AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 10: The Reagan Era—Democratic Rights/Free Speech/Public Property, Subsidies, Employees, and Schools

**Members of the City Council for the City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789** (1984)

*The Los Angeles Municipal Code prohibited the posting of signs on public property. In 1979, Roland Vincent ran for the city council, and his supporters posted cardboard signs supporting his campaign on city utility poles and wires. The Bureau of Street Maintenance routinely cleared all signs from utility poles, including Vincent’s campaign posters.*

*The Vincent campaign filed suit in federal district court seeking an injunction blocking the city from removing the posters in the future, as well as monetary damages. Vincent lost in district court. The Court of Appeals reversed, finding that the total ban on signs was an unconstitutional infringement on free speech. The city appealed to the U.S. Supreme Court.*

*In a 6-3 decision, the Supreme Court reversed the appeals court and upheld the city’s ban on the posting of signs. The Court concluded that the sign ban was a reasonable, content-neutral regulation of the use of public property. Aesthetics was a sufficient governmental interest to justify the ban on signage. Should utility poles be treated as a public forum subject to enhanced free speech protections? Should the government be required to allow the posting of political signs? Would an exception that allowed political signs but banned commercial signs raise constitutional problems?*

JUSTICE STEVENS delivered the opinion of the Court.

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The ordinance prohibits appellees from communicating with the public in a certain manner, and presumably diminishes the total quantity of their communication in the City. . . . [But] it has been clear since this Court's earliest decisions concerning the freedom of speech that the state may sometimes curtail speech when necessary to advance a significant and legitimate state interest.

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There is no claim that the ordinance was designed to suppress certain ideas that the City finds distasteful or that it has been applied to appellees because of the views that they express. The text of the ordinance is neutral -- indeed it is silent -- concerning any speaker's point of view, and the District Court's findings indicate that it has been applied to appellees and others in an evenhanded manner.

In *United States v. O'Brien* (1968), the Court set forth the appropriate framework for reviewing a viewpoint-neutral regulation of this kind:

"[A] government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."

It is well settled that the state may legitimately exercise its police powers to advance esthetic values. . . .

In *Kovacs v. Cooper* (1949), the Court rejected the notion that a city is powerless to protect its citizens from unwanted exposure to certain methods of expression which may legitimately be deemed a public nuisance. In upholding an ordinance that prohibited loud and raucous sound trucks, the Court held that the State had a substantial interest in protecting its citizens from unwelcome noise. . . .

*Metromedia, Inc. v. San Diego* (1981) dealt with San Diego’s prohibition of certain forms of outdoor billboards. There the Court considered the city’s interest in avoiding visual clutter, and seven justices explicitly concluded that this interest was sufficient to justify a prohibition on billboards. . . . Justice White, writing for the plurality, expressly concluded that the city’s esthetic interests were sufficiently substantial to provide an acceptable justification for a content-neural prohibition against the use of billboards . . . .

We turn to the question whether the scope of the restriction on appellees' expressive activity is substantially broader than necessary to protect the City's interest in eliminating visual clutter. The incidental restriction on expression which results from the City's attempt to accomplish such a purpose is considered justified as a reasonable regulation of the time, place, or manner of expression if it is narrowly tailored to serve that interest. . . .

It is true that the esthetic interest in preventing the kind of litter that may result from the distribution of leaflets on the public streets and sidewalks cannot support a prophylactic prohibition against the citizen's exercise of that method of expressing his views. In [*Schneider v. State* (1939)](http://www.lexisnexis.com/lnacui2api/mungo/lexseestat.do?bct=A&risb=21_T13132289723&homeCsi=6443&A=0.39137923006808095&urlEnc=ISO-8859-1&&citeString=308%20U.S.%20147&countryCode=USA), the Court held that ordinances that absolutely prohibited handbilling on the streets were invalid. The Court explained that cities could adequately protect the esthetic interest in avoiding litter without abridging protected expression merely by penalizing those who actually litter. . . .

The rationale of *Schneider* is inapposite in the context of the instant case. There, individual citizens were actively exercising their right to communicate directly with potential recipients of their message. The conduct continued only while the speakers or distributors remained on the scene. In this case, appellees posted dozens of temporary signs throughout an area where they would remain unattended until removed. As the Court expressly noted in *Schneider*, the First Amendment does not “deprive a municipality of power to enact regulations against throwing literature broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion.” In short, there is no constitutional impediment to “the punishment of those who actually throw papers on the streets.” A distributor of leaflets has no right simply to scatter his pamphlets in the air -- or to toss large quantities of paper from the window of a tall building or a low flying airplane. . . .

With respect to signs posted by appellees, however, it is the tangible medium of expressing the message that has the adverse impact on the appearance of the landscape. . . . The ordinance curtails no more speech than is necessary to accomplish its purpose.

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Appellees suggest that the public property covered by the ordinance either is itself a "public forum" for First Amendment purposes, or at least should be treated in the same respect as the "public forum" in which the property is located. . . .

Appellees' reliance on the public forum doctrine is misplaced. They fail to demonstrate the existence of a traditional right of access respecting such items as utility poles for purposes of their communication comparable to that recognized for public streets and parks, and it is clear that “the First Amendment does not guarantee access to government property simply because it is owned or controlled by the government.” . . .

. . . . Public property which is not by tradition or designation a forum for public communication may be reserved by the State “for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.” . . .

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*Reversed*.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and JUSTICE BLACKMUN join, dissenting.

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The Court recognizes that each medium for communicating ideas and information presents its own particular problems. Our analysis of the First Amendment concerns implicated by a given medium must therefore be sensitive to these particular problems and characteristics. The posting of signs is, of course, a time-honored means of communicating a broad range of ideas and information, particularly in our cities and towns. At the same time, the unfettered proliferation of signs on public fixtures may offend the public's legitimate desire to preserve an orderly and aesthetically pleasing urban environment. . . .

In deciding this First Amendment question, the critical importance of the posting of signs as a means of communication must not be overlooked. Use of this medium of communication is particularly valuable in part because it entails a relatively small expense in reaching a wide audience, allows flexibility in accommodating various formats, typographies, and graphics, and conveys its message in a manner that is easily read and understood by its reader or viewer. There may be alternative channels of communication, but the prevalence of a large number of signs in Los Angeles is a strong indication that, for many speakers, those alternatives are far less satisfactory.

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. . . . If the restriction is content-neutral, the court's task is to determine (1) whether the governmental objective advanced by the restriction is substantial, and (2) whether the restriction imposed on speech is no greater than is essential to further that objective. Unless both conditions are met the restriction must be invalidated.

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The fundamental problem in this kind of case is that a purely aesthetic state interest offered to justify a restriction on speech -- that is, a governmental objective justified solely in terms like "proscribing intrusive and unpleasant formats for expression," ante, at 806 -- creates difficulties for a reviewing court in fulfilling its obligation to ensure that government regulation does not trespass upon protections secured by the First Amendment. The source of those difficulties is the unavoidable subjectivity of aesthetic judgments -- the fact that “beauty is in the eye of the beholder.” . . .

. . . . Indeed, when a court reviews a restriction of speech imposed in order to promote an aesthetic objective, there is a significant possibility that the court will be able to do little more than pay lipservice to the First Amendment inquiry into the availability of less restrictive alternatives. The means may fit the ends only because the ends were defined with the means in mind. In this case, for example, the City has expressed an aesthetic judgment that signs on public property constitute visual clutter throughout the City and that its objective is to eliminate visual clutter. We are then asked to determine whether that objective could have been achieved with less restriction of speech. But to ask the question is to highlight the circularity of the inquiry. . . .

In my view, such statements of aesthetic objectives should be accepted as substantial and unrelated to the suppression of speech only if the government demonstrates that it is pursuing an identified objective seriously and comprehensively and in ways that are unrelated to the restriction of speech. . . .

. . . . In this case, . . . there is no indication that the City has addressed its visual clutter problem in any way other than by prohibiting the posting of signs – throughout the City and without regard to the density of their presence. Therefore, I would hold that the prohibition violates appellees' First Amendment rights.

. . . . A more limited approach to the visual clutter problem, however, might well pass constitutional muster. . . . The City might zone [particularly pristine] areas for a particular type of development or lack of development; it might actively create a particular type of environment; it might be especially vigilant in keeping the area clean; it might regulate the size and location of permanent signs; or it might reserve particular locations, such as kiosks, for the posting of temporary signs. Similarly, Los Angeles might be able to attack its visual clutter problem in more areas of the City by reducing the stringency of the ban, perhaps by regulating the density of temporary signs, and coupling that approach with additional measures designed to reduce other forms of visual clutter. . . .