Syllabus

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 Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CITY OF LITTLETON, COLORADO *v.* Z. J. GIFTS D–4, L. L. C., DBA CHRISTAL'S

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

No. 02–1609. Argued March 24, 2004—Decided June 7, 2004

Under petitioner city's "adult business license" ordinance, the city's decision to deny a license may be appealed to the state district court pursuant to Colorado Rules of Civil Procedure. Respondent Z. J. Gifts D–4, L. L. C. (hereinafter ZJ), opened an adult bookstore in a place not zoned for adult businesses. Instead of applying for a license, ZJ filed suit attacking the ordinance as facially unconstitutional. The Federal District Court rejected ZJ's claims, but the Tenth Circuit held, as relevant here, that state law does not assure the constitutionally required "prompt final judicial *decision*."

Held: The ordinance meets the First Amendment's requirement that such a licensing scheme assure prompt judicial review of an administrative decision denying a license. Pp. 3–9.

(a) The Court rejects the city's claim that its licensing scheme need only provide prompt access to judicial review, but not a "prompt judicial determination," of an applicant's legal claim. The city concedes that *Freedman* v. *Maryland,* 380 U. S. 51, 59, in listing constitutionally necessary "safeguards" applicable to a motion picture censorship statute, spoke of the need to assure a "prompt final judicial decision," but adds that JUSTICE O'CONNOR's controlling plurality opinion in *FW/PBS, Inc.* v. *Dallas,* 493 U. S. 215, which addressed an adult business licensing scheme, did not use the word "decision," instead speaking only of the "*possibility of prompt judicial review,*" *id.,* at 228 (emphasis added). JUSTICE O'CONNOR's *FW/PBS* opinion, however, points out that *Freedman*'s "judicial review" safeguard is meant to prevent "undue delay," 493 U. S., at 228, which includes *judicial*, as well as *administrative,* delay. A delay in issuing a judicial decision, no less than a delay in obtaining access to a court, can prevent a license from being "issued

within a reasonable period of time." *Ibid.* Nothing in the opinion suggests the contrary. Pp. 3–6.

(b) However, the Court accepts the city's claim that Colorado law satisfies any "prompt judicial determination" requirement, agreeing that the Court should modify *FW/PBS,* withdrawing its implication that *Freedman*'s special judicial review rules—*e.g.,* strict time limits—apply in this case. Colorado's ordinary "judicial review" rules suffice to assure a prompt judicial *decision,* as long as the courts remain sensitive to the need to prevent First Amendment harms and administer those procedures accordingly. And whether the courts do so is a matter normally fit for case-by-case determination rather than a facial challenge. Four considerations support this conclusion. First, ordinary court procedural rules and practices give reviewing courts judicial tools sufficient to avoid delay-related First Amendment harm. Indeed, courts may arrange their schedules to "accelerate" proceedings, and higher courts may grant expedited review. Second, there is no reason to doubt state judges' willingness to exercise these powers wisely so as to avoid serious threats of delay-induced First Amendment harm. And federal remedies would provide an additional safety valve in the event of any such problem. Third, the typical First Amendment harm at issue here differs from that at issue in *Freedman*, diminishing the need in the typical case for procedural rules imposing special decisionmaking time limits. Unlike in *Freedman*, this ordinance does not seek to *censor* material. And its licensing scheme applies reasonably objective, nondiscretionary criteria unrelated to the content of the expressive materials that an adult business may sell or display. These criteria are simple enough to apply and their application simple enough to review that their use is unlikely in practice to suppress totally any specific item of adult material in the community. And the criteria's simple objective nature means that in the ordinary case, judicial review, too, should prove simple, hence expeditious. Finally, nothing in *FW/PBS* or *Freedman* requires a city or State to place judicial review safeguards all in the city ordinance that sets forth a licensing scheme. Pp. 6–9.

311 F. 3d 1220, reversed.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, THOMAS, and GINSBURG, JJ., joined, in which STEVENS, J., joined as to Parts I and II–B, and in which SOUTER and KENNEDY, JJ., joined except as to Part II–B. STEVENS, J., filed an opinion concurring in part and concurring in the judgment. SOUTER, J., filed an opinion concurring in part and concurring in the judgment, in which KENNEDY, J., joined. SCALIA, J., filed an opinion concurring in the judgment.