SUPREME COURT OF THE UNITED STATES

Nos. 00–596 and 00–597

LORILLARD TOBACCO COMPANY, ET AL., PETITIONERS
00–596 *v.*
THOMAS F. REILLY, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL.

ALTADIS U. S. A. INC., ETC., ET AL., PETITIONERS
00–597 *v.*
THOMAS F. REILLY, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[June 28, 2001]

JUSTICE KENNEDY, with whom JUSTICE SCALIA joins, concurring in part and concurring in the judgment.

The obvious overbreadth of the outdoor advertising restrictions suffices to invalidate them under the fourth part of the test in *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N. Y.,* 447 U. S. 557 (1980). As a result, in my view, there is no need to consider whether the restrictions satisfy the third part of the test, a proposition about which there is considerable doubt. Cf. *post,* at 13–14 (THOMAS, J., concurring in part and concurring in judgment). Neither are we required to consider whether *Central Hudson* should be retained in the face of the substantial objections that can be made to it. See *post,* at 4–11 (opinion of THOMAS, J.). My continuing concerns that the test gives insufficient protection to truthful, nonmisleading commercial speech require me to refrain from expressing agreement

with the Court's application of the third part of *Central Hudson*. See, *e.g.*, *44 Liquormart, Inc.* v. *Rhode Island,* 517 U. S. 484, 501–504 (1996) (opinion of STEVENS, J., joined by KENNEDY and GINSBURG, JJ.). With the exception of Part III–B–1, then, I join the opinion of the Court.