

13-4533-cv(L); 13-4537-cv
Expressions Hair Design v. Schneiderman

United States Court of Appeals

FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 23rd day of May, two thousand seventeen.

Present:

Richard C. Wesley,
Debra Ann Livingston,
Susan L. Carney,
Circuit Judges.

Expressions Hair Design, Linda Fiacco, The Brooklyn Farmacy & Soda Fountain, Inc., Peter Freeman, Bunda Starr Corp., Donna Pabst, Five Points Academy, Steve Milles, Patio.com LLC, David Ross,

Plaintiffs-Appellees,

v.

Eric T. Schneiderman, in his official capacity as Attorney General of the State of New York, Cyrus R. Vance, Jr., in his official capacity as District Attorney of New York County, Eric Gonzalez,* in his official capacity as Acting District Attorney of Kings County,

Defendants-Appellants.

Amended Order

13-4533-cv

13-4537-cv

In light of the decision of the Supreme Court in *Expressions Hair Design v. Schneiderman*, 137 S. Ct. 1144 (2017), and the judgment that has now issued in that case, we order that the mandate in the above-captioned case be RECALLED and the appeal be, and hereby is, REINSTATED.

Both appellants and appellees are hereby ordered to, within 21 days from the date of this order, submit simultaneous letter-briefs to this court, of no more than 30 double-spaced pages,

* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Acting District Attorney Eric Gonzalez is automatically substituted for former District Attorney Charles J. Hynes as defendant-appellee in this case.

addressing the following:

- (1) Whether, as applied in the context of the plaintiffs' proposed "single-sticker pricing" scheme, *see Expressions Hair Design*, 137 S. Ct. at 1149, N.Y. Gen. Bus. Law § 518 is a valid commercial speech regulation under the four-part analysis laid out in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980).
- (2) Whether, as applied in the context of the plaintiffs' proposed "single-sticker pricing" scheme, N.Y. Gen. Bus. Law § 518 is a valid disclosure requirement under *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985).
- (3) Whether we should certify part of this case to the New York Court of Appeals for resolution, *see Expressions Hair Design*, 137 S. Ct. at 1158 (Sotomayor, *J.*, concurring in the judgment), and, if so, what question should be so certified.

Oral argument will be held at the discretion of the panel.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

The signature of Catherine O'Hagan Wolfe is written in cursive over a circular seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

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