IN THE SUPERIOR COURT OF DAWSON COUNTY
STATE OF GEORGIA

VICTORY MEDIA GROUP, LLC *Petitioner*, *v.* GEORGIA DEPARTMENT OF TRANSPORTATION, *Respondent.*	Civil Action File No. 2022-CV-0425

ORDER ON PETITION FOR JUDICIAL REVIEW

This case arises under the Outdoor Advertising Control Act, codified at O.C.G.A. §§ 32-6-70, *et seq.*, and it is before the court for judicial review under the Georgia Administrative Procedure Act (the "APA"), O.C.G.A. §§ 50-13-1 *et seq.* *See* O.C.G.A. § 50-13-19(a) (providing for judicial review in contested cases under the APA); *see also* O.C.G.A. § 32-6-95 (providing for judicial review under the Outdoor Advertising Control Act pursuant to the APA).

Petitioner Victory Media Group, LLC, appeals from the October 13, 2022 Final Decision of the Georgia Department of Transportation. On April 11, 2023, the Court held a hearing attended by counsel for the Parties. Having considered the record, the briefing of the parties, and argument of counsel, the October 13, 2022 Final Decision of the Georgia Department of Transportation in this matter is hereby **AFFIRMED**.

STANDARD OF REVIEW

Pursuant to the APA, this is not a de novo proceeding. Rather, judicial review under the APA is a two-step process. *Lamar Co. v. Whiteway Neon-Ad*, 303 Ga. App. 495, 497 (2010) (judicial review of a final decision under the Outdoor Advertising Control Act). First, the Court must determine if there is "any evidence" in the record to support any findings of fact. Second, the Court reviews any conclusions of law, de novo, to determine whether the law was correctly applied to the facts. *Id.*

BACKGROUND[1]

In September 2021, Petitioner Victory Media Group, LLC ("Victory Media") applied to Respondent Georgia Department of Transportation ("the Department" or "GDOT") for outdoor advertising permits for a sign (the "Sign") that it sought to locate in Dawson County, Georgia, at the intersection of State Route 53 ("GA-53") and State Route 400 ("GA-400"). In October 2021, the Department granted Victory Media's application for a standard permit, but it denied Victory Media's application for a multiple message supplement permit for the Sign. The basis for the Department's denial was O.C.G.A. § 32-6-75(c)(1)(C), which prohibits two multiple message signs from being located within 5,000 feet on the same side of the highway. [*See* Administrative Record, Vol.3/R.329 (Initial Decision at Findings of Fact, at ¶¶ 1-5].

According to the Department, GDOT Permit No. D3674 (which lies to the south of Victory Media's Sign) and GDOT Permit No. D3675 (which lies to the

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[1] The Court provides a brief overview of the background for context here. Pertinent factual issues are discussed in context in the Discussion section.

north) held valid multiple message permits from the Department and required denial of Victory Media's application for a multiple message supplement under O.C.G.A. § 32-6-75(c)(1)(C) because both of these signs were on the "same side" of GA-400 and within 5,000 feet. [*See* Vol.3/R.329 (Initial Decision, Conclusions of Law, at ¶¶ 3-4)].[2]

Victory Media sought review of the denial with the Office of State Administrative Hearings ("OSAH"). Administrative Law Judge ("ALJ") Shakira Barnes held a hearing in the matter in April 2022. In August 2022, the ALJ issued an Initial Decision, affirming the Department's denial. Victory Media sought agency review of the Initial Decision before the Department in September 2022. The Department's Commissioner granted Victory Media's application for agency review, designated the Deputy Commissioner as the hearing officer, and a hearing was held in September 2022. On October 13, 2022, the Deputy Commissioner entered the Final Decision of the Department, which affirmed the Initial Decision. [*See generally*, Vol.3/R.423–424 (Final Decision of Department)].[3]

Following the Final Decision, Victory Media filed its Petition for Judicial Review with this Court in November 2022. [*See* Petition]. The Department filed the Administrative Record in December 2022. [*See generally* Administrative Record]. The Department filed a Brief in Support of the Final Decision on April 7, 2022.

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[2] The Parties do not dispute the general location of the signs or the relevant distances.

[3] On October 14, 2022, the Department issued an Order Nunc Pro Tunc, clarifying a scrivener's error in the title of the Final Decision. [Vol.3/R.425].

[Brief in Support of Final Decision]. A hearing was held in this matter on April 11, 2023.

DISCUSSION

I. The Department properly interpreted and applied O.C.G.A. § 32-6-75(c)(1)(C).

Victory Media contends that the Department erred in relying on GDOT Permit Nos. D3674 or D3675 as the basis for its denial under O.C.G.A. § 32-6-75(c)(1)(C)—irrespective of the status of those permits—because the Department's interpretation and application of that Code section is erroneous. [*See* Pet. at 9–12]. According to Victory Media, its Sign is oriented towards GA-53; therefore, its Sign is located on GA-53, not GA-400, and so its Sign is not located "on the same side of *the* highway" for purposes of the 5,000-foot spacing prohibition in O.C.G.A. § 32-6-75(c)(1)(C) (emphasis added). The Court rejects this argument.

A. The statutory language plainly and unambiguously applies.

The language at the heart of this dispute is O.C.G.A. § 32-6-75(c)(1)(C), which provides in relevant part that:

> (C) No such multiple message sign shall be placed within 5,000 feet of another multiple message sign *on the same side of the highway.*

O.C.G.A. § 32-6-75(c)(1)(C) (emphasis added). In viewing this text, the Court must "presume that the General Assembly meant what it said and said what it meant," "view[ing] the statutory text in the context in which it appears" and "read[ing] the statutory text in its most natural and reasonable way." *Deal v. Coleman*, 294 Ga. 170, 172 (2013). Victory Media's Sign and the competing signs are all on *the same*

side of GA-400: all three are located on the same, eastern-side of GA-400. Furthermore, there is no dispute that the competing signs are within 5,000 feet when properly measured. So the statutory language fairly clearly and unambiguously forecloses Victory Media's argument.

Victory Media nevertheless argues that the above-quoted language cannot be interpreted in such fashion, suggesting that the term, "the highway," is arguably ambiguous and must be strictly construed here to mean GA-53 because, according to Victory Media, the statute is in derogation of the common law. [See Pet. at 9–10 (quoting and citing *Monumedia II, LLC v. Dept. of Transp.*, 343 Ga. App. 49 (2017)]. The Court declines Victory Media's invitation for giving the text a strict construction under the principle Victory Media cites. Where, as here, "a statute *does* clearly change the common law, it is not apparent where a court would get the power to limit that clear change through a rule of construction," like the "general rule . . . [that] statutes in derogation of the common law . . . are to be 'strictly construed[.]'" *Toomer v. Metro Ambulance Servs., Inc.*, 364 Ga. App. 469, 473 n.1 (2022). The Outdoor Advertising Control Act clearly changes the common law, serving as a regulation of general applicability for signs located along the highways across the State.[4]

Regardless, the broader statutory scheme demonstrates there is no ambiguity that must be strictly construed in order to avoid. *See City of Marietta v. Summerour*,

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[4] Furthermore, *Monumedia* applied this rule in the context of a local zoning ordinance; this principle is noticeably absent from the particular division of the Court of Appeals' opinion dealing with the Outdoor Advertising Control Act. *See* 343 Ga. App. at 56–57; *cf. id.* at 51–53.

302 Ga. 645, 656–57 (2017) ("When we consider the meaning of a statutory provision, we do not read it in isolation, but rather, we read it in the context of the other statutory provisions of which it is a part." (quotation omitted)). Code section 32-6-72 delineates the Department's regulatory zone of authority for purposes of permitting signs along controlled routes. This Code section dictates where certain types of signs may be located along controlled routes, subject to other conditions and limitations in the Act. Code section 32-6-72 provides that:

> "No outdoor advertising shall be erected or maintained within 660 feet of the nearest edge of the right of way and visible from the maintain travelled way of the interstate or primary highways in this state, except [off-premises signs in certain zoned locations (among other signs)]"

O.C.G.A. § 32-6-72(4)–(5). In other words, the Department will permit an off-premises sign along a controlled route (*i.e.* interstates or primary highways) when the sign is "within 660 feet of the nearest edge of the right of way" and "visible from the main travelled way," so long as the sign otherwise complies with the limitations in O.C.G.A. § 32-6-75 and other provisions of the Act. Thus, O.C.G.A. § 32-6-72 explains when a sign is located along a controlled route for purposes of the spacing prohibitions contained in O.C.G.A. § 32-6-75. *See* O.C.G.A. § 32-6-75(a) (subjecting signs authorized by O.C.G.A. § 32-6-72 to the spacing prohibitions). Here, Victory Media's Sign is within 600 feet of the nearest edge of GA-400 and visible from GA-400. Therefore, it is considered located on GA-400, regardless that it also so happens to be located on GA-53 (immediately where it intersects with GA-400). Code section 32-6-75(c) must be construed in context with O.C.G.A. § 32-6-72.

The Department's Rules and Regulations reiterate this point. *See* Ga. Comp. R. & Regs. r. 672-6.03(a)(1). Department Rule 672-6-.03(a)(1) provides in relevant part as follows:

> (1) Signs Requiring a Permit:
>
> (a) Conforming Signs. The following are required to obtain a permit prior to the construction or erection of a sign, and for the continued maintenance of signs authorized by O.C.G.A. §§ 32-6-72(1), (4), (5) and 32-6-73(1):
>
> 1. Signs within 660 feet of the nearest edge of the right of way *of all controlled routes* and visible from the main travelled way which are:
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> ***
>
> (ii) Outdoor Advertising signs in zoned commercial or industrial areas . . .
>
> (iii) Outdoor Advertising signs in unzoned commercial or industrial areas . . .

Ga. Comp. R. & Regs. r. 672-6-.03(1)(a)(1) (emphasis added). As the regulation states, an off-premises sign (like Victory Media's) requires a permit when it is within 660 feet of *any* controlled route; or, as the regulation puts it: "all controlled routes" are relevant for determining whether a permit is required.

The Court rejects Victory Media's argument that the Sign's orientation-towards GA-53 or its visibility-from GDOT Permit No. D3674 are relevant factors for purposes of O.C.G.A. § 32-6-75(c)(1)(C). [*See* Pet. at 10–11]. The multiple-message spacing prohibition does not contain orientation or simultaneous-visibility factors, nor is the Court free to import such factors into the text to rewrite the statute. As noted above, O.C.G.A. § 32-6-72 only considers whether the sign is visible *from the roadway* (in addition to being within 660 feet of the roadway), not

whether the sign is visible from another sign. If the sign is visible *from the roadway* it requires a permit. "Visible," moreover, is a statutory term of art different from Victory Media's "orientation-towards" concept. "Visible" is broadly defined in the Outdoor Advertising Control Act to mean "capable of being seen (*whether or not legible*) by a person of normal visual acuity." O.C.G.A. § 32-6-71(27) (emphasis added). There is no dispute Victory Media's Sign is *visible* from GA-400. Thus, it requires a permit under O.C.G.A. § 32-6-72 due to its location alongside GA-400, and a multiple message permit is subject to the limitation in O.C.G.A. § 32-6-75(c)(1)(C) that there be no other multiple message sign within 5,000 feet on the "same side of the highway."

To be sure, other provisions of the Outdoor Advertising Control Act do consider visibility as it relates to spacing prohibitions, even as it relates to competing sign permits, somewhat like the argument Victory Media makes. *Compare, e.g.*, O.C.G.A. § 32-6-75(a)(17) (providing that standard signs may not be located within 500 feet of one another "on the same side of the highway" *unless* "buildings or other obstructions" make it "so that only one sign face located within the 500 foot zone is visible . . . at any time"); O.C.G.A. § 32-6-75(a)(14) (sign may not be located within 500 feet of a park unless "the sign is separated by buildings or . . . obstructions so that the sign . . . is not visible from the public park. . . ."). But those provisions do not help Victory Media's argument; they confirm that the Court should reject it.

The multiple-message spacing prohibition clearly omits this concept. The spacing prohibition in O.C.G.A. § 32-6-75(c)(1)(C) simply does not provide an exception allowing two multiple message signs to exist so long as neither would be simultaneously visible; it simply provides that the signs cannot be within 5,000 feet. The Court must presume that this omission in the text was intentional. *See Alexander Props. Group, Inc. v. Doe*, 280 Ga. 306, 309 (2006); *see also Truist Bank v. Stark*, 359 Ga. App. 16, 119 (2021) ("Under the . . . doctrine of *expressio unius est exlusio alterius*, where the General Assembly includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that the General Assembly acts intentionally and purposely in the disparate inclusion or exclusion." (quotation and brackets omitted)). The General Assembly recognized such an exception for the other spacing prohibitions, but not the multiple message spacing prohibition.

B. Appellate precedent interpreting the Act points to a similar conclusion.

In *Turner Comm'cns Corp. v. Ga. Dept. of Transp.*, the Court of Appeals confronted an issue similar to the argument Victory Media makes here. *See* 139 Ga. App. 436 (1976) (hereinafter *Turner*). There, the sign applicant applied for two standard permits for signs that would have been located along the same side of I-20. Although the signs were to be located on the same side of I-20, they were also to be separated by Peters Street, a "primary highway," which is a statutory term of art meaning Peters Street is a controlled route for purposes of the Department's regulation of signs (like GA-400 and GA-53 here). *See* O.C.G.A. § 32-6-72.

The sign applicant argued that because Peters Street intersected the location of the signs, and because the signs were *not* located on the "same side" of Peters Street, the signs were therefore *not* on the "same side" of I-20 for purposes of the spacing limitation. In fact, the Department *stipulated* that one sign was meant to be oriented towards Peters Street, while the other sign was meant to be oriented towards I-20, but the Department argued that the "orientation" of the sign was irrelevant, like it does here. *See id.* at 436 ("The other sign would be constructed on the north side of Peters Street, which runs under and alongside I-20 on the north side. This sign would be constructed for display to motorists on Peters Street, though it would be visible from I-20."). The Court of Appeals agreed with the Department.

The Court of Appeals explained that both signs were "within the 660 foot limit" of I-20 "and [were] therefore 'adjacent to' the Interstate highway," for purposes of O.C.G.A. § 32-6-75(a)(17), when read in context with O.C.G.A. § 32-6-72. *Turner*, 139 Ga. At 437–38. As such, the Court of Appeals concluded that the applicable spacing limitation applied as measured along the side of I-20 that the signs shared, since both signs were located on the "same side" of I-20, within the 660-foot zone, and were visible from I-20—notwithstanding that one of the signs also happened to be located on and oriented towards Peters Street. *Id.* The "clear legislative prescription" in O.C.G.A. § 32-6-75(a)(17) "[could] not be thwarted by the mere fact that other roads, even 'primary roads,' intervene between the sign and the Interstate highway." *Id.* at 437. The situation in *Turner* is essentially the same as

the one presented here by Victory Media. Like in *Turner*, Victory Media's Sign is within 660 feet of the eastern-side GA-400 and visible from it, like the other signs. Thus, the spacing limitation in O.C.G.A. § 32-6-75(c)(1)(C) applies as measured along the eastern-side of GA-400.

C. Even if there were an ambiguity, the Department's interpretation would be entitled to deference.

Although the Court concludes that O.C.G.A. § 32-6-75(c)(1)(C) plainly prohibits Victory Media's Sign, the Department's interpretation and application of the Code section here is entitled to deference, were there even an ambiguity. *See Eagle West, LLC v. Ga. Dept. of Transp.*, 312 Ga. App. 882, 885–86 (2011) (explaining that the Department's interpretation is entitled to deference when the interpretation is supported by the plain language of the text and the purposes of the Act).

After a court applies the well-settled rules of statutory interpretation, courts "may sometimes find that the statutory text naturally and reasonably can be understood in more than one way." *Tibbles v. Teachers Ret. Sys. of Georgia*, 297 Ga. 557, 558 (2015). "When such a genuine ambiguity appears, it is usually for the courts to resolve it," but "the usual rule may not apply" "when it appears that the General Assembly has committed the resolution of such an ambiguity to the discretion and expertise of an agency of the Executive Branch that is charged with the administration of the statute[.]" *Id.* In those case, "courts must defer to the way in which the agency has resolved the ambiguity in question, so long as the agency has resolved the ambiguity in the proper exercise of its lawful discretion, and so

long as the agency has resolved it upon terms that are reasonable in light of the statutory text." *Id.* at 558–59.

Here, the General Assembly—"in no uncertain terms"—has "delegate[d] the regulation of outdoor advertising to the DOT" in the Outdoor Advertising Control Act. *Walker v. Dept. of Transp.*, 279 Ga. App. 287, 293 (2006) (deferring to the Department's interpretation of other provisions in the Act when denying an off-premises sign permit). Thus, "even if the statutory [provision] . . . were ambiguous, the way in which the [Department] has consistently understood [it] would be entitled to deference," and the Court would be required to "reach the same conclusion." *Tibbles*, 297 Ga. at 563 (resolving question of statutory interpretation in favor of agency and holding in the alternative that agency interpretation of statute was entitled to deference and was reasonable).

II. The Department properly relied on the nearby permits in its denial.

Victory Media next argues that the Department improperly relied on GDOT Permit No. D3674, GDOT Permit No. D3675, or both, when calculating the spacing measurement under O.C.G.A. § 32-6-75(c)(1)(C). In other words, even if the Department's interpretation above were correct, Victory Media argues that the Department still should not have factored either of the competing signs into the spacing prohibition. These arguments present mixed questions of fact and law; the Court ultimately rejects them.

As to the facts, the record supports the factual findings below. Walter "Buddy" Allen Sanders, the Department's Outdoor Advertising Manager testified at

the administrative hearing that GDOT Permit No. D3674 maintains a standard and a multiple message permit, which the Department regards as valid. [*See* Notice of Filing Electronic Media, Audio Hearing at 2:28:00–2:32:30].[5] Sanders explained there was nothing in the Department's files to indicate that the permit was invalid. The Department had never previously revoked, cited, or otherwise taken any adverse action against GDOT Permit No. D3674. [Audio Hearing at 2:36:00–2:29:00]. In fact, the Department even allowed GDOT Permit No. D3674 to be transferred from the original permittee to the present permittee in 2012 (at a time *after* Victory Media contends the permit supposedly became invalid). [Vol. 2/R.135 (Transfer Ltr.)].

Moreover, Beth Perkins, Victory Media's co-owner, also testified at the administrative hearing. Previously, Perkins served in Sanders's position as the Department's Outdoor Advertising Manager between 2013 and 2015. She similarly conceded that during her tenure at the Department she never took any adverse action against GDOT Permit No. D3674 for having been unlawfully erected or maintained. [Audio Hearing at 3:12:30–3:15:30].

Regarding GDOT Permit No. D3675, Sanders testified that the sign presently operates as a reader board. Had it applied for permits today, it would not have required a multiple message supplement because reader boards are no longer considered multiple message signs. Nevertheless, that was not the case when the

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[5] OSAH made an audio recording of the testimony taken at the hearing, an electronic copy of which was filed with the Administrative Record. Citations are to the internal timestamps on the audio file.

sign at GDOT Permit No. D3675 originally applied for permits; therefore, it applied for and received a standard and multiple message supplement that it has continued to maintain. If the sign owner wanted to convert the sign to a multiple message sign, it could do so given that it maintains its multiple message permit; it would simply have to submit a notification of revision to the Department. [*See* Hearing Audio at 2:33:00–2:36:00].

Victory Media nevertheless argues that under O.C.G.A. § 32-6-77, neither sign should be counted because neither sign was erected within 12 months of the initial permits having been issued some ten years ago; therefore, the signs were not lawfully erected. Code section 32-6-77 provides that, "signs which are not lawfully erected *or maintained* shall not be counted nor shall measurements be made therefore for the purpose of determining the spacing limitations prescribed in Code Section[ ] 32-6-75." O.C.G.A. § 32-6-77 (emphasis added) The Court cannot conclude as a matter of law that the Department (or the ALJ) erred in determining that both signs were being "[un]lawfully erected or maintained," such that O.C.G.A. § 32-6-77 applied, based on the above. First, as noted above, the Department has consistently recognized the competing permits as valid over the years, since their initial permitting. These permittees have relied upon the Department's determination in this respect. Victory Media cites no provision of law that authorizes the Department to revoke a permit that has been issued, recognized as valid, transferred, and renewed. Due process moreover would require that the permittees be given notice and an opportunity to be heard to contest the Department's determination in this

respect. *See Goldrush II v. City of Marietta*, 267 Ga. 683, 693 (1997) ("Due process also requires that one . . . whose valid license is being revoked or suspended be given notice and an opportunity to be heard.").

Victory Media argues that this is not a question of revocation, but of simply applying O.C.G.A. § 32-6-77 and ignoring the competing signs. But, even assuming neither sign was lawfully erected (because the permit lapsed due to the passing of 12 months), the Department must still give notice that the current permits were being revoked if or when the Department were to take such action. *See* Ga. Comp. R. & Regs. r. 672-6-.08(1) ("If the Department believes that a permit holder has violated the conditions . . . of his permit, the Department shall give thirty (30) days written notice by certified mail to the permit holder notifying him of said violation or violations."); *id.* at .08(2)(d) ("A permit *or renewal* thereof may be revoked when . . . [t]he [multi-message] revision of a permit has not been completed in accordance with Section 672-6-.06 or an approved revision has been abandoned[.]" (emphasis added)).

Furthermore, the Act and relevant regulations suggest, at most, that these permittees could not maintain—*as against the Department*—that the permits were actually valid, if in fact they were not. But *this* simply does not mean that Victory Media may maintain against the Department that these permits are invalid, when the Department has continued to regard them as such. Whatever occurred over a decade ago, the Department has regarded these permits as validly maintained over the years, and the Court cannot simply presume—at the behest of Victory Media—

that these permittees do not actually possess valid permits from the Department. *See Sleph v. Williams*, 284 Ga. 349, 352 (2008) ("[T]here is a presumption of regularity that requires the courts to presume that public officers have properly discharged their official duties.").

III. The Court rejects Victory Media's constitutional arguments.

Victory Media raises a handful of constitutional arguments against the Outdoor Advertising Control Act. The Court rejects them.

First, the Outdoor Advertising Control Act is not a content-based regulation of speech subject to strict scrutiny, as applied to Victory Media. As the U.S. Supreme Court recently explained, it has repeatedly "understood distinctions between on-premises and off-premises signs, like the one at issue in this case, to be content neutral." *City of Austin v. Reagan Nat'l Advert. Of Austin, LLC*, 142 S.Ct. 1464, 1473 (2022) (hereinafter "*Reagan National*") (holding on-premises/off-premises distinction in sign code was content-neutral). Like the outdoor advertiser in *Reagan National*, Victory Media "stretches" the U.S. Supreme Court's decision in *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015), "too far." *Reagan National*, 142 S.Ct. at 1474.

The decision in *Reed*, which Victory Media relies upon, almost exclusively, for its argument, "did not purport to cast doubt" on the Supreme Court's prior cases affirming sign code regulations that distinguished between on-premises and off-premises signs. *See Reagan National*, 142 S.Ct. at 1473–74. "Nor did *Reed* cast doubt on the Nation's history of regulating off-premises signs." *Id.* at 1474.

Similarly, the Georgia Supreme Court has determined that the Outdoor Advertising Control Act "*does not violate freedom of expression.*" *Dept. of Transp. v. Shiflett*, 251 Ga. 873, 875 (1984) (emphasis added). Rather the Act, and more particularly the off-premises distinction, is a permissible regulation on commercial speech and withstands intermediate scrutiny. *See Shiflett*, 251 Ga. at 874 (citing and applying *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm. of N.Y.*, 447 U.S. 557 (1980)).

Second, Victory Media lacks standing to assert that the Act lacks necessary procedural safeguards because the Department routinely delays in rendering decisions on pending permit applications or is granted unfettered discretion in enforcement of other provisions. [*See* Pet. at 16 ("Department officials often completely ignore any and all time limits . . .")]. There is no dispute that the Act imposes upon the Department the obligation to grant a permit application, within 60 days, so long as the application is otherwise proper. *See* O.C.G.A. § 32-6-74(a) ("the department *shall*, within 60 days, issue a permit" (emphasis added)). Furthermore, Victory Media received a decision on its application within the statutory time frame. As for Victory Media's other arguments on this front, Victory Media lacks standing to assert a challenge to provisions of the Act that have not been applied to Victory Media. The Georgia Supreme Court's decision in *Bo Fancy Productions*, "does not, [as Victory Media] urges, permit a party denied a permit based on the noncompliance with a constitutionally permissible provision to attack other provisions by which it was not injured in any manner whatsoever." *Granite*

State Outdoor Advert., Inc. v. City of Roswell, 283 Ga. 417, 421 (2008) (rejecting outdoor advertiser's argument that *Bo Fancy Prods. v. Rabun County Bd. of Comm'rs*, 267 Ga. 341 (1996) enables standing like the type Victory Media advances here).

Finally, Victory Media's constitutional arguments are cursory and conclusory. Before a duly enacted statute can be declared unconstitutional, a court must be "clearly satisfied" that the statute is unconstitutional. *JIG Real Est., LLC v. Countrywide Home Loans, Inc.*, 289 Ga. 488, 490 (2011) (quotation omitted). The conflict must be "clear and palpable." *Id.* (quotation omitted). Statutes are presumed to be constitutional, and the challenger bears a heavy burden to overcome this presumption. *Id.* Victory Media simply has not carried its burden of demonstrating that the Outdoor Advertising Control Act is clearly unconstitutional.

CONCLUSION

After completely reviewing the record in the case *sub judice*, the October 13, 2022 Final Decision of the Georgia Department of Transportation, which is the subject to this Petition for Judicial Review is hereby **AFFIRMED**.

It is **SO ORDERED** this the 21st day of April, 2023.

Albert B Collier
Senior Judge, Superior Court
Sitting by Designation
Dawson County Superior Court
Northeastern Judicial Circuit

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