Did Five Supreme Court Justices Go “Completely Bonkers”?: Saul Goodman, Legal Advertising, and the First Amendment Since *Bates v. State Bar of Arizona*[[1]](#footnote-1)♦

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Abstract

*In* Bates v. State Bar of Arizona *(1977), the U.S. Supreme Court held for the first time that the First and Fourteenth Amendments’ protection of the freedom of speech extends to truthful advertising of attorneys’ services. The ruling set aside decades of ethics rules that had prohibited lawyers from engaging in this type of marketing that bar associations had deemed predatory and beneath the stature of the profession. Saul Goodman from* Breaking Bad *and* Better Call Saul *is a pop culture representation of what legal advertising has become, both reflecting and shaping public perception of legal commercial publicity. But are Saul’s advertisements constitutionally protected? This Article uses Saul Goodman’s actions as illustrative examples—comparing them to the* Bates *decision and other Court rulings on First Amendment protections for legal ads—to explore the philosophical underpinnings of protecting commercial speech. With the growing sophistication of data mining, this review offers an opportunity to consider if a reexamination of these rulings is warranted.*

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Introduction

In the first season of *Better Call Saul*, Jimmy McGill (Bob Odenkirk)—who later changes his name to Saul Goodman—rents a billboard to advertise his legal services.[[4]](#footnote-4) Jimmy engages in a publicity stunt (explored below) as a way to garner significant media attention and drum up business for his struggling law practice.[[5]](#footnote-5) Later, Jimmy’s brother Chuck (Michael McKean)—who is also an attorney—states his belief that his brother’s actions are unprofessional and undermine the dignity of the law:

Jimmy: You think the billboard thing was unethical. It was promotion. It was advertising, that’s all.

Chuck: Which wasn’t even allowed until five Supreme Court justices went completely bonkers in *Bates v. State Bar of Arizona*.

Jimmy: Aha!

Chuck: In any event, it’s legal. If you want to advertise, that’s your business.[[6]](#footnote-6)

In what may be the only episode of a television program that explicitly refers to the U.S. Supreme Court’s decision in *Bates v. State Bar of Arizona* (1977), *Better Call Saul* brings to attention the First Amendment right that attorneys have to advertise their services. Furthermore, Chuck expresses his displeasure at the fact that lawyers can engage in commercial advertising since that seminal Court case, something that lawyers were generally prohibited from doing before *Bates*.[[7]](#footnote-7)

This Article will explore the U.S. Supreme Court’s decisions on commercial advertising and the constitutional right to freedom of expression. This will include a thorough review of advertising decisions prior to *Bates*, the *Bates* ruling, and post-*Bates* decisions that relate to the advertising of legal services. *Bates* set aside decades of ethics rules that had prohibited lawyers from engaging in this type of marketing that bar associations had deemed predatory and beneath the profession; the Court did so by ruling that such prohibitions violated the First Amendment.[[8]](#footnote-8) However, the types of advertisements considered by the Court over four decades ago in *Bates* pale in comparison to some legal advertisements in the twenty-first century.[[9]](#footnote-9) Saul Goodman from *Breaking Bad* and *Better Call Saul* is a pop culture representation of what legal advertising has become, both reflecting and shaping public perception of legal commercial promotion. Indeed, popular culture can help illuminate and affect the law and what it means as much as law can influence popular culture.[[10]](#footnote-10) However, are Saul’s advertisements constitutional? Moreover, if they are, should they be? Or is Chuck right, and the move to expand First Amendment protections is mistaken, if not “bonkers?” This Article uses Saul Goodman’s actions as illustrative examples—comparing them to the *Bates* decision and other Supreme Court rulings on First Amendment protections for legal ads—to explore the philosophical underpinnings of protecting commercial speech, particularly for attorneys.

1. The Supreme Court and Commercial Speech

Historically, the U.S. Supreme Court understood commercial speech as having no First Amendment protection. In *Valentine v. Chrestensen* (1942), the Court ruled that a New York City ordinance banning handbills, circulars, and other printed materials from being distributed in a public place if its purpose was commercial or business advertising was constitutional.[[11]](#footnote-11) The same ordinance specifically exempted (and, hence, protected) the distribution of political protest materials.[[12]](#footnote-12) In finding no violation of the First Amendment, the Court stated, “the streets are proper places for the exercise of the freedom of communicating information and disseminating opinion,” going on to proclaim that although “the states and municipalities may appropriately regulate the privilege in the public interest, they may not unduly burden or proscribe its employment in these public thoroughfares.”[[13]](#footnote-13) However, the Court then held that “the Constitution imposes no such restraint on government as respects purely commercial advertising,” proclaiming that “[w]hether, and to what extent, one may promote or pursue a gainful occupation in the streets, to what extent such activity shall be adjudged a derogation of the public right of user, are matters for legislative judgment.”[[14]](#footnote-14) Thus, according to the *Valentine* Court, commercial advertising had no protection under the Constitution.[[15]](#footnote-15)

By the mid-1970s, the Court began to rethink this understanding of the First Amendment. This reevaluation was part of an increasing assertiveness of the Court to broaden free speech protections from the late 1960s into the 1970s, as evidenced by such landmark cases as *Cox v. Louisiana* (1965),[[16]](#footnote-16) *Tinker v. Des Moines* (1969),[[17]](#footnote-17) *Brandenburg v. Ohio* (1969),[[18]](#footnote-18) *Cohen v. California* (1971),[[19]](#footnote-19) *Police Department of Chicago v. Mosley* (1972),[[20]](#footnote-20) and *Healy v. James* (1972).[[21]](#footnote-21) The first move to include commercial speech under the aegis of the First Amendment came in *Bigelow v. Virginia* (1975). The Court faced a Virginia statute prohibiting the promotion of abortion; the law was applied to Jeffrey Bigelow, an editor whose newspaper ran an advertisement for a New York City organization promoting abortions in New York State in 1971,[[22]](#footnote-22) before *Roe v. Wade* (1973) found a constitutionally protected right to abortion.[[23]](#footnote-23) In striking down Bigelow’s conviction, the Court limited the ruling in *Valentine* and held that “commercial advertising enjoys a degree of First Amendment protection.”[[24]](#footnote-24) What had motivated the ruling in *Valentine* was a distinction between protected speech—which was held to have social, literary, or political value—and merely commercial speech. Yet, in *Bigelow*, the Court found reasons why the state’s ability to regulate commercial speech ought to be curtailed. First, it mattered that the commercial activity being advertised was legal in New York, and Virginia had no power over its regulation: “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.”[[25]](#footnote-25) Critically, however, the Court realized that commercial speech might be invested with material that was not merely commercial:

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. Thus, in this case, appellant’s First Amendment interests coincided with the constitutional interests of the general public.[[26]](#footnote-26)

Nonetheless, while *Bigelow* made clear that commercial speech would receive some First Amendment protection, the Court’s opinion indicated that the degree of protection was still uncertain: “We need not decide in this case the precise extent to which the First Amendment permits regulation of advertising that is related to activities the State may legitimately regulate or even prohibit.”[[27]](#footnote-27) In addition, the Court emphasized that the commercial speech in this case was connected to another constitutional right, thus heightening its importance.[[28]](#footnote-28) These points notwithstanding, the case offered constitutional protection to commercial speech in an unprecedented way. In other words, *Bigelow* signified the “first significant break” with the *Valentine* decision.[[29]](#footnote-29)

The Court had occasion to begin clarifying the degree to which commercial speech is constitutionally protected the next year in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council* (1976). There, the Court was confronted with a challenge to a state rule prohibiting licensed pharmacists from advertising prescription drug prices. In declaring this ban unconstitutional, the Court echoed its rationale from *Bigelow* that “[t]he relationship of speech to the marketplace of products or of services does not make it valueless in the marketplace of ideas.”[[30]](#footnote-30) Indeed, the Court in *Virginia State Board of Pharmacy* reaffirmed that “speech does not lose its First Amendment protection because money is spent to project it, as in a paid advertisement of one form or another.”[[31]](#footnote-31) While it did not dispute the finding in *Bigelow* that “[s]ome forms of commercial speech regulation are surely permissible,”[[32]](#footnote-32) the Court in *Virginia State Board of Pharmacy* did not present an immediately obvious case of “clear public interest” the way that abortion advertising did in *Bigelow*.[[33]](#footnote-33) What standard, then, would apply in regulating commercial speech? In this regard, the Court offered examples of the types of commercial speech restrictions that are constitutional, including restrictions on advertising of illegal transactions, prohibitions on false or misleading advertisements, or appropriate time, place, and manner restrictions.[[34]](#footnote-34) Finding none of these matters to be at issue in the case, the Court concluded that the government may not “completely suppress the dissemination of concededly truthful information about entirely lawful activity, fearful of that information’s effect upon its disseminators and its recipients.”[[35]](#footnote-35)

*Virginia State Board of Pharmacy* was an 8-1 decision, with only Justice William Rehnquist dissenting.[[36]](#footnote-36) Thus, it appeared after this case was decided that the Court was firmly of the view that commercial speech was not only protected, but that this protection was quite substantial.[[37]](#footnote-37) Would the justices see things the same way when it came to the regulation of their own profession, though? The Court squarely faced that question just one year later in *Bates v. State Bar of Arizona*. The case involved John Bates and Van O’Steen, licensed attorneys in Arizona who opened a legal clinic to provide representation and legal services for lower fees to clients with more modest incomes.[[38]](#footnote-38) Bates and O’Steen believed that to thrive as a business, they needed the ability to advertise their services and fee structure. However, the state bar banned lawyers from advertising their practice in newspapers or magazines, on radio or television, in displays, and in the telephone book.[[39]](#footnote-39) Nevertheless, Bates and O’Steen placed an advertisement in a local newspaper, and upon being found in violation of the relevant bar rule, the Board of Governors of the State Bar of Arizona recommended a one-week suspension for each attorney.[[40]](#footnote-40)

By a vote of 5-4, the Court found that Arizona’s blanket prohibition on lawyer advertising violated the First Amendment.[[41]](#footnote-41) As was becoming standard, the Court believed that the suppression of truthful legal information was restricting constitutionally protected speech.[[42]](#footnote-42) Writing for the Court, Justice Harry Blackmun compared the bar rule with the advertising ban on Virginia pharmacists: “[l]ike the Virginia statutes, the disciplinary rule serves to inhibit the free flow of commercial information and to keep the public in ignorance.”[[43]](#footnote-43) However, since the practice of law differs from pharmacology, the Court entertained six arguments proffered by Arizona to justify the advertising ban; at least some of these arguments from Arizona may be appealing to Chuck McGill from *Better Call Saul*.

First, Arizona claimed that attorney advertising would have an adverse effect on professionalism because the resultant commercialization would “undermine the attorney’s sense of dignity and self-worth,” as well as erode “the client’s trust in his attorney.”[[44]](#footnote-44) In response, the Court surmised that the “postulated connection between advertising and the erosion of true professionalism” was severely strained, because it erroneously presumed that “attorneys must conceal from themselves and from their clients the real-life fact that lawyers earn their livelihood at the bar.”[[45]](#footnote-45) Furthermore, the Court determined that clients would rarely enlist “the aid of an attorney with the expectation that his services will be rendered free of charge.”[[46]](#footnote-46) On the contrary, the Court cited studies showing that “many persons do not obtain counsel even when they perceive a need because of the feared price of services or because of an inability to locate a competent attorney.”[[47]](#footnote-47) Indeed, leading up to the *Bates* decision, consumer groups were calling for modifications to bans on attorney advertising so that potential seekers of legal services, particularly those in poverty, would have better access to attorneys to help resolve their legal problems.[[48]](#footnote-48)

Second, Arizona advanced the argument that attorney advertising would be inherently misleading because (1) the individualized nature of legal services makes it difficult to truthfully advertise a price, (2) a potential client will not know in advance which services they will need, and (3) the advertising will inevitably stress factors that are irrelevant to good lawyering.[[49]](#footnote-49) The Court answered each of the three parts of this argument in turn. The Court did not doubt that “many services performed by attorneys are indeed unique” before determining that this does not “make advertising misleading so long as the attorney does the necessary work at the advertised price.”[[50]](#footnote-50) Furthermore, the Court contended that most people seeking legal services are not visiting a lawyer “to ascertain if they have a clean bill of legal health”; instead, the Court reasoned that “attorneys are likely to be employed to perform specific tasks.”[[51]](#footnote-51) Finally, although the Court conceded that legal advertisements may emphasize factors not relevant to selecting an attorney, the Court concluded that an advertising ban was actually worse:

The alternative[—]the prohibition of advertising[—]serves only to restrict the information that flows to consumers. Moreover, the argument assumes that the public is not sophisticated enough to realize the limitations of advertising, and that the public is better kept in ignorance than trusted with correct but incomplete information. We suspect the argument rests on an underestimation of the public.[[52]](#footnote-52)

Thus, to Arizona’s second point, the Court determined that attorney advertising was not an inherently misleading endeavor. Furthermore, the Court showed a skepticism for government arguments that it is better to keep people “in the dark” regarding access to commercial information, because the government determines it is for the people’s own good; this is a skepticism the Court would reiterate in later commercial speech cases.[[53]](#footnote-53)

Third, Arizona claimed that legal advertising would have an adverse impact on the administration of justice because it would “have the undesirable effect of stirring up litigation.”[[54]](#footnote-54) To this, the Court replied in short order that “advertising by attorneys is not an unmitigated source of harm to the administration of justice.”[[55]](#footnote-55) Instead, the Court proclaimed that advertising could be beneficial, because “we cannot accept the notion that it is always better for a person to suffer a wrong silently than to redress it by legal action.”[[56]](#footnote-56) This argument from the Court reflected the American Bar Association Code of Professional Responsibility, which stresses that attorneys have an ethical obligation to make their legal services widely accessible to laypersons.[[57]](#footnote-57)

Fourth, Arizona argued that attorney advertising would result in unwelcome economic effects, including (1) increasing overhead that would be passed along to clients in higher fees, and (2) increasing the entry costs to the profession, making it more difficult for new attorneys to enter the legal market.[[58]](#footnote-58) The Court answered this by asserting that the state’s claims were “dubious at best.”[[59]](#footnote-59) If advertising remained banned, it would “increase the difficulty of discovering the lowest cost seller of acceptable ability. As a result, to this extent attorneys are isolated from competition, and the incentive to price competitively is reduced.”[[60]](#footnote-60) Instead, the Court determined that due to pricing wars, it would be “entirely possible that advertising will serve to reduce, not advance, the cost of legal services to the consumer.”[[61]](#footnote-61) Likewise, regarding barriers to entry for new attorneys, the Court resolved that advertising would make it less likely that a lawyer “must rely on his contacts with the community to generate a flow of business,” something newer attorneys would be less likely to have.[[62]](#footnote-62) Empirical evidence after *Bates* shows that the Court’s assertions here were true: as a general matter, attorney advertising tends to lower consumer costs and helps newer firms communicate with potential clients, thus placing those firms at less of a competitive disadvantage with established firms.[[63]](#footnote-63)

Fifth, Arizona maintained that advertising would have an adverse effect on the quality of legal services because an “attorney may advertise a given ‘package’ of service at a set price” and then “be inclined to provide, by indiscriminate use, the standard package regardless of whether it fits the client’s needs.”[[64]](#footnote-64) However, the Court dealt a quick blow to this line of reasoning, retorting that an advertising ban is an “ineffective way of deterring shoddy work,” because a lawyer “who is inclined to cut quality will do so regardless of the rule on advertising.”[[65]](#footnote-65) Put another way, the Court postulated that attorneys who do substandard work would practice in this manner whether or not prohibitions on advertising were in place.[[66]](#footnote-66)

Finally, Arizona alleged that if it legalized attorney advertising, enforcement of advertising rules would be difficult, resulting in the creation of a regulatory agency to effectively carry out these regulations.[[67]](#footnote-67) The Court was not persuaded by this contention, finding it rather convenient that the state argued repeatedly about the virtues of the legal profession before then condemning it as rife with attorneys who would act corruptly.[[68]](#footnote-68) In response, the Court declared that “with advertising, most lawyers will behave as they always have: [t]hey will abide by their solemn oaths to uphold the integrity and honor of their profession and of the legal system.”[[69]](#footnote-69) For the majority, finding a constitutionally protected right to advertise is not a reason to expect that attorneys would shy away from acting professionally and ethically.[[70]](#footnote-70)

After declaring Arizona’s blanket ban on attorney advertising unconstitutional, the Court made it clear that this ruling did not prohibit state bar associations from regulating this type of expression altogether: “[W]e, of course, do not hold that advertising by attorneys may not be regulated in any way.”[[71]](#footnote-71) Echoing *Virginia State Board of Pharmacy*, the Court noted that “[a]dvertising that is false, deceptive, or misleading of course is subject to restraint,” because “the public and private benefits from commercial speech derive from confidence in its accuracy and reliability.”[[72]](#footnote-72) The Court similarly concluded that “[a]s with other varieties of speech, it follows as well that there may be reasonable restrictions on the time, place, and manner of advertising,” while also observing that “the special problems of advertising on the electronic broadcast media will warrant special consideration.”[[73]](#footnote-73) Nevertheless, the Court held that attorneys’ commercial advertising is protected by the First Amendment.

However, with four justices dissenting, the decision in *Bates* was far from unanimous. Chief Justice Warren Burger asserted that although “the public needs information concerning attorneys, their work, and their fees,” it is also true that “the public needs protection from the unscrupulous or the incompetent practitioner anxious to prey on the uninformed.”[[74]](#footnote-74) Justice Lewis Powell denied that “under the First Amendment[,] ‘truthful’ newspaper advertising of a lawyer’s prices for ‘routine legal services’ may not be restrained,” and instead found that the majority’s decision was “neither required by the First Amendment, nor in the public interest.”[[75]](#footnote-75) According to Powell, “the type of advertisement before us inescapably will mislead many who respond to it. In the end, it will promote distrust of lawyers and disrespect for our own system of justice.”[[76]](#footnote-76)

Finally, Justice Rehnquist avowed that the Free Speech Clause does not safeguard commercial expression at all:

I continue to believe that the First Amendment speech provision, long regarded by this Court as a sanctuary for expressions of public importance or intellectual interest, is demeaned by [its] invocation to protect advertisements of goods and services. I would hold quite simply that the appellants’ advertisement, however truthful or reasonable it may be, is not the sort of expression that the Amendment was adopted to protect.[[77]](#footnote-77)

The impassioned arguments of the dissents and of the State Bar of Arizona make it clear what others have noted: *Bates* was a controversial decision.[[78]](#footnote-78) Such controversy explains how—decades later—the character of Chuck McGill could believe that the five justices in the majority went “completely bonkers” in issuing the decision.

Nevertheless, the Court’s majority in *Bates* found that attorney advertisements were commercial speech receiving First Amendment protection; in truth, this result was expected given the Court’s pronouncements in *Virginia State Board of Pharmacy*.[[79]](#footnote-79) A few years later, in *Central Hudson Gas & Electric Corporation v. Public Service Commission* (1980), the Court laid down a four-part test to judge the constitutionality of commercial speech regulations:

At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.[[80]](#footnote-80)

Since the Court ruled that attorney advertising is a type of commercial speech receiving First Amendment protection, regulations of attorney advertising are subject to the *Central Hudson* test.[[81]](#footnote-81) Although the *Central Hudson* test deteriorated commercial speech rights to a certain extent by requiring the government to have only a substantial interest (as opposed to a compelling interest) at stake in its regulation,[[82]](#footnote-82) it nevertheless codified a standard to judge commercial speech regulations. The standard ensured that such speech would continue to receive refuge under the First Amendment. Furthermore, as will be discussed below, more recent Court decisions suggest that the protection of commercial speech is greater today than it was when *Bates* and *Central Hudson* were decided.[[83]](#footnote-83)

Although *Bates* involved reviewing the constitutionality of a complete ban on legal advertising, the direct matter at issue in *Bates* was the suspension of two attorneys for a simple, truthful advertisement of their prices for routine services.[[84]](#footnote-84) Later Supreme Court cases clarified the limits of this right. In *Ohralik v. Ohio State Bar Association* (1978), the Court ruled that “in-person solicitation of professional employment by a lawyer does not stand on a par with truthful advertising about the availability and terms of routine legal services, let alone with forms of speech more traditionally within the concern of the First Amendment.”[[85]](#footnote-85) Thus, the commercial speech right discussed in *Bates* was narrowed and found inapplicable to in-person solicitation due to what the Court saw as the inherently deceptive nature of this activity.[[86]](#footnote-86) Similarly, in *Florida Bar v. Went For It, Inc*. (1995), the Court upheld a law banning direct-mail solicitation of accident victims and their relatives for thirty days after an accident or disaster.[[87]](#footnote-87)

Conversely, in *In re R. M. J.* (1982), the Court reviewed the discipline of a Missouri attorney who was reprimanded by the state supreme court for not using specific prescribed language in his advertisements (e.g., he referred to his areas of practice as “personal injury” and “real estate” instead of the state bar’s required language of “tort law” and “property law,” and he referred to areas of practice that were legal, but not permitted to be advertised).[[88]](#footnote-88) The attorney was also reprimanded by the Missouri Supreme Court for listing the jurisdictions where he was admitted to practice, something prohibited by a state bar rule.[[89]](#footnote-89) The U.S. Supreme Court held that the attorney’s First Amendment rights were violated because his speech—advertising a legal service—was not misleading.[[90]](#footnote-90) Likewise, in *Zauderer v. Office of Disciplinary Counsel* (1985), the Court partially overturned a reprimand of an attorney who ran a newspaper advertisement that included an illustration, which was prohibited by the state’s bar rules.[[91]](#footnote-91) Reaffirming the right of attorneys to engage in commercial advertising that is not false or deceptive, the Court held that “the mere possibility that some members of the population might find advertising embarrassing or offensive cannot justify suppressing it. The same must hold true for advertising that some members of the bar might find beneath their dignity.”[[92]](#footnote-92) However, in the same case, the Court ruled that attorneys may be required to disclose certain information in commercial advertisements, since “disclosure requirements trench much more narrowly on an advertiser’s interests than do flat prohibitions on speech, ‘warning[s] or disclaimer[s] might be appropriately required [ . . .]in order to dissipate the possibility of consumer confusion or deception.’”[[93]](#footnote-93)

Thus, there is no question that *Bates* began a trend whereby attorney advertising was afforded First Amendment protection, especially outside of in-person or direct-mail solicitation. Despite Chuck McGill’s characterization of five justices going “completely bonkers” in the case, *Bates* set a precedent that the Court has subsequently cited dozens of times.[[94]](#footnote-94) Indeed, although states continue to impose standards on attorneys by their creation and enforcement of ethics rules, there is no question that lawyer advertisements continue to receive First Amendment protection today.[[95]](#footnote-95) More than forty years after deciding *Bates*, the Court has given no indication that it will change course and rule that lawyer advertisements no longer have protection under the Free Speech Clause. However, as we shall argue, when we look at the Saul Goodman examples, there is reason to believe Chuck McGill’s concern is not unreasonable, and we speculate how the Saul Goodmans of the future may pose a challenge to the coherence of the *Bates* ruling.

1. Saul Goodman and His Advertising

There is no question that the justices of the U.S. Supreme Court and other federal judges determine the legal meaning of national constitutional powers and rights in the United States.[[96]](#footnote-96) Nevertheless, the U.S. Constitution remains a political document in multiple senses. The Constitution is subject to amendment when political will commands it.[[97]](#footnote-97) Even in the absence of amendments, cultural events and artifacts can affect how jurists think about the Constitution and the law.[[98]](#footnote-98) Supreme Court justices, representing various ideologies and championing a variety of methods of constitutional interpretation, have quoted or alluded to popular culture artifacts in their opinions interpreting the Constitution and federal law. In recent decades, this list includes Justice William Brennan,[[99]](#footnote-99) Chief Justice William Rehnquist,[[100]](#footnote-100) Justice John Paul Stevens,[[101]](#footnote-101) Justice Antonin Scalia,[[102]](#footnote-102) Justice Anthony Kennedy,[[103]](#footnote-103) Justice David Souter,[[104]](#footnote-104) Justice Ruth Bader Ginsburg,[[105]](#footnote-105) Chief Justice John Roberts,[[106]](#footnote-106) and Justice Elena Kagan.[[107]](#footnote-107)

All told, there have been numerous references to television programming in many state and federal judicial opinions.[[108]](#footnote-108) The fact that jurists cite or allude to such popular culture artifacts emphasizes the relevance of television to the law, as well as how this programming—as a part of popular culture—can affect our perception of the law and politics,[[109]](#footnote-109) including the meaning of the Constitution.[[110]](#footnote-110) In this way, depictions of the law on *Better Call Saul* and *Breaking Bad* are not simply thought experiments helping us shed light on how the law might apply to a hypothetical; they may also have the potential to reshape how jurists, lawyers, and the public think about the law and constitutional rights. It is in this sense that Saul Goodman’s advertisements are useful learning tools and cultural reflections.

Attorney Saul Goodman was introduced to viewing audiences in the second season of *Breaking Bad*, when he is hired by Walter White (Bryan Cranston) and Jesse Pinkman (Aaron Paul) to represent one of their drug dealers, Brandon “Badger” Mayhew (Matt L. Jones).[[111]](#footnote-111) Saul is, to say the least, ethically challenged. In the episode in which he first appears, Saul admits that he takes bribes, just not from strangers.[[112]](#footnote-112) He also sets in motion a scheme whereby Badger implicates an innocent man for crystal methamphetamine manufacture and distribution, but the man—who has spent his adult life rotating in and out of prison—agrees to admit to the crime for financial compensation.[[113]](#footnote-113) Throughout the duration of *Breaking Bad*, Saul works with Walter and Jesse to launder money,[[114]](#footnote-114) facilitate their relationship with a major drug distributor,[[115]](#footnote-115) advocate for the murder of persons who are a threat to Walter’s and Jesse’s business and the safety of them and their associates,[[116]](#footnote-116) and encourage or participate in a variety of other criminal conspiracies and ethical improprieties. In fact, it has been documented that Saul committed at least sixty-nine crimes on *Breaking Bad*.[[117]](#footnote-117) Saul has changed his birth name of James McGill to Saul Goodman. We first find out that Saul Goodman is an alias when he tells Walter that he has adopted a Jewish name as a way to drum up business by playing into stereotypes he believes his potential clients hold.[[118]](#footnote-118)

Saul’s lack of ethics has not been lost among legal scholars. As Christopher Ryan explains, the depiction of Saul Goodman on television presents to viewers the stereotypical, ambulance-chasing, unethical attorney.[[119]](#footnote-119) Armen Adzhemyan and Susan M. Marcella amply demonstrate that Saul’s character distorts for the public the establishment and scope of attorney-client privilege.[[120]](#footnote-120) This contention is supported by Lucille A. Jewel, who describes Saul as embodying “all the negative stereotypes of solo practitioners in America by advertising extensively on bus station benches, having an office in a shabby shopping center, and participating in Walter White’s descent to criminal overlord status.”[[121]](#footnote-121) Similarly, Alafair S. Burke characterizes Saul as being no less than a “rule-bending” and “sketchy” lawyer.[[122]](#footnote-122) Veronica J. Finkelstein, in an article titled “Better Not Call Saul,” admonishes that a “sleazy lawyer” like Saul, who engages in criminal activities, should be seen as not only unethical, but also as providing ineffective assistance of counsel under the Sixth Amendment, requiring automatic reversal of any of his clients who are convicted.[[123]](#footnote-123) Before ascending to the U.S. Supreme Court, Neil Gorsuch wrote in the *Harvard Journal of Law and Public Policy* how Saul is not just driving culture, but also reflecting what America thinks of its lawyers: “we have reason to look hard in the mirror when our profession’s reflected image in popular culture is no longer Atticus Finch but Saul Goodman.”[[124]](#footnote-124)

Clearly, the intended effect of Saul in both *Breaking Bad* and *Better Call Saul* is to portray an unethical attorney willing to do anything for a buck. If the sampling of law review articles above is indicative, it shows that he is viewed with disdain not only by the general public, but also among legal practitioners and scholars. A core part of not only Saul’s introduction in *Breaking Bad* but also his continued portrayal on both series is his advertising, which is meant to be comedic. It is also undignified. But is it protected by the First Amendment according to *Bates* and subsequent decisions? A review of Saul’s advertisements will show that his advertisements are largely protected as commercial speech under the First Amendment. We will explore Saul’s advertisements through season four of *Better Call Saul* and throughout *Breaking Bad*, showing the progression of his advertisements.[[125]](#footnote-125)

The first known advertisement that Saul produces is a billboard, when he is still going by the name James “Jimmy” M. McGill.[[126]](#footnote-126) In an attempt to drum up business as a solo practitioner, he imitates one of the senior partners at his brother’s firm (Hamlin, Hamlin & McGill), Howard Hamlin (Patrick Fabian).[[127]](#footnote-127) The billboard lists Jimmy’s full name, James M. McGill, his phone number, and a statement that he is an attorney at law.[[128]](#footnote-128) In a photograph, Jimmy wears the same expensive suit and tie as Howard, and his hair in the picture matches Howard’s hairstyle.[[129]](#footnote-129) Jimmy also uses in a logo his initials (JMM) in the same style of font as those of the firm (HHM).[[130]](#footnote-130) Upon seeing the billboard, Howard files a cease and desist order against Jimmy, claiming trademark infringement.[[131]](#footnote-131) When Kim Wexler (Rhea Seehorn), who works at HHM, informs Jimmy of the pending legal action, Jimmy’s response is to ask rhetorically, “I can advertise, can’t I?” To this, Kim responds, “yes, you can advertise, Jimmy, all you want. That billboard is not advertising. That is a declaration of war.”[[132]](#footnote-132)

The judge hearing the matter sides with Howard Hamlin, finding that the logo Jimmy used was infringing on the HHM trademark:

Mr. McGill . . . you are within your rights to advertise using your own name. However, in my estimation, the billboard clearly and intentionally duplicates elements of the Hamlin, Hamlin, McGill logo. You’re actively copying their established brand for your own gain. . . . The billboard must come down within 48 hours.[[133]](#footnote-133)

In this case, the judge was correct in that Jimmy’s advertisement, by infringing on the HHM logo, could not claim First Amendment protection. The U.S. Supreme Court in *San Francisco Arts & Athletics, Inc. v. U.S. Olympic Committee* held that an athletic company could be enjoined from using the word “Olympic” without infringing on its First Amendment rights.[[134]](#footnote-134) According to the Court, “Congress reasonably could conclude that most commercial uses of the Olympic words and symbols are likely to be confusing. It also could determine that unauthorized uses, even if not confusing, nevertheless may harm the USOC by lessening the distinctiveness and thus the commercial value of the marks.”[[135]](#footnote-135) In reaching this conclusion in *San Francisco Arts & Athletics*, the Court emphasized one of the prongs of *Central Hudson*,asking if “the incidental restrictions on First Amendment freedoms are greater than necessary to further a substantial governmental interest.”[[136]](#footnote-136) The Court found substantial interests at stake in the exclusive control of the word “Olympic,” because, among other reasons, it “ensure[s] that the USOC receives the benefit of its own efforts so that the USOC will have an incentive to continue to produce a ‘quality product.’”[[137]](#footnote-137) The Court determined that when the same word was to be used by San Francisco Arts and Athletics for the “Gay Olympic Games,” the “possibility for confusion as to sponsorship is obvious. There is no question that this unauthorized use could undercut the USOC’s efforts to use, and sell the right to use, the word in the future, since much of the word’s value comes from its limited use.”[[138]](#footnote-138)

The same issue was at stake with Jimmy’s billboard, as he was intending to copy Howard’s appearance and his firm’s logo to steal business by confusing potential clients who might mistake him for Howard; therefore, Jimmy could be ordered to remove it without violating Jimmy’s commercial speech rights. If Jimmy’s intent was parody rather than commercial gain, *Central Hudson* probably would not be the correct standard to apply, but in this case that matter was not an issue, as Jimmy was seeking to directly advertise his services.[[139]](#footnote-139) Nevertheless, Jimmy turned lemons into lemonade by staging a publicity stunt: as he was filming the “injustice” of the billboard being removed, the worker removing the billboard slipped and fell.[[140]](#footnote-140) While the worker was hanging from a safety harness, Jimmy climbed the billboard to save the man; however, Jimmy paid the man to fall intentionally.[[141]](#footnote-141) The whole event results in favorable free media attention for Jimmy.[[142]](#footnote-142)

Jimmy’s next foray into advertising occurs while he is working as an associate at the firm of Davis & Main. Without the permission of the partners, Jimmy creates and runs a television advertisement to solicit potential clients in a class action lawsuit against Sandpiper Crossing senior living facilities.[[143]](#footnote-143) The advertisement begins by panning to an elderly woman (who is one of Jimmy’s clients) sitting in a chair.[[144]](#footnote-144) The woman narrates the following lines:

My husband and I scrimped and saved for so many years. We did our best to build a nest egg so that we wouldn’t be a burden to our family. After Ronald passed, I moved to an assisted-living facility, a nice place. They told me they’d take care of everything, but then one day they said all my money was gone. How could that be? Where did it all go?[[145]](#footnote-145)

The woman then cries a single tear.[[146]](#footnote-146) Jimmy proceeds to calmly narrate the remainder of the dialog: “[If you or a loved one] is a resident of a Sandpiper Crossing facility or other associated retirement community, you may be eligible to receive compensation. For a free consultation, call the law offices of Davis & Main at (505) 242-7700. That’s (505) 242-7700.”[[147]](#footnote-147)

Jimmy describes to Kim, who is now dating him, that the advertisement was “made in accordance with the rules and regulations of the American Bar Association.”[[148]](#footnote-148) Nevertheless, when one of the senior partners at the firm, Cliff Main (Ed Begley, Jr.), learns of the ad, he calls Jimmy and responds angrily:

Cliff: You ran a commercial?

Jimmy: Yeah, and oh my God, let me tell you, the response has been. . . .

Cliff: You ran a commercial without ever showing it to me, without first consulting me and my partners [sic]. Did you actually think that was gonna [sic] fly?

Jimmy: I was planning on telling you in the morning.

Cliff: The day after it aired?!

Jimmy: I only ran it once, just in one small market. It was kind of an experiment, alright? Kind of under the radar. And in all fairness, you did tell me client outreach was my department.

Cliff: Don’t be disingenuous. This commercial—I take it my firm’s name is mentioned?

Jimmy [nervously]: Yes. Yeah.

Cliff: Jesus. Tomorrow morning. Eight o’clock. My office, with the partners, and we want to see this thing.[[149]](#footnote-149)

As Cliff explains to Jimmy in that meeting the next day, after viewing the advertisement, “our image, our reputation, is something we’ve been carefully building for years. . . . Something like this could damage it.”[[150]](#footnote-150) The firm refuses to run the advertisement again.

Cliff Main and his fellow partners expressed concerns similar to those articulated by the State Bar of Arizona and the dissenting justices in *Bates* regarding the damaging effects that television advertising could have on the public’s view of the practice of law. Even the majority in *Bates* cautioned (as noted above) that “the special problems of advertising on the electronic broadcast media will warrant special consideration.”[[151]](#footnote-151) The decision not to run Jimmy’s advertisement again was made by the firm’s partners. However, if the state bar had required that Jimmy remove the advertisement, he would have had a very strong case for it being protected by the First Amendment under *Central Hudson*’s commercial speech test. Jimmy’s television spot advertised the lawful activity of legal representation, and it is not misleading as to the nature of the legal representation at issue. The elderly woman’s compelling story and crying resorts to emotional appeal, but the Court in *Zauderer* rejected the argument that appealing to the audience’s emotions is a sufficient reason impose an advertising ban.[[152]](#footnote-152)

Jimmy shoots his next television advertisement after he leaves Davis & Main when he is a solo practitioner once again. The advertisement proceeds as follows:

Jimmy [narrating, with a man portraying a World War II veteran in front of a B-29 on screen]: You are the greatest generation. You didn’t start World War II, but you sure as heck finished it.

Jimmy [narrating, with an older farmer standing in front of a tractor on screen]: And if that weren’t enough, you sent a rocket 300 feet tall to the moon.

Jimmy [narrating, with an elderly woman crocheting on screen]: Now, in your golden years, you need someone looking out for you. Someone you can trust. A man who says what he does and does what he says. When you need someone to count on . . . .

World War II veteran: Give me Jimmy!

Older farmer: Give me Jimmy!

Elderly woman: Give me Jimmy, because moxie is in such short supply these days.

Jimmy [narrating, with Jimmy in front of a U.S. flag on screen]: Jimmy McGill, a lawyer you can trust.[[153]](#footnote-153)

Also appearing on the screen at the end of the advertisement is the following:

JIMMY McGILL

*A Lawyer You Can Trust*.

(505) 842-5662.[[154]](#footnote-154)

Of the three actors, only the elderly woman is known to be an actual client.[[155]](#footnote-155) The shot of Jimmy in front of the American flag was staged at a public school without permission to film.[[156]](#footnote-156) More to the point, the veteran—claimed by Jimmy before filming to be a man named Major Theodore “Fudge” Talbot—is actually a criminal whom Jimmy falsely asserted was a disabled World War II veteran as pretense to get him onto an Air Force base to film the shot in front of a B-29 FIFI.[[157]](#footnote-157) It appears that Fudge has some sort of medals pinned to the side of his hat during filming, although neither he nor Jimmy states to the Air Force officer that Fudge won any medals in World War II.[[158]](#footnote-158)

Once the advertisement airs, the Air Force officer who was duped by Jimmy confronts him at his office.[[159]](#footnote-159) The officer claims that the advertisement was made under false pretenses, as the man being filmed was not, as Jimmy insinuated at the time, an Air Force veteran: “You’re gonna [sic] take that ad off the air. And if you play that ad one more time, I’ll go to the judge advocate, and we will take you down. Trespassing, false representation, stolen valor, the whole nine yards.”[[160]](#footnote-160) Although Jimmy eventually convinces the officer that this effort would not be successful,[[161]](#footnote-161) it begs the question what if Jimmy was ordered by the government to take this advertisement off the air or was prosecuted under the Stolen Valor Act?

The Air Force officer’s threat of prosecution under the Stolen Valor Act raises interesting First Amendment questions in this context. The conversation between Jimmy and the Air Force officer takes places sometime in late 2002 or early 2003.[[162]](#footnote-162) The Stolen Valor Act, prior to *United States v. Alvarez* (2012), prohibited false claims that one had earned a U.S. military medal.[[163]](#footnote-163) Although we never observe Jimmy verbally claiming that Fudge won any medals (as we only know that he falsely claimed to have served in the military), assume for the moment that Jimmy did make such a claim on Fudge’s behalf. Assume, also, that the Stolen Valor Act was used to prosecute Jimmy. In *Alvarez*, the federal government prosecuted a man for violating the Act (prior to amendments made in 2013 in response to *Alvarez*).[[164]](#footnote-164) The Supreme Court, though, ruled that the prosecution violated the First Amendment, because it punished Alvarez simply for claiming that he had been awarded the Congressional Medal of Honor without directly seeking to secure employment, financial benefits, or privileges reserved for those who have earned the medal.[[165]](#footnote-165) According to the Court, although the “Government’s interest in protecting the integrity of the Medal of Honor is beyond question,” the “Government ha[d] not shown, and cannot show, why counter speech would not suffice to achieve its interest.”[[166]](#footnote-166) In other words, the proper approach to false speech in most instances is for others to speak the truth in the marketplace of ideas.[[167]](#footnote-167)

However, the Court in *Alvarez* also noted that the First Amendment does not protect false speech that is meant to defame or defraud, holding that if such a statement is “a knowing or reckless falsehood,” that would “bring the speech outside the First Amendment.”[[168]](#footnote-168) While there is no question that any relevant insinuations by Jimmy were false, and that he knew such assertions were false, it was not done to defraud the Air Force. Neither Jimmy nor Fudge were seeking from the Air Force employment, financial benefits, or privileges reserved for those who have earned service medals.[[169]](#footnote-169) Although Jimmy was making the advertisement to appeal to potential fee-paying clients, any knowingly false statements were made to the officer, not in the advertisement. Furthermore, the speech to the public in the commercial did not directly state that Fudge himself was a World War II veteran or had won any medals. Thus, according to *Alvarez*, as despicable as we may think his conduct was, the First Amendment protected both Jimmy’s speech to the officer and the speech in the advertisement. Although a disclaimer that the persons portrayed in the advertisement were actors would have closed all doubt about the speech being protected, since no direct claim was made in the advertisement that Fudge personally was a veteran (as opposed to a paid actor), the Free Speech Clause appears to protect all aspects of what Jimmy did in the development and airing of the advertisement.

Since *Better Call Saul* is largely a prequel to *Breaking Bad*, moving chronologically we now proceed to season two of *Breaking Bad* to “Better Call Saul,” the episode where Jimmy McGill is introduced in the series. By this time, Jimmy has changed his name to Saul Goodman.[[170]](#footnote-170) Saul has taken full advantage of the *Bates* decision’s protection of commercial speech by advertising in various forms. For instance, a park bench advertisement contains his name (with the O’s in “Goodman” doubling as pans on the scales of justice), his catchphrase (“Better Call Saul!”), a statement that he is an attorney at law, his phone number, and his photograph[[171]](#footnote-171) (in a latter episode, we see Walter White using a matchbook that has similar imagery).[[172]](#footnote-172) These truthful statements—including the artwork—are clearly protected according to relevant case law.[[173]](#footnote-173) Likewise, outside of his office is a large inflatable Statue of Liberty and sizable red banner that reads, “Better Call Saul!”[[174]](#footnote-174) There is no question that these advertisements fall within the constitutional protections outlined in *Bates*, as they are not false, deceptive, or misleading.[[175]](#footnote-175) Even though they are—to say the least—obnoxious, the discussion in the paragraphs below will reveal that this alone does not strip these advertisements of First Amendment protection.

In the same “Better Call Saul” episode of *Breaking Bad*, we are introduced to a Saul Goodman television advertisement. It proceeds as follows:

Man 1 [wearing a suit in an office]: I had a good job until my boss accused me of stealing.

Man 1 [wearing prison garb behind bars]: I better call Saul!

[Cutaway to a large inflatable Statue of Liberty and a banner, “Better Call Saul!” Scrolling on the bottom of the screen, a banner reads, “NOT ACTUAL CLIENTS, PAID ACTORS REPRESENTING TESTIMONIALS, AFFIDAVITS ON FILE. ¡SE HABLA ESPAÑOL!”]

Man 2 [driving car with bottle of alcohol]: I was out partying, minding my own business.

Female Police Officer [while placing Man 2 in handcuffs after he has an automobile accident]: You are under arrest.

Man 2: I better call Saul!

Saul Goodman [in office, holding law book with Constitution wallpaper as a backdrop, with the song “Yankee Doodle” playing as background music]: Hi, I’m Saul Goodman. Did you know that you have rights? The Constitution says you do. And so do I. I believe that until proven guilty, every man, woman, and child in this country is innocent. And that’s why I fight for you, Albuquerque![[176]](#footnote-176)

The entire advertisement has a campy, comical feel to it, from the tone of the dialog to the attire of the female police officer, who is wearing a cropped top police “uniform.”[[177]](#footnote-177) Nevertheless, the statements made in the advertisement itself are not false or misleading. The ad makes statements that are true, such as that the Constitution protects the rights of the accused. It also includes statements of opinion by Saul and that he fights for his clients. By disclosing the scrolling text about the participants being paid actors representing testimonials, it provides more truthful information to the public than the advertisements he aired as Jimmy McGill, assuming that the affidavits the ad claims Saul possesses are actually on file. State bar associations may even make reasonable disclosure requirements like these in attorney advertising, in part, because “disclosure requirements trench much more narrowly on an advertiser’s interests than do flat prohibitions on speech.”[[178]](#footnote-178)

Even the depiction of the female officer in the advertisement, which is the sort of portrayal that is demeaning to women and the legal profession,[[179]](#footnote-179) is entitled to First Amendment protection. According to the Court in *Zauderer*,

[A]lthough the State undoubtedly has a substantial interest in ensuring that its attorneys behave with dignity and decorum in the courtroom, we are unsure that the State’s desire that attorneys maintain their dignity in their communications with the public is an interest substantial enough to justify the abridgment of their First Amendment rights.[[180]](#footnote-180)

This portrayal neither falls outside of First Amendment protection for being obscene,[[181]](#footnote-181) nor does it use indecent language that may be censored by the Federal Communications Commission (FCC).[[182]](#footnote-182) Even if one finds this or other portions of the ad offensive, that does not deprive it of First Amendment protection; as the Court declared in *Matal v. Tam* (2017), commercial speech may not “be cleansed of any expression likely to cause offense.”[[183]](#footnote-183) After *Bates*, *Zauderer*, and subsequent cases, the Court’s remedy for distasteful commercial speech is in the court of public opinion: if potential clients are repulsed by an advertisement, they will be deterred from seeking legal services from that attorney, creating a professional disincentive to produce such expressions. Thus, Saul’s first *Breaking Bad* television advertisement is protected commercial speech, even if it is offensive and in poor taste.

The only other television advertisement we see Saul air in *Breaking Bad* occurred during season four in the episode “Thirty-Eight Snub.” After an airliner (Wayfarer 515) crashes in Albuquerque, Saul runs the following advertisement:

Saul [sitting on a desk with law books; the backdrop is a sky with an airliner flying by and then exploding]: Have you recently lost a loved one in an aviation disaster?

Saul [with the scales of justice by his side]: Have you suffered injury, shock to the senses, or property damage as a result of airplane debris or, God forbid, falling body parts? Then call me, Saul Goodman. It goes without saying that the six, seven, or even eight figure settlement that I can win for you will never fill the hole in your heart caused by your tragic loss. But you deserve justice. So if you want to tip the scales back in your favor, better call Saul![[184]](#footnote-184)

Saul is shown at the conclusion of the advertisement with three flashing green dollar signs on each side of him and his name at the bottom of the screen.[[185]](#footnote-185)

This advertisement, with the exploding airliner and the discussion of “falling body parts,” is clearly repugnant. However, that alone does not deprive it of First Amendment protection. It reminds us of the Court’s admonition in *Zauderer* that commercial expression is protected even if “some members of the population might find advertising embarrassing or offensive,” and that this also holds “true for advertising that some members of the bar might find beneath their dignity.”[[186]](#footnote-186) As the Court noted in *Alvarez*, “[t]hough few might find respondent’s statements anything but contemptible, his right to make those statements is protected by the Constitution’s guarantee of freedom of speech and expression.”[[187]](#footnote-187) What raises a closer First Amendment question is Saul’s statement that he can win a settlement ranging from the hundreds of thousands to the tens of millions of dollars. This borders on being misleading, as it may suggest to someone who has received any physical, emotional, or property damage from the crash to believe that they would be likely to receive a settlement of this value, regardless of other circumstances. Nevertheless, Saul’s use of the word “can” (as opposed to the use of a more definitive word like “will”) leaves open the possibility that Saul might not be able to win this type of settlement for every client. Indeed, “can” is defined as “know[ing] how to” do something and as being “made possible or probable by circumstances.”[[188]](#footnote-188) In this way, he has not promised a settlement to the viewer, but he has only indicated that he is *capable* of producing this type of legal outcome. That portion of the advertisement, while a close call, does not cross the line from protected to unprotected expression, according to *Bates* and its progeny.

Finally, at the beginning of each season premiere of *Better Call Saul*, the viewer is shown a black-and-white flash-forward to the present, where we see Saul in the present day, after the events of *Breaking Bad*. Saul is working under the assumed name “Gene” at a Cinnabon in an Omaha, Nebraska shopping mall.[[189]](#footnote-189) When returning home from work one day, Gene fixes himself an alcoholic drink and watches three of his older advertisements from the time when he was known as Saul Goodman:

Saul: Don’t let false allegations bully you into an unfair fight. I’m Saul Goodman, and I’ll do the fighting for you! No charge is too big for me. When legal forces have you cornered, better call Saul!

Saul: I’ll get your case dismissed! I’ll give you the defense you deserve! Why? Because I’m Saul Goodman, attorney at law. I investigate, advocate, persuade, and most importantly, win! Better call Saul!

Saul: Do you feel doomed? Have opponents of freedom wrongly intimidated you? Maybe they told you you’re in serious trouble and there’s nothing you can do about it. I’m Saul Goodman, and I’m here to tell you that they’re wrong! It’s never too late for justice. Better call Saul![[190]](#footnote-190)

Two of these advertisements are clearly protected under *Bates*, but one is problematic. The first advertisement states that Saul will fight for a client who has been falsely accused, and it implies that he can handle criminal charges up to, and including, a top-level felony. Such a statement merely makes opinion-based claims about Saul’s capacity to take on criminal clients, and it is not false or misleading in any way for an attorney admitted to practice law. Based on the advertising that the Court held was protected expression for the attorneys in *Bates* and *R. M. J.*, this advertisement is shielded by the First Amendment.[[191]](#footnote-191)

The third advertisement involves Saul telling viewers that if someone has informed them that they are “in serious trouble and there’s nothing [they] can do about it,” then that person is wrong. This is a bit more disingenuous, but it is still protected expression. Saul’s statement that this is incorrect and that it is “never too late for justice” is true, in that “something” can always been done, even if the “something” Saul can do is ineffectual. An attempt at justice can be pursued if the case has not yet been decided at the trial level, but even if it has, motions for a new trial, as well as appeals and collateral attacks, are potentially available.[[192]](#footnote-192) In this way, Saul’s statements remain true, even if they are subject to a greater amount of misinterpretation, trending them closer to what may be prohibited under *Bates* and *Central Hudson*. Indeed, in *Central Hudson*, the Court cited *Bates* for the proposition that “[e]ven when advertising communicates only an incomplete version of the relevant facts, the First Amendment presumes that some accurate information is better than no information at all.”[[193]](#footnote-193)

The second of these three advertisements, however, makes the unequivocal claim that Saul will “get your case dismissed.” This is, at the very least, misleading. Saul knows that this will not always be possible, as no lawyer is able to see all of her or his criminal cases dismissed. Unlike the advertisement above where Saul uses the word “can” in a similar context that signifies his ability to win a case, here he says, “I’ll get your case dismissed.” The contraction “I’ll” is short for “I will” in this advertisement. The word “will” in this context means to “express frequent, customary, or habitual action or natural tendency” and to “express futurity.”[[194]](#footnote-194) In other words, it implies certainty of an outcome. This is why his statement in this advertisement is misleading to a degree that the advertisement using the word “can” above was not, thus placing it outside of First Amendment protection. However, the remainder of the second advertisement is protected expression. Saul indicates that he wins cases, which is true.[[195]](#footnote-195) Likewise, other portions of this advertisement contain a series of boasts about Saul’s ability to provide a good legal defense and what he will do to achieve that end; these are more opinions about his work ethic, so they are protected expression. In the words of the Court, although “there is no constitutional value in false statements of fact,”[[196]](#footnote-196) according to the First Amendment, “there is no such thing as a false idea.”[[197]](#footnote-197) To the extent that Saul was giving his opinion about his own legal abilities, such opinions are a constitutionally protected idea and not an unprotected false statement of fact.

1. Saul Goodman and the Constitutionality of Future Regulation of Legal Advertising

In the years following *Bates*, it is arguable that some of the objections raised in the case by the dissents and the State Bar of Arizona have, contrary to the hopes of the *Bates* majority, come to fruition. In many ways, Saul Goodman is Justice Powell’s dissent in *Bates* brought to life. *Better Call Saul* would not resonate so much if Saul Goodman’s character did not contain some kernel of truth about the public’s perception of attorneys and attorney advertising. Comparison of Gallup poll data from the last several decades reveals that public respect for lawyers has slowly deteriorated since *Bates*. In 1976, twenty-five percent of Americans had high or very high respect for the profession. In 2017, that number had declined to eighteen percent.[[198]](#footnote-198) A 2014 study in the *Proceedings of the National Academy of Sciences* found that lawyers were ranked second to last among forty-two job categories surveyed, ranking only one spot above prostitutes.[[199]](#footnote-199) According to a 2013 survey by the Pew Research Center, merely eighteen percent of the public believed that lawyers contributed “a lot” to society, which was the lowest of the ten professions surveyed.[[200]](#footnote-200) Advertisements like those of Saul Goodman are unlikely to have a positive effect on these numbers.[[201]](#footnote-201)

Thus, did the justices go “completely bonkers” in setting the precedents of *Bates* and its progeny? The question is a difficult one to answer, with problems arising either way. On the one hand, the cost of “Better Call Saul”-style advertising must be borne if the Court is to guarantee freedom of expression for any commercial speech that does not directly present *Bigelow*’s “material of clear ‘public interest.’” Indeed, as the Court’s decision in *Zauderer* made clear, “the mere possibility that some members of the population might find advertising embarrassing or offensive cannot justify suppressing it. The same must hold true for advertising that some members of the bar might find beneath their dignity.”[[202]](#footnote-202) The initial insight in *Bigelow*—that some commercial speech was of public interest—was, by necessity, broadened to include generally any commercial speech that advertises lawful activities. The justices needed to extend their interpretation to avoid becoming referees in questions of what was of sufficient “public interest” to warrant protection. Had the justices done otherwise, it would have forced Supreme Court justices and other jurists into deciding which advertisements contain permissible speech and which ones do not, likely requiring judges to insert their own tastes and political judgments into the decision, particularly in light of the Court’s recent indication that “the line between commercial and non-commercial speech is not always clear.”[[203]](#footnote-203) Indeed, commercial advertising can contain political statements and shape culture,[[204]](#footnote-204) meaning that overly zealous regulations stunt human creativity. The justices, like in other Free Speech Clause cases,[[205]](#footnote-205) rightly decided that this would be an unfruitful endeavor rife with the potential to discriminate against the expression of opinion.[[206]](#footnote-206) The result is that, barring the one billboard that involved trademark infringement and the one television ad we flagged as problematic above, the First Amendment protects—and should protect—the sleazy ambulance-chasing advertisements of Saul Goodman under the *Central Hudson* analysis. Besides guarding against the dangers of the justices determining which commercial expressions are in good taste, protecting commercial advertising in this way allowed Jimmy McGill—when he was a new attorney—to break into the legal marketplace in just the way *Bates* suggested. Indeed, without the established reputation and contacts of someone like his brother, Chuck, at a major firm, the prospects of success for attorneys like Jimmy are much lower, and his resultant clients may have never seen their valid legal claims vindicated.[[207]](#footnote-207)

Ironically, it is where the Court has agreed with Chuck McGill that tensions could arise. Imagine if Saul Goodman were still practicing law today. He would likely still make use of low budget commercials and gaudy decorations, but he would have a new tool at his disposal— Internet advertising. Does this change the First Amendment analysis? One could argue that the caveat from *Bates* might apply here: “the electronic broadcast media will warrant special consideration.”[[208]](#footnote-208) Although the Court has considered the Internet to be more like print than broadcast for First Amendment regulations and protections,[[209]](#footnote-209) one could reason that the Court should consider Internet advertisements in the same category as broadcast advertisements. In the age of Big Data and in the wake of scandals like Russian manipulation of social media and Cambridge Analytica,[[210]](#footnote-210) the Court may have occasion to reconsider the boundaries of acceptable legal advertising, particularly where electronic advertising is tailored to the individual profiles of consumers.

The rationale for this approach could be found in *Ohralik*, where the Court justified bans on in-person solicitation. In *Virginia State Board of Pharmacy*, “the dissemination of concededly truthful information about entirely lawful activity”[[211]](#footnote-211) was protected, because it gave the public more information—and one-way communication—to make decisions that are more informed. In-person solicitation, however, “may disserve the individual and societal interest, identified in Bates, in facilitating informed and reliable decision making.”[[212]](#footnote-212) The intrusive invasion of privacy, the one-sidedness of the claims, and the ability of “a professional trained in the art of persuasion” make an “uninformed acquiescence” from an “unsophisticated, injured, or distressed lay person” problematic.[[213]](#footnote-213) This, in turn, leads to “stirring up litigation, assertion of fraudulent claims, debasing the legal profession, and potential harm to the solicited client in the form of overreaching, overcharging, underrepresentation, and misrepresentation.”[[214]](#footnote-214) This concern over manipulation was extended in *Florida Bar v. Went For It, Inc.* where even mailed solicitation was proscribed for a period of time on the grounds that victims and families, in the immediate aftermath of a tragedy, would be especially vulnerable, even to printed advertisements.[[215]](#footnote-215)

The use of microtargeted online ads falls somewhere in between in-person solicitation and billboard or television advertising. The latter are static, publicly visible, aimed at a general audience, and fleeting; the typical viewer will only see them occasionally. Microtargeted advertisements, on the other hand, are tailored to the individual’s profile and designed to deliver messages that are targeted to particular emotional, financial, or ideological vulnerabilities and messages that are by no means limited to truthful and lawful claims.[[216]](#footnote-216) Further, these ads, by their nature, can be altered at will if circumstances, profiling, or other considerations indicate an alteration would improve the efficacy of the advertisement.[[217]](#footnote-217) These ads are at the same time private (designed to appear in particular users’ Internet browsers) and ubiquitous (both in terms of the growing time spent on the Internet for business, research, shopping, and leisure, but also because via tracking, ads can “follow” users across different sites).[[218]](#footnote-218) By visiting a website, “cookies” or data tags are stored, identifying the sites and even subdomains of sites one visits. One’s very presence on the Internet creates a profile that data miners can use to target one’s specific interests and needs.[[219]](#footnote-219) The American Civil Liberties Union (ACLU) notes that because of the ubiquitous nature of social media giants like Facebook, even non-users of the platform can be subject to data-mining, if they are tagged or otherwise identified by persons who have a Facebook account.[[220]](#footnote-220) As the value of data-tracking and mining has become more apparent, additional methods have emerged, such as “super cookies,” which continue to track users even when they enter into “private” browsing modes, and canvas fingerprinting, which allows very direct tracking of individual computers (and, by extension, users).[[221]](#footnote-221) As documented by *ProPublica*, a recent study out of Princeton observes that the emergence of these newer forms of tracking neither can be stopped by traditional privacy settings, nor are they detectable by most ad blocking software.[[222]](#footnote-222)

This growing sophistication of data mining and the use of tracking cookies and fingerprinting, combined with a growing use of machine learning and predictive algorithms, allow firms an unprecedented ability to target individualized messages at users.[[223]](#footnote-223) Privacy experts have, for some time, warned that companies are able to create highly personalized and intrusive profiles on Internet users based on their online purchasing habits, smartphone GPS data, and social media usage.[[224]](#footnote-224) There is every reason to suspect that tracking will continue and even grow ever more sophisticated, as the entire business model of social media sites such as Facebook and search engines like Google consist of selling data to interested third parties. The tenuous level of electronic security also means that one’s medical records and credit card data are potentially vulnerable;[[225]](#footnote-225) adding this information to a profile would permit an extraordinary level of information that could be used to construct ads which target the vulnerabilities of users.[[226]](#footnote-226) It is this sort of directly targeted advertising that suggests ills that *Ohralik* was designed to curtail. Currently, the effectiveness of microtargeted ads is controversial, but there is a clear trend line. Interestingly, it was out of the Russian election interference probe, and its indictment of members of the Internet Research Agency, a “troll farm” which sought to sway voter attitudes and participation in the 2016 election, that has spurred commentary and research on the power of Internet advertising.[[227]](#footnote-227)

If the Supreme Court decided that Internet advertising was more akin to solicitation, it could more deferentially apply *Central Hudson* or take a completely different approach to this issue. However, there would not be a workable way to impose any extensive regulation of this activity under the First Amendment beyond what is currently permitted. As long as the ad was truthful (even if it was sleazy or offensive), it is not clear what grounds the state might have, as the Court has hitherto protected this sort of commercial speech as recently as in *Matal* in 2017.[[228]](#footnote-228) The state might argue that highly effective targeted ads, as a mode of advertising, subvert the autonomy of the viewer, but this seems a difficult and contentious route to take, and it would mean that even effective targeted ads which *did* contain speech of public interest might also be banned. One would need to question how this type of targeting is fundamentally different from putting up a billboard in a neighborhood where a firm knows many people from an accident are residing or the placement of a television advertisement in a media market where a disaster has occurred. Furthermore, even microtargeted ads do not permit a deceptive lawyer to “read” a person’s reactions in real time and manipulate the person in the way that in-person solicitation does, thus making such ads more like traditional advertisements and less like the solicitation banned in *Ohralik* and *Florida Bar v. Went For It, Inc*.

One solution, which the Court has been loath to implement since *Bigelow*, is to rule on the particular content of these advertisements, protecting those it finds contain speech of “public interest.” This would be risky, as it would potentially require the Court to take sides in highly contentious debates. The Court has made clear in recent years that viewpoint discrimination is disfavored in commercial advertising regulations and that even “[g]iving offense is a viewpoint” that is generally protected, including for commercial speech.[[229]](#footnote-229) Additionally, if the Court were to change course in its commercial speech regulation and allow for the prohibition of attorney Internet advertising, there is the question as to the scope of this problem. Will it be only professions (such as lawyers) who will be barred from making use of microtargeted advertisements, or will the effectiveness of the medium mean that commercial speech will be limited more generally, with far greater state control permitted? If the Court did rule in this direction, would it require the Court to overturn or strongly limit *Reno v. ACLU* (1997)? *Reno* held that the Internet could not be regulated like broadcast media, because there has been no “history of extensive government regulation” online, there was no “scarcity of available frequencies at its inception,” and the Internet does not have an “‘invasive’ nature.”[[230]](#footnote-230) Although the Internet is much more invasive now than in 1997, the other two rationales from *Reno* remain as true now as they were two decades earlier.

The broader implications of the Court backtracking on *Reno v. ACLU*—even if only for commercial speech—would be significant costs to bear, greater costs than the benefits the additional regulation of legal advertising could provide. The government would have a much freer hand to regulate content online, much like it does for broadcast media.[[231]](#footnote-231) Empirically, it does not appear that the Court wishes to go in this direction. Recent Court decisions indicate a will to expand, rather than contract, commercial speech rights under the First Amendment. Besides the Court’s ruling in *Matal*, a majority of the justices in *Sorrell v. IMS Health, Inc*. (2011) found unconstitutional a state law restricting the sale, disclosure, and use of records that revealed the prescribing practices of individual doctors (without their consent), because “[s]peech in aid of pharmaceutical marketing . . . is a form of expression protected by the Free Speech Clause of the First Amendment.”[[232]](#footnote-232) There is certainly a cost to protecting this type of expression, but that has to be weighed against a rule that would take us back to the state of the law before *Bates*. As the Court opined in *Sorrell*, even for commercial speech, “[m]any . . . must endure speech they do not like, but that is a necessary cost of freedom.”[[233]](#footnote-233) The First Amendment requires that we tolerate those who burn the American flag,[[234]](#footnote-234) those who burn crosses,[[235]](#footnote-235) those who picket military funerals with anti-gay inflammatory messages,[[236]](#footnote-236) and those who saturate the airwaves with speech of questionable veracity about candidates for public office.[[237]](#footnote-237) For more than forty years, the Court has drifted in the direction that being subjected to the sleazy ads of someone like Saul Goodman pales in comparison. Furthermore, as much as the legal profession is viewed dimly by the public, evidence implies that more attorney advertising actually works to enhance the images of attorneys,[[238]](#footnote-238) suggesting that—unlike *Better Call Saul*—more restrictions on attorney advertising would be harmful to the public’s perception of lawyers.

Conclusion

In the end, Chuck was wrong to characterize the majority in *Bates* as going “completely bonkers,” as the consequences of greater regulation of attorney advertising would be worse than the negative effects of finding such expression to be protected by the First Amendment. Short of attorney advertising that is “false, deceptive, or misleading,”[[239]](#footnote-239) commercial expression retains constitutional protection unless the government is properly advancing a substantial interest,[[240]](#footnote-240) something the Court has been reluctant to find in recent years.[[241]](#footnote-241) Of course, such a degree of commercial speech protection means that attorneys like Saul Goodman—who do not necessarily “abide by their solemn oaths to uphold the integrity and honor of their profession and of the legal system”[[242]](#footnote-242)—will continue to promote themselves in less than dignified ways. As long as the Court continues the current approach, though, it will also mean that attorneys who do take those solemn oaths seriously may continue to advertise their services, placing in their hands not only the responsibility to provide legal representation to those who need it, but also the onus of improving the image of the legal profession. Echoing the comments of Justice Gorsuch, as much as we might be entertained by Saul Goodman and his advertisements, we need more attorneys like Atticus Finch,[[243]](#footnote-243) and more attorneys who would market their services accordingly.

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3. \*\* Associate Professor of Philosophy, University of Wisconsin-Eau Claire – Barron County; Ph.D., University of Illinois-Chicago, 2004. [↑](#footnote-ref-3)
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121. Lucille A. Jewel, *The Indie Lawyer of the Future: How New Technology, Cultural Trends, and Market Forces Can Transform the Solo Practice of Law*, 17 SMU Sci. & Tech. L. Rev. 325, 363 (2014). [↑](#footnote-ref-121)
122. Alafair S. Burke, *Got a Warrant?: Breaking Bad and the Fourth Amendment*, 13 Ohio St. J. Crim. L. 191, 201, 203 (2015). [↑](#footnote-ref-122)
123. Veronica J. Finkelstein, *Better Not Call Saul: The Impact of Criminal Attorneys on their Clients’ Sixth Amendment Right to Effective Assistance of Counsel*, 83 U. Cin. L. Rev. 1215, 1215–18 (2015). [↑](#footnote-ref-123)
124. Neil M. Gorsuch, *Law’s Irony*, 37 Harv. J.L. & Pub. Pol’y 743, 752 (2014). [↑](#footnote-ref-124)
125. With the exception of black-and-white allusions to the present, *Better Call Saul* describes events that pre-date the events of *Breaking Bad*. We will progress through Saul’s advertisements in what is largely a chronological order. [↑](#footnote-ref-125)
126. When portraying himself as James or Jimmy McGill, we will refer to the character by this name in this Article; when portraying himself as Saul Goodman, we will refer to him by that name. [↑](#footnote-ref-126)
127. *Better Call Saul: Hero* (AMC television broadcast Feb. 23, 2015). [↑](#footnote-ref-127)
128. *Id.* [↑](#footnote-ref-128)
129. *Id.* [↑](#footnote-ref-129)
130. *Id.* [↑](#footnote-ref-130)
131. *Id.* [↑](#footnote-ref-131)
132. *Id.* [↑](#footnote-ref-132)
133. *Id.* [↑](#footnote-ref-133)
134. S. F. Arts & Athletics v. U.S. Olympic Comm., 483 U.S. 522 (1987). [↑](#footnote-ref-134)
135. *Id.* at 539; Cent. Hudson Gas & Elec. Corp. v. Public Serv. Comm’n, 477 U.S. 557 (1980). [↑](#footnote-ref-135)
136. *S. F. Arts & Athletics*, 483 U.S. at 537. [↑](#footnote-ref-136)
137. *Id.* [↑](#footnote-ref-137)
138. *Id.* at 539. [↑](#footnote-ref-138)
139. *See* Lisa P. Ramsey, *Descriptive Trademarks and the First Amendment*, 70 Tenn. L. Rev. 1095, 1138 (2003). [↑](#footnote-ref-139)
140. *Better Call Saul: Hero*, *supra* note 124. [↑](#footnote-ref-140)
141. *Id.* [↑](#footnote-ref-141)
142. *Id.* [↑](#footnote-ref-142)
143. *Better Call Saul: Amarillo* (AMC television broadcast Feb. 29, 2016). [↑](#footnote-ref-143)
144. *Id.* [↑](#footnote-ref-144)
145. *Id.* [↑](#footnote-ref-145)
146. *Id.* [↑](#footnote-ref-146)
147. *Id.* [↑](#footnote-ref-147)
148. *Id.* [↑](#footnote-ref-148)
149. *Id.* [↑](#footnote-ref-149)
150. *Better Call Saul: Gloves Off* (AMC television broadcast Mar. 29, 2016). [↑](#footnote-ref-150)
151. Bates v. State Bar of Ariz., 433 U.S. 350, 384 (1977). [↑](#footnote-ref-151)
152. Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 648–49 (1985). [↑](#footnote-ref-152)
153. *Better Call Saul: Klick* (AMC television broadcast Apr. 18, 2016). [↑](#footnote-ref-153)
154. *Id.* [↑](#footnote-ref-154)
155. *Id.* [↑](#footnote-ref-155)
156. *Better Call Saul: Nailed* (AMC television broadcast Apr. 11, 2016). [↑](#footnote-ref-156)
157. *Better Call Saul: Fifi* (AMC television broadcast Apr. 4, 2016). [↑](#footnote-ref-157)
158. *Id.* [↑](#footnote-ref-158)
159. *Better Call Saul: Mabel* (AMC television broadcast Apr. 10, 2017). [↑](#footnote-ref-159)
160. *Id.* [↑](#footnote-ref-160)
161. *Id.* [↑](#footnote-ref-161)
162. *See* *Better Call Saul: Slip* (AMC television broadcast June 5, 2017), where Kim writes a check with the date of March 4, 2003. The events in this episode appear to be several weeks after the events in the *Mabel* episode. [↑](#footnote-ref-162)
163. U.S. v. Alvarez, 567 U.S. 709, 715–16 (2012). For the purposes of this hypothetical, it is important to note that the original Stolen Valor Act was signed into law in 2005, so it became law *after* the relevant events portrayed in *Better Call Saul*. *Id.* at 713. [↑](#footnote-ref-163)
164. *Id.* at 714. [↑](#footnote-ref-164)
165. *Id.* [↑](#footnote-ref-165)
166. *Id.* at 710, 727. [↑](#footnote-ref-166)
167. *Id.* at 727–28. [↑](#footnote-ref-167)
168. *Id.* at 719, 747. [↑](#footnote-ref-168)
169. *See* *id.* at 714. [↑](#footnote-ref-169)
170. *Breaking Bad: Better Call Saul*, *supra* note 108. [↑](#footnote-ref-170)
171. *Id.* [↑](#footnote-ref-171)
172. *Breaking Bad: No Mas* (AMC television broadcast Mar. 21, 2010). [↑](#footnote-ref-172)
173. *See* Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 629–30 (1985). [↑](#footnote-ref-173)
174. *Breaking Bad: Better Call Saul*, *supra* note 108. [↑](#footnote-ref-174)
175. Bates v. State Bar of Ariz., 433 U.S. 350, 383 (1977). [↑](#footnote-ref-175)
176. *Breaking Bad: Better Call Saul*, *supra* note 108. [↑](#footnote-ref-176)
177. *Id.* [↑](#footnote-ref-177)
178. *Zauderer*, 471 U.S. at 651. [↑](#footnote-ref-178)
179. Delchin & Costello, *supra* note 91, at 110. [↑](#footnote-ref-179)
180. *Zauderer*, 471 U.S. at 647–48. [↑](#footnote-ref-180)
181. *See* Miller v. Cal., 413 U.S. 15, 24–25 (1973). [↑](#footnote-ref-181)
182. *See* Fed. Cmmc’ns Comm’n v. Pacifica Found., 438 U.S. 726 (1978); Fed. Commc’ns Comm’n v. Fox Television Stations, 556 U.S. 502 (2009). [↑](#footnote-ref-182)
183. Matal v. Tam, 137 S. Ct. 1744, 1765 (2017). [↑](#footnote-ref-183)
184. *Breaking Bad: Thirty-Eight Snub* (AMC television broadcast July 24, 2011). [↑](#footnote-ref-184)
185. *Id.* [↑](#footnote-ref-185)
186. Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 648 (1985). [↑](#footnote-ref-186)
187. U.S. v. Alvarez, 567 U.S. 709, 729–30 (2012). [↑](#footnote-ref-187)
188. *Can*, Merriam-Webster’s Collegiate Dictionary 178 (11th ed. 2009). [↑](#footnote-ref-188)
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190. *Id.* [↑](#footnote-ref-190)
191. The attorneys in question advertised for various services, including “uncontested divorces, uncontested adoptions, simple personal bankruptcies, and changes of name.” Bates v. State Bar of Ariz., 433 U.S. 350, 354 (1977); *In re* R. M. J., 455 U.S. 191, 205–06 (holding that an attorney could not be reprimanded for failing to use prescribed language or including information that was truthful and not misleading). [↑](#footnote-ref-191)
192. *See, e.g.*,Fed. R. Crim. P. 33; Fed. R. App. P. 3, 22. [↑](#footnote-ref-192)
193. Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n, 447 U.S. 557, 562 (1980). [↑](#footnote-ref-193)
194. *Will*, Merriam-Webster’s Collegiate Dictionary (11th ed. 2009). [↑](#footnote-ref-194)
195. *See* *Breaking Bad: Better Call Saul*, *supra* note 108, for examples of Saul’s ability to win criminal cases. [↑](#footnote-ref-195)
196. Gertz v. Robert Welch, Inc., 418 U.S. 323, 340 (1974). [↑](#footnote-ref-196)
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202. Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 648 (1985). [↑](#footnote-ref-202)
203. Matal v. Tam, 137 S. Ct. 1744, 1765 (2017). [↑](#footnote-ref-203)
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205. *See* Snyder v. Phelps, 562 U.S. 443 (2011); Brown v. Ent. Merchants Assn., 564 U.S. 786 (2011); U.S. v. Alvarez, 567 U.S. 709 (2012). [↑](#footnote-ref-205)
206. Bates v. State Bar of Ariz., 433 U.S. 350, 378 (1977). [↑](#footnote-ref-206)
207. Although Jimmy/Saul is often portrayed as an “ambulance-chaser” with his advertisements and tactics, particularly in *Breaking Bad*, some of his earlier actions during *Better Call Saul* evince a genuine regard for justice and the vindication of clients’ legal rights. This is especially true for his elderly clients. *See* *Better Call Saul: Alpine Shepherd Boy* (AMC television broadcast Mar. 2, 2015); *Better Call Saul: RICO* (AMC television broadcast Mar. 23, 2015); *Better Call Saul: Pimento* (AMC television broadcast Mar. 30, 2015). [↑](#footnote-ref-207)
208. *Bates*, 433 U.S. at 384. [↑](#footnote-ref-208)
209. Reno v. ACLU, 521 U.S. 844, 868–69 (1997). [↑](#footnote-ref-209)
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