latory alternatives and the presence of a "reasonable fit" between the commercial speech restriction and the governmental interest.[1092]

Taxation.—Disclaiming any intimation "that the owners of newspapers are immune from any of the ordinary forms of taxation for support of the government," the Court voided a state two-percent tax on the gross receipts of advertising in newspapers with a circulation exceeding 20,000 copies a week.[1093] In the Court's view, the tax was analogous to the 18th-century English practice of imposing advertising and stamp taxes on newspapers for the express purpose of pricing the opposition penny press beyond the means of the mass of the population.[1094] The tax at issue focused exclusively upon newspapers, it imposed a serious burden on the distribution of news to the public, and it appeared to be a discriminatorily selective tax aimed almost solely at the opposition to the state administration.[1095] Combined with the standard that government may not impose a tax directly upon the exercise of a constitutional right it-

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[1092] "[S]everal Members of the Court have expressed doubts about the *Central Hudson* analysis and whether it should apply in particular cases." Thompson v. Western States Medical Center, 535 U.S. 357, 367 (2002). Justice Stevens has criticized the *Central Hudson* test because it seemingly allows regulation of any speech propounded in a commercial context regardless of the content of that speech. "[A]ny description of commercial speech that is intended to identify the category of speech entitled to less First Amendment protection should relate to the reasons for permitting broader regulation: namely, commercial speech's potential to mislead." Rubin v. Coors Brewing Co., 514 U.S. 476, 494 (1995) (concurring opinion). The Justice repeated these views in 1996: "when a State entirely prohibits the dissemination of truthful, nonmisleading commercial messages for reasons unrelated to the preservation of a fair bargaining process, there is far less reason to depart from the rigorous review that the First Amendment generally demands." 44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484, 501 (1996) (a portion of the opinion joined by Justices Kennedy and Ginsburg). Justice Thomas, similarly, wrote that, in cases "in which the government's asserted interest is to keep legal users of a product or service ignorant in order to manipulate their choices in the marketplace, the *Central Hudson* test should not be applied because such an interest' is *per se* illegitimate. . . ." Greater New Orleans Broadcasting Ass'n, Inc. v. United States, 527 U.S. 173, 197 (1999) (Thomas, J., concurring) (internal quotation marks omitted). Other decisions in which the Court majority acknowledged that some Justices would grant commercial speech greater protection than it has under the *Central Hudson* test include United States v. United Foods, Inc., 533 U.S. 405, 409–410 (2001) (mandated assessments, used for advertising, on handlers of fresh mushrooms struck down as compelled speech, rather than under *Central Hudson*), and Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 554 (2001) (various state restrictions on tobacco advertising struck down under *Central Hudson* as overly burdensome).

[1093] Grosjean v. American Press Co., 297 U.S. 233, 250 (1936).

[1094] 297 U.S. at 245–48.

[1095] 297 U.S. at 250–51. *Grosjean* was distinguished on this latter basis in Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue, 460 U.S. 575 (1983).