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COURT OF APPEALS

STATE OF NEW YORK

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PEOPLE,

Appellant,

-against-

No. 222

ON SIGHT MOBILE OPTICIANS, INC.,

Respondent.

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20 Eagle Street  
Albany, New York 12207  
November 18, 2014

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE SUSAN PHILLIPS READ  
ASSOCIATE JUDGE ROBERT S. SMITH  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

Appearances:

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1 CHIEF JUDGE LIPPMAN: Let's start with  
2 number 222.

3 And, counselor, you want any rebuttal time?

4 MR. SINNREICH: Your Honor, I'd like one  
5 minute.

6 CHIEF JUDGE LIPPMAN: Okay, one minute.  
7 You have it. Go ahead.

8 MR. SINNREICH: Thank you, Your Honor. May  
9 it please the court, I'm Jonathan Sinnreich from the  
10 firm of Sinnreich Kosakoff & Messina. My colleague,  
11 Mr. Hill, is at my left, and I represent the  
12 appellant, the People, as special counsel to the Town  
13 of Brookhaven.

14 CHIEF JUDGE LIPPMAN: The particular  
15 provision that's involved here, how does it relate to  
16 the rest of this statute?

17 MR. SINNREICH: Your Honor, it's our  
18 position, of course, that it really is a separate and  
19 freestanding provision, even though - - -

20 CHIEF JUDGE LIPPMAN: Were they all passed  
21 for the same purpose, the different parts of the  
22 statute?

23 MR. SINNREICH: No, I think that this part  
24 was - - - has its own preamble. And it's the - - -

25 CHIEF JUDGE LIPPMAN: Right.

1 MR. SINNREICH: - - - only section of the  
2 sign ordinance that does; and the reason for that is  
3 it's there to vindicate a somewhat different interest  
4 which is, among other things - - - it has some of the  
5 same purposes, Your Honor. But it also vindicates  
6 the Town's interest under the Constitution in the  
7 control of its own property. So - - -

8 CHIEF JUDGE LIPPMAN: But we don't have to  
9 guess what your purpose is in relation to this  
10 particular - - -

11 MR. SINNREICH: No, Your Honor. It - - -  
12 it also, as the preamble states, is in the interest  
13 of avoiding distraction to motorists because here  
14 we're - - - we're talking about signs right on the  
15 side of the public highways, right on the corners  
16 where, in fact, the offending signs in this  
17 particular case were placed. So it has that added  
18 purpose, which I believe is the reason why there was  
19 a separate preamble for that unique freestanding  
20 section.

21 JUDGE READ: What's left in this case for  
22 us? I mean is - - - does your - - - is the  
23 Constitutionality of that provision still at issue?

24 MR. SINNREICH: Well, Your Honor, the lower  
25 court invoked the federal - - -

1 JUDGE READ: Well, does your - - - I guess  
2 - - -

3 MR. SINNREICH: - - - overbreadth doctrine  
4 and - - -

5 JUDGE READ: Yeah.

6 MR. SINNREICH: - - - we believe the - - -  
7 the heart of our argument this morning is - - - this  
8 afternoon, I should say. I'm used to arguing in the  
9 morning - - - but the heart of our argument is the  
10 court below committed reversible error in - - - in  
11 applying the Constitutional overbreadth argument, but  
12 it did. So I didn't think we can duck that issue.  
13 That issue, I think, needs to be dealt with by this  
14 court. And respectfully, we believe that the court  
15 below committed error for several reasons - - -

16 JUDGE SMITH: I'm sorry - - -

17 MR. SINNREICH: - - - in doing that.

18 JUDGE SMITH: - - - you - - - you - - - you  
19 - - - you say we have to reach the merits of whether  
20 they - - - wheth - - - whether the other sections are  
21 overbroad?

22 MR. SINNREICH: We have to reach the issue  
23 of whether you have to reach the issue.

24 JUDGE PIGOTT: Um-hum.

25 JUDGE SMITH: Okay.

1 MR. SINNREICH: I don't believe, Your  
2 Honor, that we'd have to reach - - -

3 JUDGE SMITH: I mean, let me ask you - - -  
4 let me ask a - - - a simpler question. Is there any  
5 issue except severability in this case?

6 MR. SINNREICH: Absolutely, Your Honor. I  
7 think there are several issues that are - - -

8 CHIEF JUDGE LIPPMAN: Well, is it  
9 challenged that this particular provision is - - - is  
10 not Constitutional?

11 MR. SINNREICH: Your Honor, we contend - -  
12 -

13 CHIEF JUDGE LIPPMAN: Or do - - -

14 JUDGE READ: I thought - - - yeah, we - - -  
15 I thought your - - - your opponent had conceded that  
16 it was - - -

17 CHIEF JUDGE LIPPMAN: Constitutional, yeah.

18 JUDGE READ: - - - Constitutional, yes.

19 CHIEF JUDGE LIPPMAN: Yeah.

20 MR. SINNREICH: Well, clearly, if you were  
21 only looking at this one provision, they have not  
22 challenged its Constitutionality, and under ta - - -

23 JUDGE SMITH: And - - - and - - - and you  
24 say - - - and you say we only should look at that one  
25 provision?

1 MR. SINNREICH: Yes, but the court below  
2 didn't do that.

3 JUDGE SMITH: Okay, so - - - so if you're -  
4 - - if you're right, we're done. So you have an  
5 alternative argument. You say even it's not  
6 severable - - -

7 MR. SINNREICH: Well, I do have an  
8 alternative argument, and respectfully, even though  
9 it's been framed as severability, I don't think it  
10 really is an issue of severability. Our first  
11 argument is that the court - - - that - - - that this  
12 plaintiff does not have standing or capacity to  
13 invoke the overbreadth doctrine, as the court below  
14 in error did.

15 CHIEF JUDGE LIPPMAN: Why not?

16 MR. SINNREICH: Because, Your Honor, it's  
17 very clear - - - and I - - - I refer you to your own  
18 decision in the Syracuse Bank case. For the  
19 overbreadth doctrine to apply, the party seeking to  
20 apply it has to have either a direct interest or at  
21 least an indirect interest, as was the case in  
22 Metromedia - - -

23 JUDGE SMITH: Do we - - - do we really have  
24 this - - -

25 MR. SINNREICH: - - - in noncommercial

1 speech, but that is not the case here. This  
2 defendant's sole interest was commercial speech, so -  
3 - -

4 JUDGE SMITH: Do we really have to decide  
5 whether he has standing to challenge an overbro - - -  
6 as overbroad a statute he admits is not overbroad?

7 MR. SINNREICH: Your Honor, if you don't  
8 think so, I'm delighted, and I'll sit down but - - -

9 CHIEF JUDGE LIPPMAN: But we could just - -  
10 -

11 MR. SINNREICH: The court below - - - the  
12 court below did exactly that, Your Honor.

13 CHIEF JUDGE LIPPMAN: Counsel, we could  
14 just dispose of this if it's severable, right?

15 MR. SINNREICH: Yes.

16 CHIEF JUDGE LIPPMAN: End of story?

17 MR. SINNREICH: Yes, Your Honor.

18 CHIEF JUDGE LIPPMAN: Okay.

19 MR. SINNREICH: And I would be delighted if  
20 the court did that.

21 JUDGE PIGOTT: No, well, and another - - -

22 MR. SINNREICH: I'd be delighted if the  
23 court found that it didn't have to go down the  
24 overbreadth road. The last - - -

25 JUDGE SMITH: Well, we're not - - - we're

1 not forbidding you from making the alternative  
2 arguments. Don't be deterred.

3 MR. SINNREICH: I - - - I understand that.

4 JUDGE PIGOTT: It seems like if - - - if I  
5 understand what you're saying is that your opponent  
6 is saying this is unconstitutional because it favors  
7 commercial speech. And you're saying you don't have  
8 standing to do that because you are commercial  
9 speech. So you can't find a statute unconstitutional  
10 because it favors you.

11 MR. SINNREICH: Unless the defendant had  
12 even a direct interest in noncommercial speech, like  
13 Metromedia did or National Advertising because even  
14 though they were commercial entities, the lessees of  
15 their billboard, some of them - - - two percent,  
16 actually, but that was not enough - - - had an  
17 interest in expressive speech. But without that they  
18 cannot invoke the overbreadth doctrine, and the court  
19 below was in error in doing so. That's correct, Your  
20 Honor.

21 JUDGE ABDUS-SALAAM: Does it matter - - -  
22 sorry. Does it matter that the severability portion  
23 of the statute was enacted after this case came?

24 MR. SINNREICH: Your Honor, it doesn't  
25 matter what the - - - the severability issue really

1 rises and falls on a policy issue which is  
2 vindicating as much of the legislative purpose as  
3 possible, and - - - and I agree with the Chief Judge.  
4 I believe, if I'm reading him right, that you could  
5 stop right there because, clearly, the Town had an  
6 interest in the regulation of its own property as per  
7 that standalone section.

8 The - - - the last thing I'll say, and I  
9 won't use up all my time, my - - - my - - - my last  
10 argument - - - but hopefully we won't have to get  
11 there - - - is that - - - I raise it partly because  
12 it's an interesting argument, to be perfectly honest  
13 - - - but the - - - the court below only relied on  
14 Metromedia. Counsel relied on Metromedia and its  
15 Second Circuit progeny, the National Advertising  
16 Case.

17 But this court actually doesn't have to  
18 follow either of those cases. This court is not  
19 bound by the jurisprudence that comes from Metromedia  
20 and National Advertising and all those cases - - -  
21 and respectfully, if you ever got to the merits, my  
22 position would be you shouldn't - - - because the  
23 Metromedia case was a fractured plurality decision  
24 with no discernible position of any sort that  
25 garnered the support of five Supreme Court justices.

1           And I'll just refer the court to the Rappa  
2 case, a - - - a Third Circuit case where the Third  
3 Circuit, wrestling with this exact position said, you  
4 know, "It is not always possible to discover a single  
5 standard that legitimately constitutes the narrowest  
6 ground for decision. In such case, no particular  
7 standard constitutes the law of the land because no  
8 single approach can be said to have the support of  
9 the majority. Therefore, Metromedia is such a case.  
10 Simply stated, the plurality and concurrences took  
11 such markedly different approaches to the San Diego  
12 ordinance that there is no common denominator."

13           So were the court, notwithstanding the  
14 severability issue, notwithstanding the incorrect  
15 application of overbreadth to the - - - to get to the  
16 merits, our position is you're not bound by  
17 Metromedia and shouldn't follow it.

18           CHIEF JUDGE LIPPMAN: Okay, counselor.  
19 Thank you, counsel.

20           MR. SINNREICH: Thank you, Your Honor.

21           CHIEF JUDGE LIPPMAN: Counsel, you're on.

22           MR. NEGRON: Thank you, Your Honor. May it  
23 please the court, Raymond Negron.

24           CHIEF JUDGE LIPPMAN: Counsel, why - - -  
25 why isn't it sev - - - severable and - - - and if you

1 agree that that particular is Constitutional, why  
2 aren't we finished?

3 MR. NEGRON: Well, Judge, it's not  
4 Constitutional.

5 CHIEF JUDGE LIPPMAN: Oh, you don't believe  
6 - - - you're challenging its Constitutionality.

7 MR. NEGRON: Yes, we are, Judge, because  
8 what we're challenging - - -

9 JUDGE SMITH: Even standing alone?

10 MR. NEGRON: If - - -

11 JUDGE SMITH: Read - - - reading it - - -  
12 reading it separate from the - - - this - - - this  
13 section, by itself, is not Constitutional?

14 MR. NEGRON: Well, Judge, it's not a  
15 section. It's a chapter. I mean - - -

16 JUDGE SMITH: Okay.

17 MR. NEGRON: - - - if you look at my brief  
18 - - -

19 JUDGE SMITH: Pret - - - pretend for a  
20 minute we have nothing before us except that - - -  
21 except the - - - whatever it is that's labeled 57A-  
22 11.

23 MR. NEGRON: Okay.

24 JUDGE SMITH: There's no Constitutional  
25 problem with that; is it - - - is there?

1 MR. NEGRON: I believe there is because if  
2 I violate that section, what does it mean?

3 JUDGE SMITH: It means you get a ticket,  
4 and you pay a fine.

5 MR. NEGRON: Why do you pay a fine, Judge?  
6 That's in 57A-24.

7 JUDGE SMITH: Okay.

8 MR. NEGRON: And what is a sign? If I give  
9 my son a sign to steal first on a park, can I be - -  
10 - am - - - am in violation of this?

11 JUDGE SMITH: You - - - you're - - - are  
12 you saying that the word "sign" is so vague as to  
13 render the statute, in itself, unconstitutional?

14 MR. NEGRON: Yes, Judge, because it's  
15 defined in 57A-2.

16 JUDGE SMITH: And you're - - - you're - - -  
17 you're simply saying that if I - - - that if - - -  
18 that if a stat - - - a - - - an ordinance that says  
19 don't put a sign on a wall is vague because it could  
20 mean the sign to steal second?

21 MR. NEGRON: That's a hypothetical, Judge.  
22 I'm looking at this statute. It says you won't put a  
23 sign - - - place a sign - - - actually - - -

24 JUDGE SMITH: Place - - - place a sign on  
25 public property.

1                   MR. NEGRON: You can't have a sign on  
2 public property.

3                   JUDGE SMITH: And - - - and you think that  
4 could - - - that might be - - - confuse someone to  
5 thinking you can't put a third-base coach on there to  
6 be flashing signals?

7                   MR. NEGRON: Judge, every Thursday the town  
8 tells people who were on vacation or at work, I  
9 understand your son put a car in your driveway  
10 without a license plate on it, but you own the house;  
11 pay this fine, or we're going to trial. We cannot  
12 think that the town will not do ridiculous things  
13 with their ordinance. It says sign. If you look at  
14 - - -

15                   JUDGE SMITH: Well - - - well, the fact  
16 that government is capable of doing ridiculous things  
17 doesn't mean that every - - - every statute with a  
18 plain meaning is overbroad just because some - - -  
19 some overaggressive bureaucrat might give it a  
20 ridiculous interpretation.

21                   MR. NEGRON: Well, it says sign, Judge. If  
22 you look it up in the dictionary, which you have to  
23 do if you don't adopt 57A-2, which defines it, there  
24 are over thirty-one definitions of different signs.

25                   CHIEF JUDGE LIPPMAN: Counsel, but by that

1 reasoning, I mean, no statute is valid because you  
2 can always give some speculative unusual reading to  
3 something that seems plain and simple.

4 MR. NEGRON: I don't believe so, Judge,  
5 because we have definition sections. This is 57A-2,  
6 another section which counsel says, "is not  
7 intertwined, dependent upon, or related to any other  
8 provision." But yet there are thirty-one different  
9 signs defined in the - - - in the - - -

10 JUDGE SMITH: Is it - - -

11 MR. NEGRON: - - - definition section.

12 JUDGE SMITH: Is it - - - is it dependent  
13 on something that's unconstitutional?

14 MR. NEGRON: Well, in that definition  
15 section, it defines political signs.

16 JUDGE SMITH: Well - - -

17 MR. NEGRON: It defines houses of worship.

18 JUDGE SMITH: Is - - - is - - -

19 MR. NEGRON: Why is that defined in a sign  
20 code? Are they giving extra protections or less  
21 protections to a house of worship? So yes.

22 JUDGE PIGOTT: Well - - - well, you're  
23 saying - - - you're saying that they're favoring  
24 commercial speech over noncommercial speech, and - -  
25 - and you're commercial speech. So what you're

1 saying is this law is way too nice to me; I want it  
2 struck down. And I don't think you have - - - I  
3 don't think you have ca - - - had standing to do  
4 that.

5 MR. NEGRON: That's absolutely not the - -  
6 - I'm sorry, Judge, it's not the essence at all.

7 JUDGE PIGOTT: Noncommercial - - -

8 MR. NEGRON: This is ad hoc review of the -  
9 - - of the statute. This has nothing to do with my  
10 client.

11 JUDGE PIGOTT: Well, I'm reading - - - I'm  
12 reading what the court said. It said, "Considered as  
13 a whole, 57 unconstitutionally favors commercial  
14 speech over noncommercial speech. Noncommercial  
15 speech is to be afforded a greater degree of  
16 protection than commercial speech." Then it goes on  
17 to say, you don't stand - - - that - - - that - - -  
18 well, it goes on to say that, but you can't challenge  
19 this thing saying it's too nice to me.

20 MR. NEGRON: I - - - I - - - I respectfully  
21 disagree, Judge. Women challenge the - - - their - -  
22 - their right not to vote by getting arrested for  
23 trespassing because the law said women can't vote.  
24 They were asked to leave - - -

25 JUDGE PIGOTT: You - - - you - - - that - -

1 -

2 MR. NEGRON: - - - they got it into the  
3 criminal courts.

4 JUDGE PIGOTT: That makes no sense what you  
5 just said. I mean what - - - what I'm saying - - -  
6 you're saying, I've got a - - - I've got a - - - I've  
7 got a parking ticket at a parking meter. But you  
8 know what they do is they let me go. So this whole  
9 parking meter business has got to fall, because they  
10 let me go. So they're not - - - they're - - -  
11 they're not enforcing this right.

12 MR. NEGRON: I don't see - - - I - - - I'm  
13 sorry, Judge, I don't - - - my client received  
14 tickets under a statute that, by itself, standalone  
15 ad hoc looking at it - - - it fails Constitutional  
16 muster. The Eastern District of New York ruled the  
17 same statutes - - - all these towns cut and paste the  
18 same statutes.

19 JUDGE SMITH: Tell - - - yeah, tell me - -  
20 - and maybe you've told me already, but I want to be  
21 sure I understand it.

22 MR. NEGRON: Sure, Judge.

23 JUDGE SMITH: It fails Constitutional  
24 muster because "sign" is an undefined term and  
25 insufficiently clear on its face?

1 MR. NEGRON: No, Judge.

2 JUDGE SMITH: Well, why - - - tell - - -  
3 tell me - - - tell me why it's illegal, why it's  
4 unconstitutional to pass - - -

5 MR. NEGRON: Okay, it's - - -

6 JUDGE SMITH: - - - to pass something like  
7 this - - -

8 MR. NEGRON: Okay, it's - - - it's outlined  
9 perfectly by the Second Department, and it really  
10 mimics everything I said in my motion for it. The  
11 unconstitutional provisions are intertwined. We  
12 don't want signs that - - - because they distract  
13 drivers. They get in the way. They're aesthetically  
14 unvaluable (sic). However, if it says vote for  
15 Jones, all those reasons we have a sign statute - - -

16 JUDGE SMITH: Well - - - well, now it  
17 sounds like you're making exactly the argument that  
18 Judge - - - that you just told Judge Pigott you  
19 weren't making. You - - - you - - - you - - - you -  
20 - - you - - - you're saying they're - - - you're  
21 saying that it's discriminating against political  
22 speech, and you're not a political speaker.

23 MR. NEGRON: Then it - - - that - - - I'm  
24 sorry, Judge, my client, specifically in this case,  
25 has nothing to do with an ad hoc review of a statute

1 on its own. Pulling in anything having to do with my  
2 client detracts from what the Second Department did.  
3 The Second Department looked at the statute.

4 JUDGE PIGOTT: Well, you can't - - - you -  
5 - - you are your client - - - you can - - - you want  
6 to - - - you want to say, Judge Pigott, you can  
7 challenge this sign ordinance down in - - - down in  
8 my town. Be - - - why? Because you think it  
9 violates free speech. I think your town might say  
10 who are you, Judge Pigott? You're not even from  
11 here.

12 MR. NEGRON: My client is someone who was  
13 charged.

14 JUDGE PIGOTT: I know.

15 MR. NEGRON: So - - -

16 JUDGE PIGOTT: And - - - but - - - but you  
17 just get done saying, you know, it doesn't make any  
18 difference. I'm not running for political office,  
19 but they're saying that pol - - - that political  
20 signs can't be up there so I can - - - so I can  
21 challenge the Constitutionality of the sign.

22 MR. NEGRON: But the Eastern District, the  
23 Second Department, and the Second Circuit all said  
24 was that this statute - - - look, it - - - it - - -  
25 we're not applying to any particular person.

1 JUDGE PIGOTT: I'm going over your head.

2 But I - - - I - - -

3 MR. NEGRON: Okay, well - - -

4 JUDGE PIGOTT: And I don't mean to. I'm  
5 just wondering why you can say, this favors  
6 commercial speech. I'm - - - I'm exercising my  
7 commercial speech rights, and I got a ticket for it.  
8 It's favoring me, and I got a ticket. And - - - and  
9 the reason why I shouldn't get a ticket is because  
10 somebody that's running for political office doesn't  
11 get a ticket.

12 MR. NEGRON: Well, that's not commercial  
13 speech. That's the point, Judge. The statute does  
14 not serve its purpose.

15 JUDGE ABDUS-SALAAM: So is - - - counsel,  
16 is it your position that the only way this section  
17 that you were fined under or your client allegedly  
18 violated, could be Constitutionally valid is if it  
19 had its own definition section as well as the  
20 preamble - - -

21 MR. NEGRON: Well - - -

22 JUDGE ABDUS-SALAAM: - - - and everything  
23 else that this - - -

24 MR. NEGRON: - - - and the penalty section,  
25 Judge.

1 JUDGE ABDUS-SALAAM: - - - that the city  
2 statute has. And - - -

3 MR. NEGRON: If I violate this section,  
4 57A-11, okay, I violated it. I have to look to  
5 another section - - - is it a violation? Is it a  
6 felony, or is - - -

7 JUDGE SMITH: Is there something invalid  
8 about the penalty section?

9 MR. NEGRON: Well, once - - - once you get  
10 there, now there's one section for - - -

11 JUDGE SMITH: Then you - - - then - - -  
12 then you're only - - -

13 MR. NEGRON: - - - both of the - - -

14 JUDGE SMITH: - - - one section away from  
15 something that's invalid? I - - - I - - - I'm having  
16 trouble following your argument.

17 MR. NEGRON: Well, is the court - - - am I  
18 being asked should the court go beyond what the  
19 relief requested is and start looking at other  
20 sections and rewriting? That's what the Eastern  
21 District did, and that's why the Second Circuit  
22 overruled them. This is not an emergency room for  
23 statutes. Legislatures should be writing statues  
24 that meet Constitutional muster. And if you - - -

25 JUDGE SMITH: And they - - - they - - -

1           they - - - they - - - they - - - they - - - they  
2           should, but - - - but if they failed to write one  
3           that does - - - that - - - that - - - that - - - that  
4           - - - that meets Constitutional mus - - - muster, why  
5           should we invalidate the one next door? I - - - I -  
6           - - I'm not getting it.

7                       MR. NEGRON: As the Second Department said,  
8           which I believe is - - -

9                       JUDGE SMITH: This - - - this - - -

10                      MR. NEGRON: - - - re - - - rewording mine,  
11           they're too intertwined.

12                      JUDGE SMITH: This is - - - well, this is -  
13           - - that's what they're appealing from. Tell us why  
14           they're right. I don't see the - - - I don't see the  
15           intertwining.

16                      MR. NEGRON: Because the - - - the - - -  
17           the definitions, the penalties, they're in different  
18           sections.

19                      JUDGE SMITH: But the - - - but there's  
20           nothing wrong with the definition or the penalty that  
21           I can see.

22                      MR. NEGRON: Well, the - - - the penalty -  
23           - -

24                      JUDGE SMITH: It - - - it - - - it has to  
25           be - - - it has to be intertwined with something

1 that's illegal or unconstitutional. Where is it  
2 intertwined with something unconstitutional?

3 MR. NEGRON: The penalty section refers you  
4 back to all these other sections that were al - - -  
5 were also struck down for oth - - - for - - - for  
6 different reasons. The - - - the - - - the intent of  
7 the statute is blatantly disregarded in certain other  
8 sections, most prevalently under the political speech  
9 where it says, however, if the speech is something we  
10 like - - - and by the way, political speech is not  
11 commercial speech - - -

12 JUDGE PIGOTT: Right, well, you're - - - so  
13 you're - - - you're making an equal protection  
14 argument?

15 MR. NEGRON: That - - - that is - - -  
16 absolutely, Judge. That is - - - that is one of the  
17 underlying arguments there. The - - - what the  
18 Second Department did was take my - - - my one of - -  
19 - of several arguments - - -

20 JUDGE PIGOTT: Well, you - - -

21 MR. NEGRON: - - - and expound upon it.

22 JUDGE PIGOTT: It's a very simple case, it  
23 seems to me. You - - - you're putting - - - you're  
24 putting commercial signs on public property where - -  
25 - where they want to put speed zones, and they want

1 to put, you know, whatever the public - - - on - - -  
2 it's on government property. They don't want you  
3 taking advantage of public property by advertising  
4 your business with the - - - with those signs.  
5 That's - - - that seems very clear, and it doesn't  
6 seem like it's a violation of anybody's  
7 Constitutional rights.

8 Then you say well, wait a minute, you know,  
9 even though you can have commercial signs, there's -  
10 - - there's other signs you can't have and,  
11 therefore, you've got to do something. You can't  
12 charge me because you're - - - you're letting  
13 political speech go.

14 MR. NEGRON: And that's where the  
15 intertwine comes from, Judge. If the statute just  
16 regulated signs and not speech, I'd have a much  
17 tougher - - - I would have had a much tougher time.  
18 The Eastern District would have had a tougher time  
19 doing what it's did - - - did in the Second Circuit.

20 And as far as were the signs on public  
21 property, with the sufficiency argument, Judge, let's  
22 go back to that which is not waivable. The  
23 accusatory instrument just said I saw a sign next to  
24 the road. I'm sorry, this - - - any kind of property  
25 case you need a survey.

1 CHIEF JUDGE LIPPMAN: Okay, counsel.

2 MR. NEGRON: That's just the conclusion.

3 CHIEF JUDGE LIPPMAN: Thanks, counsel.

4 Counselor, rebuttal?

5 MR. SINNREICH: Just one sentence, Your

6 Honor, which is this - - -

7 CHIEF JUDGE LIPPMAN: One sentence?

8 MR. SINNREICH: Yes, Your Honor.

9 CHIEF JUDGE LIPPMAN: Go ahead.

10 MR. SINNREICH: I'm going to keep it within

11 one sentence.

12 CHIEF JUDGE LIPPMAN: Okay.

13 MR. SINNREICH: That as - - - as the court

14 has rightly observed, this - - - it may be two

15 sentences. I can't be sure. The - - - this is a

16 standalone section. It bans all signs - - -

17 commercial, expressive - - - all signs on the public

18 right-of-way and - - - to keep it one sentence - - -

19 comma, that kind of an ordinance was specifically

20 upheld by the United States Supreme Court as

21 Constitutional in - - - in *Members of the City*

22 *Council v. Taxpayers for Vincent*, 466 U.S. 789.

23 So respectfully, there is no question about

24 the Constitutionality of that standalone ordinance.

25 Thank you, Your Honors.

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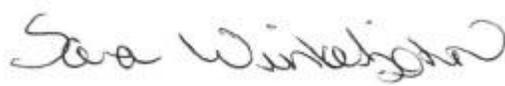
CHIEF JUDGE LIPPMAN: Okay, counsel. Thank  
you. Thank you both. Appreciate it.

(Court is adjourned)

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C E R T I F I C A T I O N

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. On Sight Mobile Opticians, No. 222 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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Date: November 22, 2014