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## Supreme Court, New York County Stringfellow's of New York Ltd. v. City of New York

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in their favor.<sup>82</sup> Without a sufficient showing by the city that the ordinance was necessary to achieve a reduction in the spread of sexually transmitted diseases, the court reversed the order below and granted the plaintiff's motion for a preliminary injunction.<sup>83</sup>

The creators of the Federal Constitution envisioned that the citizens of this country would be guaranteed certain minimum liberty protections under the Federal Constitution which the states would be free to expand upon via their individual state constitutions. New York exercised this option and has, historically, chosen to extend greater protection in the area of free speech and expression than the federal government. While the Supreme Court has interpreted the First Amendment to require only that incidental burdens to free expression be "narrowly tailored,"<sup>84</sup> the New York State Court of Appeals has interpreted Article 1, section 8 of the New York State Constitution as requiring that "the least restrictive means" possible be employed to burden its citizens.<sup>85</sup> Thus, the disparity of results reached by a challenge brought under the Federal and State Constitutions can be understood not only as a contrast in the liberty interest provided by each, but also as a difference in the measuring standard utilized by the court.

## SUPREME COURT

### NEW YORK COUNTY

Stringfellow's of New York Ltd. v. City of New York<sup>86</sup>  
(decided October 24, 1996)

Plaintiff Stringfellow's, along with plaintiffs in two similar actions, sought to declare as invalid a zoning resolution which, if

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82. *Id.*

83. *Id.* at 279, 645 N.Y.S.2d at 958.

84. See *O'Brien*, 391 U.S. at 382.

85. See *Matter of Nicholson*, 50 N.Y.2d 597, 409 N.E.2d 818, 431 N.Y.S.2d 340 (1980).

86. 653 N.Y.S.2d 801 (Sup. Ct. New York County 1996).

enacted, would restrict the operation of adult entertainment establishments to certain areas within New York City.<sup>87</sup> Plaintiffs argued that enactment of such a zoning resolution violated their freedom of expression rights guaranteed under Article I Section 8 of the New York State Constitution.<sup>88</sup> The court, in denying plaintiffs' motions for summary judgment and granting defendant City of New York's motion for summary judgment determined that the resolution "d[id] not violate plaintiffs' rights of freedom of expression guaranteed under the State constitution, and [wa]s therefore, constitutional."<sup>89</sup> In reaching this determination, the court found that the zoning resolution in question would not silence freedom of expression nor would it interfere with "New York's long history and tradition of fostering freedom of expression and tolerating ideas that some may find offensive."<sup>90</sup>

At issue in these cases is the zoning resolution known as the "Text Amendment N 950384 ZRY" (hereinafter referred to as "Amended Zoning Resolution") which was drafted with an eye towards restricting adult use establishments in areas such as residential neighborhoods, and the facilities and commercial areas that serve them, as well as certain districts of New York City which are zoned for commercial and manufacturing uses but

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87. *Id.* at 803. This action also concerns two other actions which seek the same relief. *Id.* Those actions, *Hickerson v. City of New York* and *Amsterdam Video, Inc. v. City of New York*, are so intertwined with the facts and law of the case at bar that all three cases were joined together, in so far as deciding the motions for summary judgment premised on the right to freedom of expression under the New York State Constitution. *Id.* In *Hickerson*, plaintiffs, Manhattan and Bronx residents, sued the City of New York claiming that the zoning resolution infringed on their freedom of expression rights as regular patrons of these adult entertainment establishments. *Id.* In *Amsterdam Video*, 92 adult entertainment establishments challenged the validity of the zoning resolution in question. *Id.*

88. N.Y. CONST. art I. §8. This section provides in pertinent part: "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press." *Id.*

89. *Stringfellow's*, 653 N.Y.S.2d at 814.

90. *Id.*

permit new residential development.<sup>91</sup> The Amended Zoning Resolution was proposed in response to a study which was undertaken by the City of New York, specifically, the Department of City Planning ("DCP"), as a result of community concerns which were voiced relating to the effects and impact adult entertainment establishments had on the community.<sup>92</sup> As of 1993, there were 177 such establishments, a thirty-five percent increase since 1984.<sup>93</sup> Once the study was concluded, the DCP determined that with the increase in the number of adult uses citywide, many adult entertainment establishments had located to residential areas<sup>94</sup> which "tend[ed] to produce negative secondary effects such as increased crime, decreased property values, and reduced shopping and commercial activities."<sup>95</sup> Based on these conclusions the DCP recommended "that the zoning resolution be amended so as to regulate adult entertainment establishments more closely than other commercial uses by placing restrictions on the proximity of adult uses to residential areas, schools, houses of worship, and other adult establishments."<sup>96</sup>

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91. *Id.* at 804 (explaining Amended Zoning Resolution §§32-01(a) and 42-01(a)).

92. *Id.* at 803. These studies included one by the New York City Department of City Planning ("DCP") undertaken in 1993 to determine whether the zoning ordinance in effect at that time should be amended to regulate these adult use establishments. *Id.* During the course of this study, seven areas were targeted for review. These areas included certain districts within each of the five boroughs: Manhattan, Bronx, Brooklyn, Queens and Staten Island. *Id.* However, the DCP did not include the Times Square area within its study since that area was already being studied by Times Square Business Improvement District ("TSBID"). *Id.*

93. *Id.* at 803.

94. *Id.* at 804. As the court illustrated, many adult entertainment establishments have "clustered in central locations such as Times Square" in Manhattan. *Id.* Similarly, "[i]n the outer boroughs, these establishments have concentrated along major arteries, such as Queens Boulevard in Queens and Third Avenue in Brooklyn." *Id.*

95. *Id.*

96. *Id.* The court noted that "[p]rior to this recommendation, the City's zoning resolution had made no distinction between adult entertainment establishments and other commercial activities." *Id.*

This Amended Zoning Resolution which was approved on October 25, 1995 had as its objective the dilution of “adult entertainment establishments in certain neighborhoods by dispersing such businesses to certain permissible zoned districts . . . [in order] to shield the City’s residential neighborhoods, and the facilities and commercial areas that served them, from the negative impacts produced by adult uses.”<sup>97</sup> The Amended Zoning Resolution contained several provisions which included prohibition of adult entertainment establishments in certain districts,<sup>98</sup> restrictions on placement of adult uses in other districts,<sup>99</sup> and prevention of the concentration of adult uses in other districts.<sup>100</sup> Moreover, the Resolution provided for an amortization period for those existing adult use establishments to come into conformity with the Resolution with limited exemptions.<sup>101</sup>

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97. *Id.* at 804.

98. *Id.* The court noted that the prohibition on adult uses was targeted for residentially zoned districts and certain commercial and manufacturing districts which permit new residential development. *Id.* (explaining Amended Zoning Resolution §§32-01(a) and 42-01(a)).

99. *Id.* at 805. The court explained what these restrictions entailed and the purpose behind their enactment. *Id.* The objective behind imposing these restrictions was to “further ensure that such [adult] uses do not adversely impact residential communities or the facilities that serve them.” *Id.* In restricted districts, adult use establishments “must be located at least 500 feet from any school, day care center, or house of worship and at least 500 feet from most zoning districts in which new residential uses are allowed.” *Id.* (citing Amended Zoning Resolution §§32-01(a) and 42-01(b)).

100. *Id.* at 805. In order to prevent the concentration of adult use establishments, in those districts where adult uses are permissible, such a new adult use establishment “must be located at least 500 feet from any other adult use.” (discussing Amended Zoning Resolution §§32-01(c) and 42-01(c)). *Id.* Furthermore, “only one adult establishment, not to exceed 10,000 square feet of usable floor area, may be located on a zoning lot. *Id.* (citing §§32-01(d) and 42-01(d)). Moreover, the resolution “also regulates the size, placement and illumination of accessory business signs on adult establishments, but not their content.” *Id.* (citing Amended Zoning Resolution §§32-69 and 42-55).

101. *Id.* at 805. The amortization period is one year for an existing adult use establishment to conform or terminate. *Id.* However, a non-conforming adult use establishment may apply for an extension to allow operation for more than one year provided the applicant meets certain criteria. *Id.* (explaining

Ruling in favor of defendants' motion for summary judgment in supporting the enactment of the Amended Zoning Resolution and consequently, against plaintiffs, the court in *Stringfellow's* based its decision solely on an analysis under the New York State Constitution. In reaching its conclusion, the court applied state law, relying on New York and federal court decisions which dealt with ordinances or regulations infringing upon freedom of speech or expression in the commercial arena.<sup>102</sup> In relying predominately on New York case law, the *Stringfellow's* court recognized that "New York's constitutional guarantee affords greater protection than its federal counterpart"<sup>103</sup> and also affirmed New York's "long history and tradition in fostering freedom of expression, often tolerating and supporting works which in other States would be found offensive to the community."<sup>104</sup>

Beginning its discussion on the constitutionality of the Amended Zoning Resolution, the court in *Stringfellow's* examined the competing principles between Article I, Section 8,

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Amended Zoning Resolution §72-40). Existing adult use establishments in permissible districts which otherwise conform to the provisions of the Resolution but "are within 500 feet of another adult use, located on the same zoning lot of another adult use, or exceed 10,000 square feet of usable floor area, would not be subject to the amortization provisions . . . ." *Id.* (discussing Amended Zoning Resolution §§32-01(f), 42-01(f) and 52-77).

102. *Stringfellow's*, 653 N.Y.S.2d at 806. See, e.g., *Town of Islip v. Caviglia*, 73 N.Y.2d 544, 540 N.E.2d 215, 542 N.Y.S.2d 139 (1989); *People ex rel. Arcara v. Cloud Books, Inc.*, 68 N.Y.2d 553, 503 N.E.2d 492, 510 N.Y.S.2d 844 (1986); *Renton v. Playtime Theatres, Inc.*, 475 U.S. 40 (1986); *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976).

103. *Stringfellow's*, 653 N.Y.S.2d at 805. (referring to U.S. CONST. amend. I. which provides in relevant part that "Congress shall make no law . . . abridging the freedom of speech, or of the press"). See also *Arcara*, 68 N.Y.2d 553, 557-58, 503 N.E.2d 492, 494-95, 510 N.Y.S.2d 844, 846-47 (finding that "the minimal national standard established by the Supreme Court for First Amendment rights cannot be considered dispositive in determining the scope of this State's constitutional guarantee of freedom of expression").

104. *Stringfellow's*, 653 N.Y.S.2d at 805. See also *Arcara*, 68 N.Y.2d 553, 557, 503 N.E.2d 492, 494, 510 N.Y.S.2d 844, 846 (finding that "[f]reedom of expression in books, movies and the arts, generally, is one of those areas in which there is great diversity among the States").

of the New York State Constitution and a municipality's "broad powers to implement land use controls to meet the increasing encroachments of urbanization on the quality of life."<sup>105</sup> The court explained the reasons behind restrictions or encroachments on land use, specifically, "to advance the public health, safety and welfare."<sup>106</sup> Furthermore, "[p]reventing neighborhood deterioration [wa]s undeniably a legitimate public objective."<sup>107</sup>

Moreover, the court examined and discussed the importance behind zoning and the "preserv[ation of] the character of specific areas of a city" which is "the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life."<sup>108</sup> To meet this objective, the legislature through the enactment of zoning ordinances, "enjoy[s] a strong presumption of constitutionality and if there is a reasonable relation between the end sought to be achieved and the means adopted to achieve that end the regulation will be upheld."<sup>109</sup> However, there is a conflict where "a municipality's zoning power is used to regulate lawfully operating establishments that are devoted to adult uses

105. *Caviglia*, 73 N.Y.2d at 550, 540 N.E.2d at 217, 542 N.Y.S.2d at 141. See generally, *Asian Americans for Equality v. Koch*, 72 N.Y.2d 121, 527 N.E.2d 265, 531 N.Y.S.2d 782 (1988); *Harbison v. City of Buffalo*, 4 N.Y.2d 553, 152 N.E.2d 42, 176 N.Y.S.2d 598 (1958).

106. *Caviglia*, 73 N.Y.2d at 550, 540 N.E.2d at 217, 542 N.Y.S.2d at 141 (citing *Berman v. Parker*, 348 U.S. 26, 32 (1954); *Udell v. Haas*, 21 N.Y.2d 463, 469-70, 235 N.E.2d 897, 901, 288 N.Y.S.2d 888, 894 (1968)).

107. *Stringfellow's*, 653 N.Y.S.2d at 806 (citation omitted). The court went on to explain that "[w]ithout stable residential and commercial neighborhoods large sections of a modern city can quickly deteriorate into an urban jungle with tragic consequences to social, environmental and economic values." *Id.* (citing *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 80 (1976) (Powell, J., concurring)).

108. *Stringfellow's*, 653 N.Y.S.2d at 806. (citing *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 80 (1976) (Powell, J., concurring)).

109. *Stringfellow's*, 653 N.Y.S.2d at 806. The court noted that "[w]here the issue is 'fairly debatable' courts must defer to the legislative judgment on the need for such regulation. See, e.g., *Caviglia*, 73 N.Y.2d 544, 540 N.E.2d 215, 542 N.Y.S.2d 139; *McMinn v. Town of Oyster Bay*, 66 N.Y.2d 544, 488 N.E.2d 1240, 498 N.Y.S.2d 128 (1985); *Shepard v. Village of Skaneateles*, 300 N.Y. 115, 89 N.E.2d 619 (1949).

protected under this State's constitutional guarantee of freedom of expression."<sup>110</sup>

It is with this background and understanding of the municipality's legislative power concerning the welfare of its community that the court in *Stringfellow's* discussed the appropriate test to analyze the constitutional right to freedom of speech and expression under the New York State Constitution in relation to the Amended Zoning Resolution at issue.<sup>111</sup>

The Supreme Court in *City of Renton v. Playtime Theaters*<sup>112</sup> enunciated the applicable test for reasonable content-neutral time,

110. *Stringfellow's*, 653 N.Y.S.2d at 806 (citation omitted).

111. *Id.*

112. 475 U.S. 41 (1986). The respondents operated two movie theaters in the City of Renton which showed adult films, thus categorizing the theater as an "adult motion picture theater" as that term is defined in the City's zoning ordinance: "[a]n enclosed building used for presenting motion picture films, video cassettes, cable television, or any other such visual media, distinguished or characteri[zed] by an emphasis on matter depicting, describing or relating to 'specified sexual activities' or 'specified anatomical areas'. . . for observation by patrons therein." *Id.* at 44-45 (citations omitted). The ordinance in question prohibited these 'adult motion picture theaters' from locating within 1,000 feet of any residential zone, single- or multiple-family dwelling, church, park or school. *Id.* at 44. The respondents challenged the ordinance on First and Fourteenth amendment grounds. *Id.* at 45. However, the Supreme Court upheld the ordinance as a reasonable content-neutral time, place, and manner restriction which was designed to serve a substantial governmental interest without unreasonably limiting alternative avenues of communication. *Id.* at 54-55. The Court summarily held that:

[T]he Renton ordinance represents a valid governmental response to the 'admittedly serious problems' created by adult theaters. Renton has not used 'the power to zone as a pretext for suppressing expression', but rather has sought to make some areas available for adult theaters and their patrons, while at the same time preserving the quality of life in the community at large by preventing those theaters from locating in other areas. This, after all, is the essence of zoning. Here . . . the city has enacted a zoning ordinance that meets these goals while also satisfying the dictates of the First Amendment.

*Id.* at 54-55 (citations omitted).



place, and manner restrictions on commercial speech,<sup>113</sup> which has been followed and applied to constitutional claims under the New York State Constitution as in *Town of Islip v. Caviglia*.<sup>114</sup> In order to be a reasonable content-neutral time, place and manner restriction, the court in *Stringfellow's* relied on certain elements established pursuant to the *Renton* test and applied to *Caviglia*.

The appropriate test for reasonable content-neutral time, place and manner restrictions on commercial speech is similar under an

113. Regulations which are deemed reasonable content-neutral time, place, and manner restrictions on commercial speech are justified without reference to the content of the regulated speech, relating only to the time, place, and manner of expression, and "are valid if the governmental interest to be achieved outweighs the resulting interference with free expression." *Caviglia*, 73 N.Y.2d at 556-57, 540 N.E.2d at 221, 542 N.Y.S.2d at 145; *See generally Renton*, 475 U.S. 41 (1986).

114. 73 N.Y.2d 544, 540 N.E.2d 215, 542 N.Y.S.2d 139 (1989). The petitioner, Town of Islip, enacted a zoning ordinance which differentiated between certain "adult uses" and limited the operation of these adult uses to areas zoned Industrial I. 73 N.Y.2d at 548, 540 N.E.2d at 216, 542 N.Y.S.2d at 140. Respondent, Caviglia owned and operated the Happy Hour Bookstore in the heart of the downtown district of the village of Bay Shore, outside the Industrial I zone. *Id.* at 550, 540 N.E.2d at 217, 542 N.Y.S.2d at 141. This bookstore excluded minors by reason of age and therefore fell within the definition of "adult use" under the ordinance. *Id.* The respondents challenged the ordinance on First Amendment grounds as violating their constitutional right to freedom of expression. *Id.* In upholding the constitutional validity of the zoning ordinance, the court recognized that "[b]ecause zoning ordinances are legislative acts, they enjoy a strong presumption of constitutionality and if there is a reasonable relation between the end sought to be achieved and the means adopted to achieve it, the regulation will be upheld." 73 N.Y.2d at 550-51, 540 N.E.2d at 217, 542 N.Y.S.2d at 141. Furthermore, utilizing the rule as formulated in *City of Renton v. Playtime Theaters*, the court of appeals found that petitioner's ordinance met "the federal constitutional requirements under the *Renton* test." 73 N.Y.2d at 552, 540 N.E.2d at 218, 542 N.Y.S.2d at 142. Specifically, the court held that the ordinance was "an appropriate method of addressing existing problems; it [wa]s not overinclusive and it d[id] not unduly restrict adult uses to limited or unsuitable areas of the town." 73 N.Y.2d at 560, 540 N.E.2d at 223, 542 N.Y.S.2d at 147-148. Moreover, the ordinance was "no broader than needed for the intended purpose and d[id] not violate the State Constitution . . . ." 73 N.Y.2d at 560, 540 N.E.2d at 224, 542 N.Y.S.2d at 148.

analysis of both New York<sup>115</sup> and Federal Constitutions.<sup>116</sup> Under this standard, there are four elements which must be established in order for such regulations on commercial speech to be valid and constitutional.<sup>117</sup> First, the “predominant purpose” of the ordinance must not seek to regulate the content of the speech or expression but to regulate the “secondary effects” of such uses on the surrounding community.<sup>118</sup> Second, the ordinance must be designed in such a way as to serve a “substantial governmental interest.”<sup>119</sup> Third, the ordinance must be “narrowly tailored” to affect only those uses that produce the unwanted secondary

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115. In *Islip*, the court noted that “state courts are bound by Supreme Court decisions defining federal constitutional rights but those rulings establish a minimum standard which state courts may surpass so long as their holdings do not conflict with federal law.” 73 N.Y.2d at 556, 540 N.E.2d at 221, 542 N.Y.S.2d at 145. Furthermore, the court held that “New York may interpret its own constitution to extend greater protections to its residents.” *Id.* Moreover, the court recognized that “New York has a long history and tradition of fostering freedom of expression, often tolerating and supporting works which in other states would be found offensive to the community. *Id.* (citations omitted).

116. *Renton*, 475 U.S. 41 (1986); *Cf.*, *Caviglia*, 73 N.Y.2d at 544, 540 N.E.2d at 215, 542 N.Y.S.2d at 139 (applying the *Renton* test to alleged violations of both Federal and New York State constitutional claims of freedom speech and expression).

117. *See Renton*, 475 U.S. 41.

118. *See, e.g., Renton*, 475 U.S. at 48 (finding the “predominant purpose” behind the enactment of a zoning ordinance regulating the locale of certain adult movie theaters to be the avoidance of unwanted secondary effects by preventing “crime, protect[ing] the city’s retail trade, maintain[ing] property values, and generally protect[ing] and preserv[ing] the quality of [the city’s] neighborhoods, commercial districts, and the quality of urban life”); *Caviglia*, 73 N.Y.2d at 552, 540 N.E.2d at 218, 542 N.Y.S.2d at 142 (finding the “predominant purpose” behind an “adult use” zoning ordinance to be the “eliminat[ion] of secondary effects of adult uses and [the] attempt[ed] control [of] future development in the business districts”).

119. *See, e.g., Renton*, 475 U.S. at 50 (recognizing the city’s “interest in attempting to preserve the quality of life, one that must be accorded high respect”) (citations omitted); *Caviglia*, 73 N.Y.2d at 553, 540 N.E.2d at 219, 542 N.Y.S.2d at 143 (finding that the Town had a substantial “governmental interest” in the “eradication of the effects of urban blight and neighborhood deterioration and furtherance of the quality of life for the Town’s residents”).

effects.<sup>120</sup> Finally, the ordinance must allow for “reasonable alternative avenues of communication or expression.”<sup>121</sup>

In applying the *Renton* test, as well as the New York Court of Appeal’s reasoning in *Caviglia*, to the case at bar, the *Stringfellow*’s court found that the Amended Zoning Resolution passed constitutional muster under the *Renton* test.<sup>122</sup> The court did not specifically discuss the second element of the *Renton* test regarding a “substantial governmental interest,” however, such an interest could be inferred from the totality of the court’s analysis concerning the City’s predominate purpose behind the Amended Zoning Resolution’s enactment.<sup>123</sup>

First, the court determined that the “predominate purpose” behind the enactment of the Resolution was to eradicate adverse secondary effects caused by the proliferation of adult establishments.<sup>124</sup> These adverse secondary effects were shown through “planning studies” and reliance on the experiences of other cities.<sup>125</sup> The court found that defendant City of New York’s

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120. See, e.g., *Renton*, 475 U.S. at 52 (finding the adult use zoning ordinance ‘narrowly tailored’ to affect only that category of theaters shown to produce the unwanted secondary effects”).

121. See, e.g., *Renton*, 475 U.S. at 53 (holding that the zoning ordinance provides reasonable alternative locations by leaving “more than five percent of the entire land area of Renton, open to use as adult theater sites . . . , [consisting] of ample, accessible real estate, including ‘acreage in all stages of development from raw land to developed, industrial, warehouse, office and shopping space that is criss-crossed by freeways, highways and roads’”) (citations omitted); *Caviglia*, 73 N.Y.2d at 554-55, 540 N.E.2d at 220, 542 N.Y.S.2d at 144 (finding that the adult use Industrial I zoning ordinance provides over 6,000 acres of land in Industrial I for alternative locations which includes “85.6 miles of running frontage on open roads which are situated on lots over 500 feet from a church, park, playground or residential zone”).

122. *Stringfellow*’s, 653 N.Y.S.2d at 814.

123. *Id.* at 807.

124. *Id.* at 809.

125. 653 N.Y.S.2d at 808. The court recognized that the rationale behind the use of planning studies to legitimize the City’s argument of secondary effects:

planning studies, by their nature, are not scientific nor their predictions certain but [a municipality] [is] entitled to credit the evidence in its study of past deterioration and the prediction that, unless remedied the deterioration would

“methodology in determining whether adult establishments existing in the City produced negative impacts was constitutionally permissible.”<sup>126</sup> Moreover, the court in *Stringfellow's* found plaintiffs’ contentions that the City should have conducted its own independent assessments unpersuasive to invalidate the Amended Zoning Resolution.<sup>127</sup> The court determined that to establish adverse secondary effects the City need only show “that there [wa]s a reasonable belief that adult entertainment businesses, including the upscale kind allegedly offered by Stringfellow’s, produce at least some of the unwanted secondary effects so as to permit the City to experiment with solutions to admittedly serious problems.”<sup>128</sup> Thus, the court held that the City of New York satisfied the first element of the *Renton* test.<sup>129</sup>

After establishing that the predominant purpose behind the City’s enactment of the Amended Zoning Resolution was to eradicate the adverse secondary effects associated with adult use establishments, the court reviewed the third element of the *Renton* test, to determine whether the Resolution was no broader than necessary to

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continue; it [is] not required to wait before acting until its business area [become] wastelands.

*Id.* (quoting *Caviglia*, 73 N.Y.2d at 553-54, 540 N.E.2d at 219, 542 N.Y.S.2d at 143). Moreover the court in relying on Islip, further explained that “planning studies have established that adult bookstores and other adult entertainment facilities are generally injurious to the maintenance and development of healthy commercial and residential areas.” *Stringfellow's*, 653 N.Y.S.2d at 808. (citing *Caviglia*, 73 N.Y.2d at 555, 540 N.E.2d at 218, 542 N.Y.S.2d at 142).

126. *Stringfellow's*, 653 N.Y.S.2d at 808.

127. *Id.*

128. *Id.* See also *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413, 1416-17 (8th Cir. 1994) (holding that the City permissibly relied on studies conducted in other cities to determine whether adult use establishments had an adverse secondary effect on the community).

129. *Stringfellow's*, 653 N.Y.S.2d at 809. The court summarily held that [t]he voluminous and comprehensive administrative record clearly demonstrates the City not only reviewed studies from other jurisdictions, but actually used those studies to guide it in its study to determine the existence of negative secondary effects associated with adult use businesses, and in formulating a proper response to combat such effects.

*Id.*

meet the City's underlying purpose in enacting the Resolution.<sup>130</sup> The court quickly dismissed plaintiff's contention that the Resolution was not narrowly drawn by recognizing the City's ability to "utilize its zoning powers to address the negative effects associated with adult use businesses given the fact that such effects are not subject to direct attack."<sup>131</sup> Thus, the court found that "[u]nder these circumstances, the Amended Zoning Resolution [wa]s no broader than necessary, and d[id] not violate the State Constitution."<sup>132</sup>

Finally, the court addressed the fourth element of the *Renton* test which required that the Amended Zoning Resolution provide for "reasonable alternative avenues of communication"<sup>133</sup> or ensure that "there remain[ed] ample space available for adult uses."<sup>134</sup> In addressing this inquiry, the court in *Stringfellow's* found that the City had devoted four percent of its total land, which included commercial and manufacturing districts in all five boroughs, to adult use establishments.<sup>135</sup> Moreover, the court determined that adult use establishments were also permitted in districts which were zoned for "retail, recreational, entertainment and commercial uses."<sup>136</sup> The City also argued that the available sites within these districts for adult use establishments are located near mass transportation, such as buses and subways.<sup>137</sup> The court found ample evidence in the record to support the City's argument that ample space is available for adult use establishments thus, satisfying the fourth element of the *Renton* test despite plaintiffs' argument to the contrary.<sup>138</sup> In fact, the court emphatically

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130. *Id.*

131. *Id.*

132. *Id.*

133. *Renton*, 475 U.S. at 50.

134. *Stringfellow's*, 653 N.Y.S.2d at 810 (quoting *Caviglia*, 73 N.Y.2d at 555, 540 N.E.2d at 221, 542 N.Y.S.2d at 145). Although recognizing the *Renton* test of "reasonable alternative avenues of communication," the court in *Caviglia* interpreted this inquiry to be geographical one when dealing with adult use establishments and zoning restrictions. *Id.*

135. *Stringfellow's*, 653 N.Y.S.2d at 810.

136. *Id.*

137. *Id.*

138. *Id.*

rejected plaintiffs' contention that the alternative sites were remote or inaccessible.<sup>139</sup> Rather the court found that despite "the plethora of generalized and conclusory allegations made by plaintiffs, the record [wa]s utterly devoid of a single action taken by a single affected owner or operator of an adult establishment to negotiate for alternative space."<sup>140</sup>

Moreover, the court found that plaintiffs' reliance on *Topanga Press Inc. v. City of Los Angeles*<sup>141</sup> only reiterated and supported the City's argument that the Amended Zoning Resolution provided for ample space.<sup>142</sup> In *Topanga*, the Ninth Circuit grappled with the question of whether a zoning ordinance which restricted the placement of new and existing adult use establishments within five hundred feet of a residential area was constitutional.<sup>143</sup> The *Topanga* court found that such an ordinance was impermissible where it did not provide for reasonable alternative avenues of expression because the sufficiency of the land allotted for the relocation of adult use establishments to conform with the ordinance was wholly lacking.<sup>144</sup> In fact, the ratio of available sites to relocating businesses in *Topanga* was only one to one whereas the ratio in *Stringfellow's* was greater than three to one.<sup>145</sup> Therefore, in light of the fact that defendant City of New York had "more than sufficiently demonstrated that the permissible areas [were] suitable for commercial enterprise and [were] large enough to accommodate adult establishments which must relocate," the court validated the Amended Zoning Resolution and found that the City satisfied this fourth, and final element of the *Renton* test.<sup>146</sup>

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139. *Id.*

140. *Id.* at 813.

141. 989 F.2d 1524 (9th Cir. 1993).

142. *Stringfellow's*, 653 N.Y.S.2d at 813. The court found that the "key was whether the challenged Amended Zoning Resolution allow[ed] for the operation of at least as many adult establishments as existed before the enactment." *Id.*

143. *Topanga*, 989 F.2d at 1527. Moreover, the ordinance in question in *Topanga* required one thousand feet distance between any two adult use establishments. *Id.*

144. *Id.* at 1531-33.

145. *Stringfellow's*, 653 N.Y.S.2d at 813.

146. *Id.* at 814.

Thus, the court upheld the constitutionality of the Amended Zoning Resolution under the New York State Constitution by recognizing that the Resolution “carefully balanc[ed] the interests of those who s[ought] to eliminate the neighborhood blight caused by an over concentration of adult establishments against an individual’s constitutional right to patronize adult establishments.”<sup>147</sup> In doing so, the court guaranteed that “New York’s long history and tradition of fostering freedom of expression and tolerating ideas some may find offensive” would not be disturbed.<sup>148</sup>

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147. *Id.* The court recognized the merit to some of the factors which plaintiffs” asserted in their favor, however, it held that such factors did not “render the Amended Zoning Resolution constitutionally infirm.” The court outlined these factors:

[i]t is true, however, as plaintiffs contend that instant availability to pornography on demand will be eliminated from some sections of the City. It is also true that those who seek to patronize adult establishments may be minimally inconvenienced by the need to travel a bit to satisfy their desires and that the owners and operators of certain adult establishments may sustain some economic hardship as a result of the Amended Zoning Resolution.

*Id.*

148. *Id.* The court explained that “[t]hose seeking to patronize adult establishments will be able to continue to beat a path to their doors.” *Id.* Moreover, “[w]hile x-rated businesses may no longer be located on every street corner and may no longer dominate the Times Square Area, as long as the current demand for them exists their numbers will certainly not lessen.”

*Id.*

