regulation than if it were offered for free.[1038] The doctrine lasted in this form for more than twenty years.

The Court later modified this position so that commercial speech is protected "from unwarranted governmental regulation," although its nature makes it subject to greater limitations than may be imposed on expression not solely related to the economic interests of the speaker and its audience.[1039] The change to its earlier holdings was accomplished within a brief span of time in which the Justices haltingly but then decisively moved to a new position. Applying the doctrine in a narrow five-to-four decision, the Court sustained the application of a city's ban on employment discrimination to bar sex-designated employment advertising in a newspaper.[1040] Suggesting that speech does not lose its constitutional protection simply because it appears in a commercial context, Justice Powell, for the Court, did find the placing of want-ads in newspapers to be "classic examples of commercial speech," devoid of expressions of opinions with respect to issues of social policy; so the "did no more than propose a commercial transaction." But the Justice also noted that employment discrimination, which was facilitated by the advertisements, was itself illegal.[1041]

Next, the Court overturned a conviction under a state statute that made it illegal, by sale or circulation of any publication, to encourage or prompt the procuring of an abortion. The Court held the statute unconstitutional as applied to an editor of a weekly newspaper who published an advertisement announcing the availability of legal and safe abortions in another state and detailing the assistance that would be provided state residents in obtaining abortions in the other state.[1042] The Court discerned that the advertisements conveyed information of other than a purely commercial nature, that they related to services that were legal in the other jurisdiction, and that the state could not prevent its residents from obtaining abortions in the other state or punish them for doing so.

[1038] Books that are sold for profit, Smith v. California, 361 U.S. 147, 150 (1959); Ginzburg v. United States, 383 U.S. 463, 474–75 (1966), advertisements dealing with political and social matters which newspapers carry for a fee, New York Times Co. v. Sullivan, 376 U.S. 254, 265–66 (1964), motion pictures which are exhibited for an admission fee, United States v. Paramount Pictures, 334 U.S. 131, 166 (1948); Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 501–02 (1952), were all during this period held entitled to full First Amendment protection regardless of the commercial element involved.

[1039] Central Hudson Gas & Electric Co. v. PSC, 447 U.S. 557, 561 (1980).

[1040] Pittsburgh Press Co. v. Comm'n on Human Relations, 413 U.S. 376 (1973).

[1041] 413 U.S. at 385, 389. The Court continues to hold that government may ban commercial speech related to illegal activity. Central Hudson Gas & Electric Co. v. PSC, 447 U.S. 557, 563–64 (1980).

[1042] Bigelow v. Virginia, 421 U.S. 809 (1975).