fends a regulation on speech as a means to redress past harms or prevent anticipated harms, it must do more than simply 'posit the existence of the disease sought to be cured.' . . . It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." [555] The Court has held, however, that to sustain a denial of a statute denying minors access to sexually explicit material "requires only that we be able to say that it was not irrational for the legislature to find that exposure to material condemned by the statute is harmful to minors." [556]

In certain other contexts, the Court has relied on "common sense" rather than requiring the government to demonstrate that a recited harm was real and not merely conjectural. For example, it held that a rule prohibiting high school coaches from recruiting middle school athletes did not violate the First Amendment, finding that it needed "no empirical data to credit [the] common-sense conclusion that hard-sell [speech] tactics directed at middle school students could lead to exploitation . . . ." [557] On the use of common sense in free

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[555] Turner Broadcasting System v. FCC, 512 U.S. 622, 664 (1994) (federal "must-carry" provisions, which require cable television systems to devote a portion of their channels to the transmission of local broadcast television stations, upheld as a content-neutral, incidental restriction on speech, not subject to strict scrutiny). The Court has applied the same principle in weighing the constitutionality of two other types of speech restrictions to which it does not apply strict scrutiny: restrictions on commercial speech, Edenfield v. Fane, 507 U.S. 761, 770–771 (1993) ("a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real"), and restrictions on campaign contributions, Nixon v. Shrink Missouri Government PAC, 528 U.S. 377, 392 (2000) ("We have never accepted mere conjecture as adequate to carry a First Amendment burden").

[556] Ginsberg v. New York, 390 U.S. 629, 641 (1968) (upholding a ban on sale to minors of "girlie" magazines, and noting that, although "studies all agree that a causal link [between 'minors' reading and seeing 'sexual material' and an impairment in their 'ethical and moral development'] has not been demonstrated, they are equally agreed that a causal link has not been disproved either," id. at 641–42). In a case involving a federal statute that restricted "signal bleed" of sexually explicit programming on cable television, a federal district court wrote, "We recognize that the Supreme Court's jurisprudence does not require empirical evidence. Only some minimal amount of evidence is required when sexually explicit programming and children are involved." Playboy Entertainment Group, Inc. v. U.S., 30 F. Supp. 2d 702, 716 (D. Del. 1998), *aff'd*, 529 U.S. 803 (2000). In a case upholding a statute that, to shield minors from "indecent" material, limited the hours that such material may be broadcast on radio and television, a federal court of appeals wrote, "Congress does not need the testimony of psychiatrists and social scientists in order to take note of the coarsening of impressionable minds that can result from a persistent exposure to sexually explicit material. . . ." Action for Children's Television v. FCC, 58 F.3d 654, 662 (D.C. Cir. 1995) (en banc), *cert. denied*, 516 U.S. 1043 (1996). A dissenting opinion complained, "[t]here is not one iota of evidence in the record . . . to support the claim that exposure to indecency is harmful—indeed, the nature of the alleged 'harm' is never explained." Id. at 671 (Edwards, C.J., dissenting).

[557] Tennessee Secondary School Athletic Ass'n v. Brentwood Academy, 551 U.S. 291, 300 (2007).