LOW COST Contact WOMEN'S PAVILION 515 Madison Avenue New York, N.Y. 10022 or call any time (212) 371—6670 or (212) 371—6650 AVAILABLE 7 DAYS A WEEK STRICTLY CONFIDENTIAL. We will make all arrangements for you and help you with information and counseling.'

It is to be observed that the advertisement announced that the Women's Pavilion of New York City would help women with unwanted pregnancies to obtain 'immediate placement in accredited hospitals and clinics at low cost' and would 'make all arrangements' on a 'strictly confidential' basis; that it offered 'information and counseling'; that it gave the organization's address and telephone numbers; and that it stated that abortions 'are now legal in New York' and there 'are no residency requirements.' Although the advertisement did not contain the name of any licensed physician, the 'placement' to which it referred was to 'accredited hospitals and clinics.'

On May 13 Bigelow was charged with violating Va.Code Ann. § 18.1—63 (1960). The statute at that time read:

'If any person, by publication, lecture, advertisement, or by the sale or circulation of any publication, or in any other manner, encourage or prompt the procuring of abortion or miscarriage, he shall be guilty of a misdemeanor.'

Shortly after the statute was utilized in Bigelow's case, and apparently before it was ever used again, the Virginia Legislature amended it and changed its prior application and scope.

Appellant was first tried and convicted in the County Court of Albemarle County. He appealed to the Circuit Court of that county where he was entitled to a de novo trial. Va.Code Ann. §§ 16.1—132 and 16.1—136 (1960). In the Circuit Court he waived a jury and in July 1971 was tried to the judge. The evidence consisted of stipulated facts; an excerpt, containing the advertisement in question, from the Weekly's issue of February 8, 1971; and the June 1971 issue of Redbook magazine, containing abortion information and distributed in Virginia and in Albemarle County. App. 3, 8. The court rejected appellant's claim that the statute was unconstitutional and adjudged him guilty. He was sentenced to pay a fine of $500, with $350 thereof suspended 'conditioned upon no further violation' of the statute. Id., at 5.

The Supreme Court of Virginia granted review and, by a 4—2 vote, affirmed Bigelow's conviction. 213 Va. 191, 191 S.E.2d 173 (1972). The court first rejected the appellant's claim that the advertisement was purely informational and thus was not within the 'encourage or prompt' language of the statute. It held, instead, that the advertisement 'clearly exceeded an informational status' and 'constituted an active offer to perform a service, rather than a passive statement of fact.' Id., at 193, 191 S.E.2d, at 174. It then rejected Bigelow's First Amendment claim. This, the court said, was a 'commercial advertisement' and, as such, 'may be constitutionally prohibited by the state,' particularly 'where, as here, the advertising relates to the medical-health field.' Id., at 193—195, 191 S.E.2d at 174—176. The issue, in the court's view, was whether the statute was a valid exercise of the State's police power. It answered this question in the affirmative, noting that the statute's goal was 'to ensure that pregnant women in Virginia who decided to have abortions come to their

decisions without the commercial advertising pressure usually incidental to the sale of a box of soap powder.' Id., at 196, 191 S.E.2d, at 176. The court then turned to Bigelow's claim of overbreadth. It held that because the appellant himself lacked a legitimate First Amendment interest, inasmuch as his activity 'was of a purely commercial nature,' he had no 'standing to rely upon the hypothetical rights of those in the non-commercial zone.' Id., at 198, 191 S.E.2d, at 177—178.

Bigelow took a timely appeal to this Court. During the pendency of his appeal, Roe v. Wade, [1973] USSC 43; 410 U.S. 113, 93 S.Ct. 705, 355 L.Ed.2d 147 (1973), and Doe v. Bolton, [1973] USSC 40; 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973), were decided. We subsequently vacated Bigelow's judgment of conviction and remanded the case for further consideration in the light of Roe and Doe. 413 U.S. 909, 93 S.Ct. 3057, 37 L.Ed.2d 1020 (1973).

The Supreme Court of Virginia, on such reconsideration, but without further oral argument, again affirmed appellant's conviction, observing that neither Roe nor Doe 'mentioned the subject of abortion advertising' and finding nothing in those decisions 'which in any way affects our earlier view.'5 214 Va. 341, 342, 200 S.E.2d 680 (1973). Once again, Bigelow appealed. We noted probable jurisdiction in order to review the important First Amendment issue presented. 418 U.S. 909, 94 S.Ct. 3201, 41 L.Ed.2d 1155 (1974).

II

This Court often has recognized that a defendant's standing to challenge a statute on First Amendment grounds as facially overbroad does not depend upon whether his own activity is shown to be constitutionally privileged. The Court consistently has permitted 'attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity.' Dombrowski v. Pfister, [1965] USSC 74; 380 U.S. 479, 486[1965] USSC 74; , 85 S.Ct. 1116, 1121[1965] USSC 74; , 14 L.Ed.2d 22 (1965). See also Grayned v. City of Rockford, [1972] USSC 158; 408 U.S. 104, 114[1972] USSC 158; , 92 S.Ct. 2294, 2302[1972] USSC 158; , 33 L.Ed.2d 222 (1972); Gooding v. Wilson, [1972] USSC 64; 405 U.S. 518, 520 521[1972] USSC 64; , 92 S.Ct. 1103, 1105—1106[1972] USSC 64; , 31 L.Ed.2d 408 (1972); Coates v. City of Cincinnati, [1971] USSC 104; 402 U.S. 611, 616[1971] USSC 104; , 91 S.Ct. 1686, 1689, 29 L.Ed.2d 214 (1971), and id., at 619—620, 91 S.Ct. at 1690, 1691. (White, J., dissenting); NAACP v. Button, [1963] USSC 9; 371 U.S. 415, 432[1963] USSC 9; , 83 S.Ct. 328, 337[1963] USSC 9; , 9 L.Ed.2d 405 (1963); Thornhill v. Alabama, [1942] USSC 81; 310 U.S. 88, 97—98[1942] USSC 81; , 60 S.Ct. 736, 741—742[1942] USSC 81; , 84 L.Ed. 1093 (1940). The Supreme Court of Virginia itself recognized this principle when it recently stated that 'persons who engage in non-privileged conduct are not precluded from attacking a statute under which they were convicted.' Owens v. Commonwealth, 211 Va. 633, 638—639, 179 S.E.2d 477, 481 (1971). 'For in appraising a statute's inhibitory effect upon (First Amendment) rights, this Court has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar.' NAACP v. Button, 371 U.S., at 432, 83 S.Ct. at 338. See generally Note, The First Amendment Overbreadth breadth Doctrine, 83 Harv.L.Rev. 844,

847—848 (1970).

This 'exception to the usual rules governing standing,' Dombrowski v. Pfister, 380 U.S., at 486, 85 S.Ct. at 1121, reflects the transcendent value to all society of constitutionally rpotected expression. We give a defendant standing to challenge a statute on grounds that it is facially overbroad, regardless of whether his own conduct could be regulated by a more narrowly drawn statute, because of the 'danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application.' NAACP v. Button, 371 U.S., at 433, 83 S.Ct. at 338.

Of course, in order to have standing, an individual must present more than '(a)llegations of a subjective 'chill'.' There must be a 'claim of specific present objective harm or a threat of specific future harm.' Laird v. Tatum, [1972] USSC 162; 408 U.S. 1, 13—14[1972] USSC 162; , 92 S.Ct. 2318, 2326[1972] USSC 162; , 33 L.Ed.2d 154 (1972). That requirement, however, surely is met under the circumstances of this case, where the threat of prosecution already has blossomed into the reality of a conviction, and where there can be no doubt concerning the appellant's personal stake in the outcome of the controversy. See Baker v. Carr, [1962] USSC 48; 369 U.S. 186, 204[1962] USSC 48; , 82 S.Ct. 691, 703, 7 L.Ed.2d 603 (1962). The injury of which appellant complains is one to him as an editor and publisher of a newspaper; he is not seeking to raise the hypothetical rights of others. See Moose Lodge No. 107 v. Irvis[1972] USSC 134; , 407 U.S. 163, 166[1972] USSC 134; , 92 S.Ct. 1965, 1968, 32 L.Ed.2d 627 (1972); Breard v. Alexandria, [1951] USSC 69; 341 U.S. 622, 641[1951] USSC 69; , 71 S.Ct. 920, 932[1951] USSC 69; , 95 L.Ed. 1233 (1951). Indeed, unlike some cases in which the standing issue similarly has been raised, the facts of this case well illustrate 'the statute's potential for sweeping and improper applications.' Gooding v. Wilson, 405 U.S., at 532—533, 92 S.Ct. at 1111 (Burger, C.J., dissenting).

Declaring a statute facially unconstitutional because of overbreadth 'is, manifestly, strong medicine,' and 'has been employed by the Court sparingly and only as a last resort.' Broadrick v. Oklahoma, [1973] USSC 166; 413 U.S. 601, 613[1973] USSC 166; , 93 S.Ct. 2908, 2916[1973] USSC 166; , 37 L.Ed.2d 830 (1973). But we conclude that the Virginia courts erred in denying Bigelow standing to make this claim, where 'pure speech' rather than conduct was involved, without any consideration of whether the alleged overbreadth was or was not substantial. Id., at 615, 616, 93 S.Ct., at 2917, 2918. The Supreme Court of Virginia placed no effective limiting construction on the statute. Indeed, it characterized the rights of doctors, husbands, and lecturers as 'hypothetical,' and thus seemed to imply that, although these were in the noncommercial zone, the statute might apply to them, too.

In view of the statute's amendment since Bigelow's conviction in such a way as 'effectively to repeal' its prior application, there is no possibility now that the statute's pre-1972 form will be applied again to appellant or will chill the rights of others. As a practical matter, the issue of its overbreadth has become moot for the future. We therefore decline to rest our decision on overbreadth and we pass

on to the further inquiry, of greater moment not only for Bigelow but for others, whether the statute as applied to appellant infringed constitutionally protected speech.

III

A. The central assumption made by the Supreme Court of Virginia was that the First Amendment guarantees of speech and press are inapplicable to paid commercial advertisements. Our cases, however, clearly establish that speech is not stripped of First Amendment protection merely because it appears in that form. Pittsburgh Press Co. v. Human Rel. Comm'n, [1973] USSC 192; 413 U.S. 376, 384[1973] USSC 192; , 93 S.Ct. 2553, 2558[1973] USSC 192; , 37 L.Ed.2d 669 (1973); New York Times Co. v. Sullivan, [1964] USSC 40; 376 U.S. 254, 266[1964] USSC 40; , 84 S.Ct. 710, 718[1964] USSC 40; , 11 L.Ed.2d 686 (1964).

The fact that the particular advertisement in appellant's newspaper had commercial aspects or reflected the advertiser's commercial interests did not negate all First Amendment guarantees. The State was not free of constitutional restraint merely because the advertisement involved sales or 'solicitations,' Murdock v. Pennsylvania, [1943] USSC 91; 319 U.S. 105, 110—111[1943] USSC 91; , 63 S.Ct. 870, 873—874[1943] USSC 91; , 87 L.Ed. 1292 (1943), or because appellant was paid for printing it, New York Times Co. v. Sullivan, 376 U.S., at 266, 84 S.Ct., at 718; Smith v. California, [1960] USSC 89; 361 U.S. 147, 150[1960] USSC 89; , 80 S.Ct. 215, 217[1960] USSC 89; , 4 L.Ed.2d 205 (1959), or because appellant's motive or the motive of the advertiser may have involved financial gain, Thomas v. Collins, [1945] USSC 32; 323 U.S. 516, 531[1945] USSC 32; , 65 S.Ct. 315, 323[1945] USSC 32; , 89 L.Ed. 430 (1945). The existence of 'commercial activity, in itself, is no justification for narrowing the protection of expression secured by the First Amendment.' Ginzburg v. United States, [1966] USSC 49; 383 U.S. 463, 474[1966] USSC 49; , 86 S.Ct. 942, 949[1966] USSC 49; , 16 L.Ed.2d 31 (1966).

Although other categories of speech—such as fighting words, Chaplinsky v. New Hampshire, [1942] USSC 50; 315 U.S. 568, 572[1942] USSC 50; , 62 S.Ct. 766, 769[1942] USSC 50; , 86 L.Ed. 1031 (1942), or obscenity, Roth v. United States, [1957] USSC 100; 354 U.S. 476, 481—485[1957] USSC 100; , 77 S.Ct. 1304, 1306—[1957] USSC 100; 1309, 1 L.Ed.2d 1498 (1957), Miller v. California, [1973] USSC 190; 413 U.S. 15, 23[1973] USSC 190; , 93 S.Ct. 2607, 2614[1973] USSC 190; , 37 L.Ed.2d 419 (1973), or libel, Gertz v. Robert Welch, Inc., [1974] USSC 144; 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974), or incitement, Brandenburg v. Ohio, [1969] USSC 139; 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969)—have been held unprotected, no contention has been made that the particular speech embraced in the advertisement in question is within any of these categories.

The appellee, as did the Supreme Court of Virginia, relies on Valentine v. Chrestensen, [1942] USSC 80; 316 U.S. 52, 62 S.Ct. 920, 86 L.Ed. 1262 (1942), where a unanimous Court, in a brief

opinion, sustained an ordinance which had been interpreted to ban the distribution of a handbill advertising the exhibition of a submarine. The handbill solicited customers to tour the ship for a fee. The promoter-advertiser had first attempted to distribute a single-faced handbill consisting only of the advertisement, and was denied permission to do so. He then had printed, on the reverse side of the handbill, a protest against official conduct refusing him the use of wharfage facilities. The Court found that the message of asserted 'public interest' was appended solely for the purpose of evading the ordinance and therefore did not constitute an 'exercise of the freedom of communicating information and disseminating opinion.' Id., at 54, 62 S.Ct. at 921. It said:

'We are equally clear that the Constitution imposes no such restraint on government as respects purely commercial advertising.' Ibid.

But the holding is distinctly a limited one: the ordinance was upheld as a reasonable regulation of the manner in which commercial advertising could be distributed. The fact that it had the effect of banning a particular handbill does not mean that Chrestensen is authority for the proposition that all statutes regulating commercial advertising are immune from constitutional challenge. The case obviously does not support any sweeping proposition that advertising is unprotected per se.

This Court's cases decided since Chrestensen clearly demonstrate as untenable any reading of that case that would give it so broad an effect. In New York Times Co. v. Sullivan, supra, a city official instituted a civil libel action against four clergymen and the New York Times. The suit was based on an advertisement carried in the newspaper criticizing police action against members of the civil rights movement and soliciting contributions for the movement. The Court held that this advertisement, although containing factually erroneous defamatory content, was entitled to the same degree of constitutional protection as ordinary speech. It said:

'That the Times was paid for publishing the advertisement is as immaterial in this connection as is the fact that newspapers and books are sold.' 376 U.S.A t 266, 84 S.Ct. at 718.

Chrestensen was distinguished on the ground that the handbill advertisement there did no more than propose a purely commercial transaction, whereas the one in New York Times

'communicated information, expressed opinion, recited grievances, protested claimed abuses, and sought financial support on behalf of a movement whose existence and objectives are matters of the highest public interest and concern.' Ibid.

The principle that commercial advertising enjoys a degree of First Amendment protection was reaffirmed in Pittsburgh Press Co. v. Human Rel. Comm'n, [1973] USSC 192; 413 U.S. 376, 93 S.Ct. 2553, 37 L.Ed.2d 669 (1973). There, the Court, although divided sustained an ordinance that had been construed to forbid newspapers to carry help-wanted advertisements in sex-designated columns except where based upon a bona fide occupational exemption. The Court did describe the advertisements at issue as 'classic examples of commercial speech,' for each was 'no more than a proposal of possible employment.' Id., at 385, 93 S.Ct. at 2559. But the Court indicated that the advertisements would have received some degree of First Amendment protection if the commercial proposal had been legal. The illegality of the advertised activity was particularly stressed:

'Any First Amendment interest which might be served by advertising an ordinary commercial proposal and which might arguably outweigh the governmental interest supporting the regulation is altogether absent when the commercial activity itself is illegal and the restriction on advertising is incidental to a valid limitation on economic activity.' Id., at 389, 93 S.T., at 2561.

B. The legitimacy of appellant's First Amendment claim in the present case is demonstrated by the important differences between the advertisement presently at issue and those involved in Chrestensen and in Pittsburgh Press. The advertisement published in appellant's newspaper did more than simply propose a commercial transaction. It contained factual material of clear 'public interest.' Portions of its message, most prominently the lines, 'Abortions are now legal in New York. There are no residency requirements,' involve the exercise of the freedom of communicating information and disseminating opinion.

Viewed in its entirety, the advertisement conveyed information of potential interest and value to a diverse audience not only to readers possibly in need of the services offered, but also to those with a general curiosity about, or genuine interest in, the subject matter or the law of another State and its development, and to readers seeking reform in Virginia. The mere existence of the Women's Pavilion in New York City, with the possibility of its being typical of other organizations there, and the availability of the services offered, were not unnewsworthy. Also, the activity advertised pertained to constitutional interests. See Roe v. Wade, [1973] USSC 43; 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), and Doe v. Bolton, [1973] USSC 40; 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973). Thus, in this case, appellant's First Amendment interests coincided with the constitutional interests of the general public.

Moreover, the placement services advertised in appellant's newspaper were legally provided in New York at that time.8 The Virginia Legislature could not have regulated the advertiser's activity in New York, and obviously could not have proscribed the activity in that State.9 Huntington v. Attrill, [1892] USSC 238; 146 U.S. 657, 669[1892] USSC 238; , 13 S.Ct. 224, 228[1892] USSC 238; , 36 L.Ed. 1123 (1892). Neither could Virginia prevent its residents from traveling to New York to obtain those services or, as the State conceded, Tr. of Oral Arg. 29, prosecute them for going there. See United States v. Guest, [1966] USSC 63; 383 U.S. 745, 757—759[1966] USSC 63; , 86 S.Ct. 1170, 1177—1178[1966] USSC 63; , 16 L.Ed.2d 239 (1966); Shapiro v. Thompson, [1969] USSC

85; 394 U.S. 618, 629—631[1969] USSC 85; , 89 S.Ct. 1322, 1328—[1969] USSC 85; 1330, 22 L.Ed.2d 600 (1969); Doe v. Bolton, 410 U.S., at 200, 93 S.Ct. at 751. Virginia possessed no authority to regulate the services provided in New York—the skills and credentials of the New York physicians and of the New York professionals who assisted them, the standards of the New York hospitals and clinics to which patients were referred, or the practices and charges of the New York referral services.

A State does not acquire power or supervision over the internal affairs of another State merely because the welfare and health of its own citizens may be affected when they travel to that State. It may seek to disseminate information so as to enable its citizens to make better informed decisions when they leave. But it may not, under the guise of exercising internal police powers, bar a citizen of another State from disseminating information about an activity that is legal in that State.

C. We conclude, therefore, that the Virginia courts erred in their assumptions that advertising, as such, was entitled to no First Amendment protection and that appellant Bigelow had no legitimate First Amendment interest. We need not decide in this case the precise extnet to which the First Amendment permits regulation of advertising that is related to activities the State may legitimately regulate or even prohibit.

Advertising, like all public expression, may be subject to reasonable regulation that serves a legitimate public interest. See Pittsburgh Press Co. v. Human Rel. Comm'n, supra; Lehman v. City of Shaker Heights, [1974] USSC 145; 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974).11 To the extent that commercial activity is subject to regulation, the relationship of speech to that activity may be one factor, among others, to be considered in weighing the First Amendment interest against the governmental interest alleged. Advertising is not thereby stripped of all First Amendment protection. The relationship of speech to the marketplace of products or of services does not make it valueless in the marketplace of ideas.

The Court has stated that 'a State cannot foreclose the exercise of constitutional rights by mere labels.' NAACP v. Button, 371 U.S., at 429, 83 S.Ct. at 336. Regardless of the particular label asserted by the State—whether it calls speech 'commercial' or 'commercial advertising' or 'solicitation'—a court may not escape the task of assessing the First Amendment interest at stake and weighing it against the public interest allegedly served by the regulation. The diverse motives, means, and messages of advertising may make speech 'commercial' in widely varying degrees. We need not decide here the extent to which constitutional protection is afforded commercial advertising under all circumstances and in the face of all kinds of regulation.

IV

The task of balancing the interests at stake here was one that should have been undertaken by the Virginia courts before they reached their decision. We need not remand for that purpose, however, because the outcome is readily apparent from what has been said above.

In support of the statute, the appellee contends that the commercial operations of abortion referral agencies are associated with practices, such as fee splitting, that tend to diminish, or at least adversely affect, the quality of medical care, and that advertising of these operations will lead women to seek services from those who are interested only or mainly in financial gain apart from professional integrity and responsibility.

The State, of course, has a legitimate interest in maintaining the quality of medical care provided within its borders. Barsky v. Board of Regents, [1954] USSC 38; 347 U.S. 442, 451[1954] USSC 38; , 74 S.Ct. 650, 655[1954] USSC 38; , 98 L.Ed. 829 (1954). No claim has been made, however, that this particular advertisement in any way affected the quality of medical services within Virginia. As applied to Bigelow's case, the statute was directed at the publishing of informative material relating to services offered in another State and was not directed at advertising by a referral agency or a practitioner whose activity Virginia had authority or power to regulate.

To be sure, the agency-advertiser's practices, although not then illegal, may later have proved to be at least 'inimical to the public interest' in New York. S.P.S. Consultants, Inc. v. Lefkowitz, 333 F.Supp. 1373, 1378 (SDNY 1971).12 But this development would not justify a Virginia statute that forbids Virginians from using in New York the then legal services of a local New York agency. Here, Virginia is really asserting an interest in regulating what Virginians may hear or read about the New York services. It is, in effect, advancing an interest in shielding its citizens from information about activities outside Virginia's borders, activities that Virginia's police powers do not reach. This asserted interest, even if understandable, was entitled to little, if any, weight under the circumstances.

No claim has been made, nor could any be supported on this record, that the advertisement was deceptive or fraudulent,13 or that it related to a commodity or service that was then illegal in either Virginia or in New York, or that it otherwise furthered a criminal scheme in Virginia.14 There was no possibility that appellant's activity would invade the privacy of other citizens, Breard v. Alexandria, supra, or infringe on other rights. Observers would not have the advertiser's message thrust upon them as a captive audience. Lehman v. City of Shaker Heights, supra; Packer Corp. v. Utah, [1932] USSC 42; 285 U.S. 105, 110[1932] USSC 42; , 52 S.Ct. 273, 274[1932] USSC 42; , 76 L.Ed. 643 (1932).

If application of this statute were upheld under these circumstances, Virginia might exert the power

sought here over a wide variety of national publications or interstate newspapers carrying advertisements similar to the one that appeared in Bigelow's newspaper or containing articles on the general subject matter to which the advertisement referred.15 Other States might do the same. The burdens thereby imposed on publications would impair, perhaps severely, their proper functioning. See Miami Herald Publishing Co. v. Tornillo, [1974] USSC 147; 418 U.S. 241, 257—258[1974] USSC 147; , 94 S.Ct. 2831, 2839—2840[1974] USSC 147; , 41 L.Ed.2d 730 (1974). We know from experience that 'liberty of the press is in peril as soon as the government tries to compel what is to go into a newspaper.' 2 Z. Chafee, Government and Mass Communications 633 (1947). The policy of the First Amendment favors dissemination of information and opinion, and '(t)he guarantees of freedom of speech and press were not designed to prevent 'the censorship of the press merely, but any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential . . .' 2 Cooley, Constitutional Limitations 886 (8th ed.).' Curtis Publishing Co. v. Butts, [1967] USSC 200; 388 U.S. 130, 150[1967] USSC 200; , 87 S.Ct. 1975, 1989, 18 L.Ed.2d 1094 (1967) (opinion of Harlan, J.).

We conclude that Virginia could not apply Va.Code Ann. § 18.1 63 (1960), as it read in 1971, to appellant's publication of the advertisement in question without unconstitutionally infringing upon his First Amendment rights. The judgment of the Supreme Court of Virginia is therefore reversed.

Reversed.

Mr. Justice REHNQUIST, with whom Mr. Justice WHITE joins, dissenting.

The Court's opinion does not confront head-on the question which this case poses, but makes contact with it only in a series of verbal sideswipes. The result is the fashioning of a doctrine which appears designed to obtain reversal of this judgment, but at the same time to save harmless from the effects of that doctrine the many prior cases of this Court which are inconsistent with it.

I am in agreement with the Court, ante, at 2230—2231, that Virginia's statute cannot properly be invalidated on grounds of overbreadth,1 given that the sole prosecution which has ever been brought under this now substantially altered statute is that now in issue. 'It is the law as applied that we review, not the abstract, academic questions which it might raise in some more doubtful case.' Saia v. New York, [1948] USSC 80; 334 U.S. 558, 571[1948] USSC 80; , 68 S.Ct. 1148, 1155[1948] USSC 80; , 92 L.Ed. 1574 (1948) (Jackson, J., dissenting).

Since the Court concludes, apparently from two lines of the advertisement, ante, at 812, that it conveyed information of value to those interested in the 'subject matter or the law of another State and its development' and to those 'seeking reform in Virginia,' ante, at 822, and since the ad relates

to abortion, elevated to constitutional stature by the Court, it concludes that this advertisement is entitled to something more than the limited constitutional protection traditionally accorded commercial advertising. See ante, at 825, n. 10. Although recognizing that '(a)dvertising, like all public expression, may be subject to reasonable regulation that serves a legitimate public interest,' ante, at 826, the Court for reasons not entirely clear to me concludes that Virginia's interest is of 'little, if any, weight.' Ante, at 828.

If the Court's decision does, indeed, turn upon its conclusion that the advertisement here in question was protected by the First and Fourteenth Amendments, the subject of the advertisement ought to make no difference. It will not do to say, as the Court does, that this advertisement conveyed information about the 'subject matter or the law of another State and its development' to those 'seeking reform in Virginia,' and that it related to abortion, as if these factors somehow put it on a different footing from other commercial advertising. This was a proposal to furnish services on a commercial basis, and since we have always refused to distinguish for First Amendment purposes on the basis of content, it is no different from an advertisement for a bucket shop operation or a Ponzi scheme which has its headquarters in New York. If Virginia may not regulate advertising of commercial abortion agencies because of the interest of those seeking to reform Virginia's abortion laws, it is difficult to see why it is not likewise precluded from regulating advertising for an out-of-state bucket shop on the ground that such information might be of interest to those interested in repealing Virginia's 'blue sky' laws.

As a threshold matter the advertisement appears to me, as it did to the courts below, to be a classic commercial proposition directed toward the exchange of services rather than the exchange of ideas. It was apparently also so interpreted by the newspaper which published it which stated in apparent apology in its following issue that the "Weekly collective has since learned that this abortion agency . . . as well as a number of other commercial groups are charging women a fee for a service which is done free by Women's Liberation, Planned Parenthood, and others." 213 Va. 191, 194, 191 S.E.2d 173, 175 (1972). Whatever slight factual content the advertisement may contain and whatever expression of opinion may be laboriously drawn from it does not alter its predominantly commercial content. 'If that evasion were successful, every merchant who desires to broadcast . . . need only append a civic appeal, or a moral platitude, to achieve immunity from the law's command.' Valentine v. Chrestensen, [1942] USSC 80; 316 U.S. 52, 55[1942] USSC 80; , 62 S.Ct. 920, 922[1942] USSC 80; , 86 L.Ed. 1262 (1942). See e.g., Ginzburg v. United States, [1966] USSC 49; 383 U.S. 463, 474 n. 17[1966] USSC 49; , 86 S.Ct. 942, 16 L.Ed.2d 31 (1966). I am unable to perceive any relationship between the instant advertisement and that for example in issue in New York Times Co. v. Sullivan, [1964] USSC 40; 376 U.S. 254, 292[1964] USSC 40; , 84 S.Ct. 710, 732[1964] USSC 40; , 11 L.Ed.2d 686 (1964). Nor am I able to distinguish this commercial proposition from that held to be purely commercial in Pittsburgh Press Co. v. Human Rel. Comm'n, [1973] USSC 192; 413 U.S. 376, 93 S.Ct. 2553, 37 L.Ed.2d 669 (1973). As the Court recognizes, ante, at 819-821, a purely commercial proposal is entitled to little constitutional protection.

Assuming arguendo that this advertisement is something more than a normal commercial proposal, I am unable to see why Virginia does not have a legitimate public interest in its regulation. The Court

apparently concedes, ante, at 825 n. 10, and our cases have long held, that the States have a strong interest in the prevention of commercial advertising in the health field—both in order to maintain high ethical standards in the medical profession and to protect the public from unscrupulous practices. See, e.g., Semler v. Dental Examiners, [1935] USSC 79; 294 U.S. 608, 612[1935] USSC 79; , 55 S.Ct. 570, 572[1935] USSC 79; , 79 L.Ed. 1086 (1935); Williamson v. Lee Optical Co., [1955] USSC 46; 348 U.S. 483, 490—491[1955] USSC 46; , 75 S.Ct. 461, 465—466[1955] USSC 46; , 99 L.Ed. 563 (1955); North Dakota Pharmacy Bd. v. Snyder's Stores, [1973] USSC 248; 414 U.S. 156, 94 S.Ct. 407, 38 L.Ed.2d 379 (1973). And the interest asserted by the Supreme Court of Virginia in the Virginia statute was the prevention of commercial exploitation of those women who elect to have an abortion:

'It is clearly within the police power of the state to enact reasonable measures to ensure that pregnant women in Virginia who decide to have abortions come to their decisions without the commercial advertising pressure usually incidental to the sale of a box of soap powder. And the state is rightfully interested in seeing that Virginia women who do decide to have abortions obtain proper medical care and do not fall into the hands of those interested only in financial gain, and not in the welfare of the patient.' 213 Va., at 196, 191 S.E.2d, at 176.

The concern of the Virginia Supreme Court was not a purely hypothetical one. As the majority notes, ante, at 822-823 n. 8, although New York at the time of this advertisement allowed profitmaking abortion referral agencies, it soon thereafter passed legislation prohibiting commercial advertisement of the type here in issue. The court in S.P.S. Consultants, Inc. v. Lefkowitz, 333 F.Supp. 1373, 1378 (SDNY 1971), quoted the author of that legislation on the reasons for its passage:

"Because New York State has the most liberal abortion statute within the Continental United States, thousands of women from all over the country are coming into New York State . . .. (M)ost of these women came here through referral agencies who advertise nationally. These agencies, for a sizeable fee, make all abortion arrangements for a patient. We also learned that certain hospitals give discounts to these lucrative, profit-making organizations. Thus, at the expense of desperate, frightened women these agencies are making a huge profit—some, such a huge profit that out Committee members were actually shocked.'

See, e.g., State v. Mitchell, 66 Misc.2d 514, 321 N.Y.S.2d 756 (1971); State v. Abortion Information Agency, Inc., 69 Misc.2d 825, 323 N.Y.S.2d 597 (1971).

Without denying the power of either New York or Virginia to prohibit advertising such as that in issue where both publication of the advertised activity and the activity itself occur in the same State, the Court instead focuses on the multistate nature of this transaction, concluding that a State 'may not, under the guise of exercising internal police powers, bar a citizen of another State from

disseminating information about an activity that is legal in that State.' Ante, at 824-825. And the Court goes so far as to suggest that it is an open question whether a State may constitutionally prohibit an advertisement containing an invitation or offer to engage in activity which is criminal both in the State of publication and in the proposed situs of the crime. See ante, at 828 n. 14.

The source of this rigid territorial limitation on the power of the States in our federal system to safeguard the health and welfare of their citizens is not revealed. It is surely not to be found in cases from this Court.2 Beginning at least with our decision in Delamater v. South Dakota, [1907] USSC 68; 205 U.S. 93, 100[1907] USSC 68; , 27 S.Ct. 447, 448[1907] USSC 68; , 51 L.Ed. 724 (1907), we have consistently recognized that irrespective of a State's power to regulate extraterritorial commercial transactions in which its citizens participate it retains an independent power to regulate the business of commercial solicitation and advertising within its borders. Thus, for example, in Head v. New Mexico Board, [1963] USSC 154; 374 U.S. 424, 83 S.Ct. 1759, 10 L.Ed.2d 983 (1963), we upheld the power of New Mexico to prohibit commercial advertising by a New Mexico radio station of optometric services provided in Texas. Mr. Justice Brennan, concurring in that opinion, noted that a contrary result might well produce 'a 'noman's land' . . . in which there would be at best selective policing of the various advertising abuses and excesses which are now very extensively regulated by state law.' Id., at 446, 83 S.Ct. at 1772. See, e.g., Packer Corp. v. Utah, [1932] USSC 42; 285 U.S. 105, 52 S.Ct. 273, 76 L.Ed. 643 (1932); Breard v. Alexandria, [1951] USSC 69; 341 U.S. 622, 71 S.Ct. 920, 95 L.Ed. 1233 (1951).

Were the Court's statements taken literally, they would presage a standard of the lowest common denominator for commercial ethics and business conduct. Securities issuers could circumvent the established blue-sky laws of States which had carefully drawn such laws for the protection of their citizens by establishing as a situs for transactions those States without such regulations, while spreading offers throughout the country. Loan sharks might well choose States with unregulated small loan industries, luring the unwary with immune commercial advertisements. And imagination would place the only limit on the use of such a 'no-man's land' together with artificially created territorial contacts to bilk the public and circumvent long-established state schemes of regulation.

Since the Court saves harmless from its present opinion our prior cases in this area, ante, at 825 n. 10, it may be fairly inferred that it does not intend the results which might otherwise come from a literal reading of its opinion. But solely on the facts before it, I think the Court today simply errs in assessing Virginia's interest in its statute because it does not focus on the impact of the practices in question on the State. Cf. Young v. Masci, [1933] USSC 90; 289 U.S. 253, 53 S.Ct. 599, 77 L.Ed. 1158 (1933). Although the commercial referral agency, whose advertisement in Virginia was barred, was physically located outside the State, this physical contact says little about Virginia's concern for the touted practices. Virginia's interest in this statute lies in preventing commercial exploitation of the health needs of its citizens. So long as the statute bans commercial advertising by publications within the State, the extraterritorial location at which the services are actually provided does not diminish that interest.

Since the statute in question is a 'reasonable regulation that serves a legitimate public interest,' ante, at 826, I would affirm the judgment of the Supreme Court of Virginia.