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Commerce Clause: Discount for Residents by Bridge Authority Does Not Violate Commerce Clause or Nonresidents' Right to Interstate Travel

James v. Triborough Bridge and Tunnel Authority, No. 13-4377-cv (2d Cir. Dec. 24, 2014).

Where New York provides a moderate discount on bridge tolls for borough residents served by specific bridges, the higher fee charged to nonresidents is not unconstitutional.

The Triborough Bridge and Tunnel Authority provides discounted toll prices to residents of Staten Island, the Rockaway Peninsula, and Broad Channel Island when crossing specific bridges. These bridge crossings are the exclusive means of egress and access for the residential areas listed above.

Residents of New Jersey and New York, led by plaintiff Riva James, challenged the Triborough Bridge and Tunnel Authority's discount program, alleging it violated the constitutional right to travel and the dormant Commerce Clause. The district court granted the defendant's motion to dismiss. The plaintiffs appealed.

HELD: The Second Circuit affirmed the lower court, holding the discounted rate provided to some residents for some bridges violated neither the right to travel nor the dormant Commerce Clause.

DISCUSSION: In describing the right to travel, the Supreme Court has said it "protects the right of a citizen of one State to enter and to leave another State, the right to be

treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State." *Saenz v. Roe*, 526 U.S. 489 (1999). As for the dormant Commerce Clause, the Court has said it "significantly limits the ability of States and localities to regulate or otherwise burden the flow of interstate commerce. It is driven by a concern about economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *McBurney v. Young*, 133 S. Ct. 1709, 1719 (2013).

In the case at hand, plaintiffs complained that the toll discounts set up an "invidious distinction" between residents and non-residents that violates the right to travel. To analyze the challenge the court looked to what it called an "unusually apposite circuit precedent," *Selevan v. New York Thruway Authority*, 584 F.3d 82 (2d Cir. 2009), for the proposition that where a toll differential amounts to "a minor restriction on travel," there is no "invidious distinction" requiring strict scrutiny analysis. Instead, courts will apply three-part test from *Northwest Airlines, Inc. v. County of Kent*, 510 U.S. 355 (1994). Under that test, the Supreme Court asked whether the fee "(1) is based on some fair approximation of use of the facilities, (2) is not excessive in relation to the benefits conferred, and (3) does not discriminate against interstate commerce." The Second Circuit noted that plaintiffs failed to show that the discounts at issue are materially different from those it addressed in *Selevan* - in fact, in percentage terms the discount at issue was even smaller than that in the previous case, and the residents involved were similarly geographically isolated. Moreover, as in *Selevan*, the money collected from the tolls is used to defray the costs of the bridges and to support mass transit systems, enhancing interstate travel. Furthermore, plaintiffs could not point to a single instance of a person foregoing interstate travel across the bridges due to the toll discrepancy. As a result, *Northwest Airlines* was the proper test; the resident discount at issue passed such a test given it is not excessive, is based on an approximation of use, and does not discriminate against interstate commerce.

As for the dormant Commerce Clause challenge, the court noted that although overtly protectionist measures by a state are invalid, "the Commerce Clause does not invalidate all State restrictions on commerce." Again, *Northwest Airlines* was the proper test – not strict scrutiny – since the discount amounted to only a minor restriction on travel.

http://www.ca2.uscourts.gov/decisions/isysquery/1be298ff-595a-4729-bf85-2808ac2271fc/1/doc/13-4377_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/1be298ff-595a-4729-bf85-2808ac2271fc/1/hilite/ (last accessed Jan. 28, 2015).

Employment: Employer's Misrepresentations about Employee's FMLA Eligibility Gives Rise to Equitable Estoppel Claim

Tilley v. Kalamazoo County Road Commission, No. 14-1679 (6th Cir. Jan. 26, 2015).

The Sixth Circuit has reversed in part the grant of summary judgment to a Michigan local government employer, finding that the dismissed employee detrimentally relied on the employer's material misrepresentations about his eligibility for benefits under the Family Medical Leave Act (FMLA).

Terry Tilley was employed by the Kalamazoo County Road Commission. He failed to produce several reports explaining various performance deficiencies, and claimed that he experienced heart attack symptoms on the day the reports were due and went for medical care. One week later, he received a letter from the Commission advising him that he should apply for FMLA benefits covering his time off. The requested reports were never provided and Tilley was terminated shortly thereafter. He filed suit, alleging violations of Michigan's age discrimination statute and claiming that his termination was retaliation for taking leave pursuant to FMLA.

The District Court for the Western District of Michigan granted the Commission's motion for summary judgment on the grounds that Tilley had not demonstrated age discrimination and was not an "eligible employee" entitled to leave under the FMLA because the Commission employed fewer than 50 people.

HELD: On appeal, the Sixth Circuit upheld summary judgment on the age discrimination claim but reversed on the FMLA claim.

DISCUSSION: The issues on appeal were whether Tilley was an "eligible employee" as defined in FMLA and whether he detrimentally relied on the Commission's misrepresentation about his eligibility for FMLA benefits.

The Circuit Court found that Tilley was not an "eligible employee" as defined in the FMLA, because the Commission did not employ at least 50 employees at its worksite (or within 75 miles thereof).

Alternatively, Tilley argued that the Commission was equitably estopped from raising his non-eligibility as a defense to his claim. In order to prevail on an equitable estoppel argument, an employee must show (1) a definite misrepresentation as to material fact, (2) a reasonable reliance on the misrepresentation, and (3) a resulting detriment to the party reasonably relying on the misrepresentation. The Court found that Tilley had satisfied all three elements. First, the Commission's Personnel Manual contained "unambiguous and unqualified" language that full-time employees, like Tilley, were covered under the FMLA. Second, the court concluded that a jury could find that Tilley had reasonably relied on this misrepresentation, based solely on Tilley's sworn affidavit

to that effect. Tilley stated that had he known that he was not eligible under FMLA, he would have stayed at work to the complete the assignments, the incompletion of which served as the basis for his termination. The court stated that as long as an employee is able to point to some action or statement that indicates that his decision to take leave was contingent on his understanding of his FMLA status, the reliance element of the test would be satisfied.

(The Commission attacked the credibility of Tilley's assertion that he relied on the statement in the Manual before deciding to take leave. While the court recognized that there was "obvious reasons to doubt the veracity of Plaintiff's assertions," it left the ultimate question of Tilley's credibility for the jury to decide).

Finally, the court concluded that Tilley suffered a detriment as a result of his reliance on the Commissions misrepresentations. As such, the Commission was equitably estopped from raising Tilley's eligibility as a defense. Accordingly, the district court erred in granting summary judgment in favor of the Commission.

http://www.ca6.uscourts.gov/opinions.pdf/15a0013p-06.pdf (last accessed Jan. 29, 2015).

Immunity: Absolute Immunity for Grand Jury Witness Does Not Extend to Matters Outside of Grand Jury Testimony

Coggins v. Buonora, No. 13-4635 (2d Cir. Jan. 13, 2015).

A New York police officer's absolute immunity as a grand jury witness does not insulate him against Section 1983 charges based on matters outside the scope of his grand jury testimony, the Second Circuit recently held.

In 2004 Darryl Coggins was stopped by a police officer in Floral Park, New York. Coggins was not told why he was pulled over though he asked throughout the stop. He ultimately passed field sobriety tests and a roadside portable breath test. He continued to ask why he was stopped. Coggins believed it was because of his race. At some point during the interaction Coggins saw the officer place his hand on his gun. He feared for his life and fled. As he was running away he heard a back-up officer that had arrived yell "shoot him in the back, shoot him in the back." Coggins kept running then but turned himself into police later that day. Based on the back-up officers' statements to the district attorney he was charged with criminal possession of a firearm – the officers said they "heard a metal noise" during the foot pursuit of Coggins. The grand jury indicted Coggins for this charge. However, an unnamed Floral Park police officer came forward after the hearing and told Coggins' attorney that the two officers had perjured themselves in the hearing. Ultimately, the officers were indicted for perjury and plead guilty.

Coggins sued the officers involved and Nassau County, New York alleging that the officers failed to follow procedures and policies of the county police department, falsified police reports, failed to file proper paperwork regarding the stop and foot chase, and conspired with each other to create "an altered version of what transpired." He also alleged one officer, Craig Buonora, knew the documents regarding his stop, chase, and arrest were false and did nothing to correct them and, in fact, testified to false facts. Lastly, he alleged this behavior from Nassau police officers is routine, especially with regard to black males.

The district court dismissed Coggins' malicious prosecution and abuse of process claims, but denied Buonora's motion to dismiss the other claims. That decision was appealed to the Second Circuit, which affirmed the district court. Buonora then filed another motion to dismiss and/or a motion for summary judgment based on his qualified or absolute immunity as a grand jury witness. When the court denied Buonora's defense of qualified and/or absolute immunity, Buonora filed an interlocutory appeal.

HELD: The Second Circuit affirmed the lower court decision to deny the officer's absolute and qualified immunity.

DISCUSSION: The court began by noting that the Supreme Court announced, in *Rehberg v. Paulk*, 132 S. Ct. 1497 (2012), a bright-line rule that all grand jury witnesses,

police officers included, have absolute immunity from § 1983 suits based on their testimony. It narrowed the question before it, however, to whether "a law enforcement officer is entitled to absolute immunity as a grand jury witness pursuant to *Rehberg* when a § 1983 plaintiff alleges that the officer withheld and falsified evidence *in addition to* committing perjury before the grand jury." This was a question of first impression for the Second Circuit.

The court reviewed *Rehberg*, noting that the case dealt with an investigator lying to the grand jury and that the Supreme Court held there is immunity for *witness testimony.* It also pointed out the Supreme Court's footnote limiting its decision, specifically that it "d[id] not suggest that absolute immunity extends to all activity that a witness conducts outside of the grand jury room. For example, [the Court] ha[s] accorded only qualified immunity to law enforcement officials who falsify affidavits and fabricate evidence concerning an unsolved crime."

Buonora framed Coggins' claims as, at their essence, all stemming from matters in his grand jury testimony. The Second Circuit disagreed with this characterization. For if such a precedent were set the court had a difficult time understanding where it would end – an officer "could immunize for § 1983 purposes any unlawful conduct prior to and independent of his perjurious grand jury appearance merely by testifying before a grand jury." As a result, the court developed a test: "When a police officer claims absolute immunity for his grand jury testimony under Rehberg, the court should determine whether the plaintiff can make out the elements of his § 1983 claim without resorting to the grand jury testimony. [If] the claim exists independently of the grand jury testimony, it is not "based on" that testimony, as that term is used in *Rehberg*. [But], if the claim requires the grand jury testimony, the defendant enjoys absolute immunity under *Rehberg.*"

Evaluating the case at hand, the Court found much of the alleged misconduct unrelated to the grand jury testimony, including the falsified police reports, the statements of the unnamed officer that came forward, Buonora's statements to the district attorney, Buonora's knowledge that the police report ultimately filed by his partner was false, and the radio transmissions recorded the night in question. These facts, in existence long before the grand jury testimony, were "independently actionable" according to the court and the simple fact that Buonora's testimony paralleled these facts did not mean that Coggins' claims were "based on" that testimony. The Second Circuit thus affirmed the lower court.

http://www.ca2.uscourts.gov/decisions/isysquery/5f43be1d-7756-40ac-a5c1-58cf38deca17/3/doc/13-4635_opn.pdf (last accessed Jan. 29, 2015).

Land Use: Injunction Sought Against Airbnb-Enabled Leasing of Central Park Bedrooms

Brookford, LLC v. Penraat, 2014 NY Slip Op 24399 (Sup. Ct. NY Co. Dec. 19, 2014).

In an opinion which typifies the combat playing out in Airbnb wars across the country, a Manhattan judge has denied attempts by an Airbnb-enabled landlord to forestall plaintiff's motion to enjoin her renting out the bedrooms in her Central Park West apartment.

Defendant Noelle Penraat resides in a luxury 43-unit building overlooking the reservoir at Central Park West and West 91st Street. The rent for her four-bedroom rent-controlled dwelling is capped at $4,477 per month. As a senior citizen, she receives a reduction to $4,193 per month and is exempt from future rent increases.

Over the past two years, using Airbnb, she has continuously advertised three of her four bedrooms. She offers: (a) "Lovely Small Bedroom in Huge Apartment" (which includes a full size bed--$75 per night); (b) "Sunny Bedroom, Central Park View" (which includes a queen size bed and two large closets-$100 per night); and (c) "Gorgeous master bed/bath on park" (which includes a king size bed and private *en suite* bath--$150 per night).

Plaintiff Brookford LLC, which owns the building, contends that in 2014 Penraat rented her bedrooms to 110 different guests — complete strangers to herself and the lawful tenants of the Building, generating upwards of $8,000 per month. Brookford moved by order to show cause for a preliminary injunction enjoining Penraat from advertising and renting to tourists and other visitors for stays of less than 30 days, in violation of the City's Rent Control Law; Multiple Dwelling Law "MDL"); Housing Maintenance Code; City Building Code and the building's own certificate of occupancy.

HELD: The Supreme Court of New York County (New York's trial-level tribunal) granted plaintiff's order to show cause; the hearing on the requested injunction is scheduled for February 6, 2015.

DISCUSSION: In support of its request for injunctive relief, Brookford argued that it was likely to succeed on the merits: Penraat substantially violated the terms of her tenancy by using her residential apartment for business and profiteering from an illegal hotel in violation of the City's Rent Control Law. Her conduct constituted an incurable violation of her obligations as a rent-controlled tenant. Her guests were not roommates or sublessees; by renting to transients for stays of less than 30 days, Penraat violated the MDL and other regulations.

Brookford also argued that Penraat materially changed the residential character of the building, compromising the safety and security of its tenants and their children. The

owner's 13 family members, ranging in ages from under 6 years old to over 80 years old, all lived in the building and faced a constant threat to their life and safety from transients. As a Class A dwelling, the apartment was not properly equipped with the proper fire safety protections required of hotels in the City, creating a safety issue for Penraat's guests.

A preliminary injunction was needed to restrain defendant from operating her illegal hotel. The balance of the equities weighed in Brookford's favor. The only purported injury that Penraat might suffer was the suspension of her illegal bed and breakfast, which would be compensated by money damages. If a preliminary injunction were not granted, the building and its occupants would be subjected to unwarranted safety risks and intrusions.

Penraat launched a litany of counter-arguments, summarized by the court:

First, there was no likelihood of success on the merits. The predicate notice of violation was sent to defendant instead of her father, the tenant of record. A notice to cure was not served prior to the 30-day lease termination notice, and plaintiff did not specify which conduct could not be cured in the absence of an injunction.

Second, the alleged conduct was permitted under the MDL, which Penraat claims makes clear that "there is nothing illegal about a tenant or other permanent resident renting out a room in the apartment that the individual occupies for payment." Plaintiff cited no caselaw that permitting a guest to stay overnight made use of the apartment "commercial." And other courts had found that the rental of a room in a tenant's apartment while the tenant also occupied the unit did not violate the law.

Third, plaintiff failed to show the imminent threat of irreparable harm. There was no claim of actual injury where a guest of defendant caused damage or annoyance to any person. The delay in bringing this action showed the absence of any danger.

Finally, the balance of the equities favored defendant. Plaintiff's potential financial gain in evicting defendant and re-renting for higher rent did not outweigh defendant's right to occupy her home of nearly 60 years with friends and guests.

The court disagreed with Penraat, finding a significant likelihood that plaintiff would prevail on the merits and would suffer irreparable injury without the injunction. She had willfully violated a substantial obligation of her tenancy and her obligations as a rent-controlled tenant. The court cited analogous precedent: "placing unsuspecting tourists in illegal, dangerous accommodations constitutes irreparable injury, especially if there is a tragic fire." (citation omitted). And Penraat's repeated rentals to transients for the prior year and a half at more than the legal rent "constitutes an incurable violation of the Rent Control Law."

The court also analyzed 2011 amendments to the MDL, citing language by the bill's sponsor which contradicted Penraat's assertion that the MDL allows short-term, compensated transient stays:

> This bill will fulfill the original intent of the law, as construed by enforcing agencies, including the New York City Department of Buildings, by modifying the specific provisions of the Multiple Dwelling Law and applicable local codes that have been cited by defendants in enforcement proceedings as authority for the use of Class A dwellings as illegal transient hotels. *The only "secondary" transient use of class A dwelling units allowed would be use by the permanent occupants natural persons, not corporate entities — for house guests, boarders, roomers or lodgers living within the household of the permanent occupants or for circumstances such as the occasional pet or apartment "sitter" when the permanent occupants are absent for personal reasons, such as vacation or for medical treatment. (Emphasis added).*

The Order to Show Cause by plaintiff for a preliminary injunction against Penraat's advertising or renting her rooms for fewer than 30 day periods was granted.

http://leagle.com/decision/In%20NYCO%2020141219429.xml/BROOKFORD,%20LLC%20v.%20PENRAAT (last accessed Jan. 28, 2015).

Search and Seizure: Warrantless Entry on Curtilage Violates Fourth Amendment

Covey v. Assessor of Ohio County, No. 13-1227 (4th Cir. Jan. 26, 2015).

The Sixth Circuit has reversed the dismissal of a case brought by a homeowner against a tax assessor and police officers who entered the curtilage of his property without a warrant, declining to apply the "knock and talk" exception to the warrant requirement.

In 2009, the Ohio County, West Virginia tax assessor entered plaintiff Christopher Covey's property to assess its value for tax purposes. His entry violated the "standard visitation procedures" in the jurisdiction, which provide that a tax data collector may not enter private property where "No Trespassing" signs are posted, as was the case with the Covey's property. After finding no one home, the assessor searched an outdoor patio area, where he found marijuana. The assessor informed local police, who later returned to Covey's home, entered the patio area without a warrant, and arrested him.

After pleading guilty to drugs charges, the plaintiff brought suit under 42 U.S.C. § 1983 alleging that the tax assessor and the police officers violated his Fourth Amendment rights by conducting an unreasonable search of his outdoor patio. The lower court dismissed the action for failure to state a claim, and Covey appealed.

HELD: The Fourth Circuit reversed and remanded, finding a violation of plaintiff's clearly established Fourth Amendment rights and denying defendants' qualified immunity claim.

DISSCUSION: The issues on appeal were (1) whether plaintiff alleged plausible Fourth Amendment violations, and (2) whether the defendants were entitled to qualified immunity.

Citing *Florida v. Jardines*, 133 S. Ct. 1409, 1414 (2013), the court reiterated that the Fourth Amendment protects the curtilage of a home from unreasonable government intrusions and that a warrantless search of curtilage is presumed to be unreasonable. The officers argued that their conduct fell within the "knock and talk" exception to the Fourth Amendment's warrant requirement, which permits officers to approach a home "as a private citizen might do." Under this exception, a police officer may "bypass the front door" when circumstances reasonably indicate that the officer might find the homeowner elsewhere on the property. The officers argued that they were justified in bypassing the front door because they saw the plaintiff in the patio area, *before* entering the curtilage, thus giving them an implied invitation to approach him.

The court noted however that the complaint alleged that the officers could only see the plaintiff *after* entering the curtilage and that they had no reason to suspect that he would be there. Accepting as true all factual allegations in the complaint and considering the

case in the light most favorable to the plaintiff, the Circuit Court concluded that plaintiff plausibly alleged that the police officers did not see him in time to avoid a violation of his Fourth Amendment rights.

With respect to the tax assessor's entry on the property, the court stated that a violation of an administrative regulation (in this case, a prohibition against entry on property where "No Trespassing" signs are posted), does not amount to a violation of the Fourth Amendment per se. However, the court found that even if the tax assessor's initial entry on to the property was merely an administrative violation, his entry onto the curtilage infringed on the plaintiff's constitutional rights.

The defendants also argued that they were entitled to qualified immunity. The court held that, based on the allegations in the complaint, the police officers violated a "clearly established right" when they entered the patio area without a warrant. The court also found that the tax assessor was not entitled to qualified immunity. As a general rule, an official who performs an act clearly established to be beyond the scope of his discretionary authority is not entitled to claim qualified immunity under § 1983. Here, the court found that the assessor had exceeded the scope of his authority by entering the property despite the "No Trespassing" signs.

http://www.ca4.uscourts.gov/Opinions/Published/131227.P.pdf (last accessed Jan. 28, 2015).

Speech: Ordinance Limiting Size of "Signs" but Exempting Artworks and National, State or Organizational Flags is Content-Neutral and Furthers Legitimate Legislative Purpose

Central Radio Company, Inc. v. City of Norfolk, No. 13-1996 (4th Cir. Jan. 13, 2015).

The Fourth Circuit has affirmed a lower court decision upholding Norfolk's signs ordinance which limits the size of signs but does not restrict most flags or artwork.

Norfolk, Virginia, like many cities, has a code section regulating the placement and display of signs. And, like many cities, it was enacted to "enhance and protect the physical appearance of all areas of the city" and to "reduce the distractions, obstructions, and hazards to pedestrian and auto traffic caused by the excessive number, size or height, inappropriate types of illumination, indiscriminate placement or unsafe construction of signs." The term "sign," however, does not include any "flag or emblem of any nation, organization of nations, state, city, or any religious organization," or any "works of art which in no way identify or specifically relate to a product or service."

Central Radio Company, Inc. wanted to place a sign on its building to protest action by the Norfolk Redevelopment and Housing Authority. In 2010 the agency initiated condemnation proceedings against Central Radio and other nearby property owners in an effort to gain control of certain properties to turn them over to Old Dominion University. Central Radio and others successfully challenged the action, after which Central Radio placed a 375-square foot banner on the side of its building facing a major thoroughfare. The sign said "50 YEARS ON THIS STREET / 78 YEARS IN NORFOLK / 100 WORKERS / THREATENED BY / EMINENT DOMAIN!" After being made aware of the sign by a member of the public the city's zoning enforcement staff confirmed that the sign did not meet applicable size restrictions for the industrial zone where Central Radio was located. The city thus directed the company to bring it into compliance with the sign code, which required reducing it to 60 square feet. Central Radio, instead, filed suit to enjoin the city from enforcing the sign code, alleging it was unconstitutional because it subjected their sign to restrictions, but excepted flags, emblems, and art.

The District Court denied the plaintiff's motion and granted summary judgment to the city. The lower court held the sign code was content-neutral and subject only to intermediate scrutiny, that the city was using its regulatory authority appropriately under such a standard, and that the exemptions were reasonably related to the city's interests. Central Radio appealed.

HELD: The Fourth Circuit affirmed the lower court's ruling that the sign ordinance is a content-neutral restriction on speech that satisfies intermediate scrutiny.

DISCUSSION: Under Fourth Circuit precedent "[a] regulation is not a content-based regulation of speech if (1) the regulation is not a regulation of speech, but rather a regulation of the places where some speech may occur; (2) the regulation was not adopted because of disagreement with the message the speech conveys; or (3) the government's interests in the regulation are unrelated to the content of the affected speech." Under this standard, just because a law differentiates between types of speech does not necessarily mean it is content-based, rather the law is only content-based if it "distinguishes content with a censorial intent to value some forms of speech over others to distort public debate, to restrict expression because of its message, its ideas, its subject matter, or to prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

The plaintiff argued that the exemption for flags, emblems, and art in the code were facially unrelated to the legislatures' stated interest in aesthetics and traffic safety. Central Radio also attacked, simultaneously, the exemption as too narrow, since it only exempted flags and emblems of governmental or religious organizations, and as too broad in that it exempts art, but does not define "art." Since, in Central Radio's estimation, private flags and many works of art have the same distracting impact on traffic and detrimental aesthetic effects on the community, the regulation lacks a reasonable relationship to the legislature's stated purpose for its enactment.

The Fourth Circuit affirmed the lower court's ruling that intermediate scrutiny applied. The exemptions bore a "reasonable relationship to legitimate legislative purposes" because the city generally allows all signs, regardless of messages, and only restricts their time, place, and manner. The exemptions simply had an incidental effect on some speakers or messages, but did not convert the whole code section into a content-based restriction demanding strict scrutiny. Moreover, exempting government and religious organizations from size limits did not demonstrate a preference for particular governments or religious groups, and exempting works of art did not demonstrate a preference for some artistic messages over others.

Being a content-neutral regulation subject to intermediate scrutiny, the law is valid so long as it "furthers a substantial government interest, is narrowly tailored to further that interest, and leaves open ample alternative channels of communication." The court noted that the record included evidence of how the banner disturbed traffic, including by causing passing drivers to honk, yell things in support of Central Radio, and wave at the building. This potentially dangerous behavior evidenced that the sign code furthered the government's interest in safety. The court also found the sign code to be narrowly tailored since it does not burden more speech than necessary to accomplish its purpose. The law limits size and location which the court found "calculated" to its safety and aesthetic reasons. Lastly, the Fourth Circuit found the law left open alternative channels of communication. Particularly important was the fact that Central Radio could still have its sign, since the city only required it meet size and location regulations for its zoning district. While the plaintiffs argued that there are "no reasonable alternatives" to convey its message such that its message could be seen by the very busy highway

below, the Circuit held that “the plaintiffs do not have a constitutional right to place their sign in the location and manner that they deem most desirable.”

http://www.ca4.uscourts.gov/Opinions/Published/131996.P.pdf (last accessed Jan. 29, 2015).