NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CITY OF CINCINNATI *v.* DISCOVERY NETWORK, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 91–1200. Argued November 9, 1992—Decided March 24, 1993

In 1989, petitioner city authorized respondent companies to place 62 freestanding newsracks on public property for the purpose of distributing free magazines that consisted primarily of advertisements for respondents' services. In 1990, motivated by its interest in the safety and attractive appearance of its streets and sidewalks, the city revoked respondents' permits on the ground that the magazines were ``commercial handbill[s],'' whose distribution on public property was prohibited by a pre-existing ordinance. In respondents' ensuing lawsuit, the District Court concluded that this categorical ban violated the First Amendment under the ``reasonable fit'' standard applied to the regulation of commercial speech in *Board of Trustees of State Univ. of New York* v. *Fox,* 492 U. S. 469. The Court of Appeals affirmed.

Held: The city's selective and categorical ban on the distribution, via newsrack, of ``commercial handbills'' is not consistent with the dictates of the First Amendment. Pp. 5–20.

(a) The record amply supports the conclusion that the city has not met its burden of establishing a ``reasonable fit'' between its legitimate interests in safety and esthetics and the means it chose to serve those interests. The ordinance's outdated prohibition of handbill distribution was enacted long before any concern about newsracks developed, for the apparent purpose of preventing the kind of visual blight caused by littering, rather than any harm associated with permanent, freestanding dispensing devices. The fact that the city failed to address its recently developed concern about newsracks by regulating their size, shape, appearance, or number indicates that it has not ``carefully calculated'' the costs and benefits

associated with the burden on speech imposed by its prohibition. See *Fox,* 492 U. S., at 480. The lower courts correctly ruled that the benefit to be derived from the removal of 62 newsracks out of a total of 1,500–2,000 on public property was small. Pp. 5–8.

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(b) The Court rejects the city's argument that, because every decrease in the overall number of newsracks on its sidewalks necessarily effects an increase in safety and an improvement in the attractiveness of the cityscape, there is a close fit between its ban on newsracks dispensing ``commercial handbills'' and its interests in safety and esthetics. This argument is premised upon the distinction the city has drawn between commercial speech such as respondents', which is viewed as having only a low value, and the assertedly more valuable noncommercial speech of ``newspapers,'' whose distribution on public land is specifically authorized by separate provisions of the city code. The argument attaches more importance to that distinction than the Court's cases warrant and seriously underestimates the value of commercial speech. Moreover, because commercial and noncommercial publications are equally responsible for the safety concerns and visual blight that motivated the city, the distinction bears no relationship *whatsoever* to the admittedly legitimate interests asserted by the city and is an impermissible means of responding to those interests. Thus, on this record, the city has failed to make a showing that would justify its differential treatment of the two types of newsracks. Pp. 8–18.

(c) Because the city's regulation of newsracks is predicated on the difference in content between ordinary newspapers and commercial speech, it is not content neutral and cannot qualify as a valid time, place, or manner restriction on protected speech. See, *e.g., Ward* v. *Rock Against Racism,* 491 U. S. 781, 791. Pp. 18–20.

946 F. 2d 464, affirmed.

STEVENS, J., delivered the opinion of the Court, in which BLACKMUN, O'CONNOR, SCALIA, KENNEDY, and SOUTER, JJ., joined. BLACKMUN, J., filed a concurring opinion. REHNQUIST, C. J., filed a dissenting opinion, in which WHITE and THOMAS, JJ., joined.