JUSTICE STEVENS, concurring in part and concurring in the judgment.

There is an important difference between an ordinance conditioning the operation of a business on compliance with certain neutral criteria, on the one hand, and an ordinance

conditioning the exhibition of a motion picture on the consent of a censor. The former is an aspect of the routine operation of a municipal government. The latter is a species of content-based prior restraint. Cf. *Graff* v. *Chicago*, 9 F. 3d 1309, 1330–1333 (CA7 1993) (Flaum, J., concurring).

The First Amendment is, of course, implicated whenever a city requires a bookstore, a newsstand, a theater, or an adult business to obtain a license before it can begin to operate. For that reason, as JUSTICE O'CONNOR explained in her plurality opinion in *FW/PBS, Inc.* v. *Dallas*, 493 U. S. 215, 226 (1990), a licensing scheme for businesses that engage in First Amendment activity must be accompanied by adequate procedural safeguards to avert "the possibility that constitutionally protected speech will be suppressed." But JUSTICE O'CONNOR's opinion also recognized that the full complement of safeguards that are necessary in cases that "present the grave 'dangers of a censorship system'" are "not required" in the ordinary adult-business licensing scheme. *Id.*, at 228 (quoting *Freedman* v. *Maryland*, 380 U. S. 51, 58 (1965)). In both contexts, "undue delay results in the unconstitutional suppression of protected speech," 493 U. S., at 228, and *FW/PBS* therefore requires both that the licensing decision be made promptly and that there be "the possibility of prompt judicial review in the event that the license is erroneously denied," *ibid.* But application of neutral licensing criteria is a "ministerial action" that regulates speech, rather than an exercise of discretionary judgment that prohibits speech. *Id.*, at 229. The decision to deny a license for failure to comply with these neutral criteria is therefore not subject to the presumption of invalidity that attaches to the "direct censorship of particular expressive material." *Ibid.* JUSTICE O'CONNOR's opinion accordingly declined to require that the licensor, like the censor, either bear the burden of going to court to effect the denial of a license or otherwise assume responsibility for ensuring

a prompt judicial determination of the validity of its decision. *Ibid.*

The Court today reinterprets *FW/PBS*'s references to "'*the possibility of prompt judicial review*'" as the equivalent of *Freedman*'s "'prompt' judicial decision" requirement. *Ante*, at 780–781. I fear that this misinterpretation of *FW/PBS* may invite other, more serious misinterpretations with respect to the content of that requirement. As the Court applies it in this case, assurance of a "'prompt' judicial decision" means little more than assurance of the *possibility* of a prompt decision—the same possibility of promptness that is available whenever a person files suit subject to "ordinary court procedural rules and practices." *Ante*, at 781–782. That possibility will generally be sufficient to guard against the risk of undue delay in obtaining a remedy for the erroneous application of neutral licensing criteria. But the mere possibility of promptness is emphatically insufficient to guard against the dangers of unjustified suppression of speech presented by a censorship system of the type at issue in *Freedman*, and is certainly not what *Freedman* meant by "'prompt' judicial decision."

JUSTICE O'CONNOR's opinion in *FW/PBS* recognized that differences between ordinary licensing schemes and censorship systems warrant imposition of different procedural protections, including different requirements with respect to which party must assume the burden of taking the case to court, as well as the risk of judicial delay. I would adhere to the views there expressed, and thus do not join Part II–A of the Court's opinion. I do, however, join the Court's judgment and Parts I and II–B of its opinion.