Federal Land Use Law,
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ATTACHMENT 7b

§ 7.06 Political Signs

Regulations of political signs raise particularly delicate problems for two reasons. First, political speech lies at the heart of the first amendment—indeed, it may be the core value of "the freedom of speech."[1] Second, signs have been an integral part of political campaigns for more than a century. Because signs have been a preferred method of communicating political messages, any general restriction on signs inevitably will have an effect on political speech. Hence it might be argued that all sign ordinances ought to contain special provisions to protect this uniquely valuable form of speech. But most political signs relate to a particular election, or short

(*Text continued on page 7-47*)

[1] M. Nimmer, Freedom of Speech § 1.02[H] (1984).

sequence of elections, on a given date.[2] Their effectiveness is limited to a particular time period. Hence it might also be argued, if the purpose of the ordinance is to reduce the total number of signs in the interest of aesthetics, that political signs could be subject to special time limitations applicable only to them without sacrificing free speech values. The tension between these opposing views—special protection versus special limitations—has produced a number of issues the Supreme Court has yet to resolve.[3]

One of the reasons given for striking down the comprehensive ordinance in *City of San Diego v. Metromedia, Inc.*,[4] the first Supreme Court decision applying first amendment doctrine to sign controls, was that it lacked content neutrality. The ordinance was content discriminatory because it contained a list of exemptions for signs of specified content; one exemption was political signs.[5] *Metromedia* thus seemed to suggest that any special provision for political signs was unconstitutional per se. But at the same time it decided *Metromedia*, the Court summarily affirmed *John Donnelly & Sons, Inc. v. Campbell*,[6] which had invalidated a total ban on billboards because the partial exemption it made for political signs did not go far enough. Other courts have split on the issue, one saying that a special time limit for political signs would be permissible,[7] the other saying that any regulation that singles out political signs for special treatment is a violation of *Metromedia*.[8] The question awaits final resolution by the Supreme Court.

In *Members of the City Council v. Taxpayers for Vincent*,[9] the Court sustained a sign ordinance that prohibited attaching signs, including political signs, to many varieties of public property.[10]

[2] Some political signs are not time bound. *E.g.*, "Get Us Out of the United Nations," Oklahoma v. Pile, 603 P.2d 337 (Okla. 1979).

[3] *See generally* Ziegler, Rathkopf's The Law of Zoning and Planning ch. 14 (4th ed. 1990).

[4] 453 U.S. 490 (1981).

[5] *See supra* § 7.02[1].

[6] 639 F.2d 6 (1st Cir. 1980), *aff'd*, 453 U.S. 916 (1981).

[7] City of Lakewood v. Colfax Unlimited, 634 P.2d 52 (Colo. 1981).

[8] City of Antioch v. Candidates' Outdoor Graphic Serv., 557 F. Supp. 52 (N.D. Cal. 1982)

[9] 466 U.S. 789 (1984).

[10] *See supra* § 7.02[2]. Ordinances similar to the one at issue in *Vincent* have been upheld by lower courts. State v. Hodgkiss,—N.H.—, 565 A.2d 1059 (1989) (opinion by Souter, J.); Friemer v. Cheltenham, 709 F.2d 874 (3d Cir. 1983); Candidates' Outdoor Graphic Serv. v. City and County of San Francisco, 574 F. Supp. 1240 (N.D.

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Vincent made it clear that at least this one kind of ban will survive a first amendment challenge, even though it does result in reducing the number of political signs. Whether any other total format ban that includes political signs will pass constitutional muster remains to be seen. There is an obvious tension between *Vincent* and *Donnelly*, even though the cases are distinguishable.[11] The Court strongly implied in *Vincent* that affixing signs to public property was not the only "intrusive and unpleasant format" of expression that could be banned completely without making special allowances for political signs. *Vincent* thus suggests that the total ban overturned in *Donnelly* might now be upheld.

The ordinance in *Vincent* was limited to signs on public property. The leading case on regulating political signs generally is *Baldwin v. Redwood City.*[12] Redwood City had a comprehensive ordinance governing all types of signs. Temporary signs were exempted from its general requirements, but were subject to less onerous requirements set out in a separate section of the ordinance. "Temporary signs" were defined as those "used solely for the purpose of advertising an event occurring on a specific date, such as elections."[13] This content-based definition was not challenged in *Baldwin*, but other courts have declared similar provisions invalid.[14] Since the ordinance was comprehensive and the court's treatment of its provisions was systematic, *Baldwin* is used as a framework to discuss the variety of issues that are raised by efforts to regulate political signs.

[1] Permits

The Redwood City ordinance required a permit to be obtained from the building inspector to erect or maintain a temporary sign.[15] That requirement was held unconstitutional for a number of reasons. First, a permit was required for each and every sign. As applied to

Cal. 1983); Sussli v. City of San Mateo, 120 Cal. App. 3d 1, 173 Cal. Rptr. 781 (1981).

[11] *See supra* § 7.02[3][c].

[12] 540 F.2d 1360 (9th Cir. 1976).

[13] § 3.134 in *id.* at 1362 n.1.

[14] John Donnelly & Sons, Inc. v. Campbell, 639 F.2d 6 (1st Cir. 1980), *aff'd*, 453 U.S. 916 (1981); City of Lakewood v. Colfax Unlimited, 634 P.2d 52 (Colo. 1981). *See also* § 7.05[1], *supra.*

[15] *See generally* § 7.04[1], *supra.*

the typical political campaign where multitudes of signs are used, the burden imposed by the requirement unnecessarily inhibited this traditional means of communication. Second, the city provided only one application form for permits, and it was designed for signs with significant physical structures. The city conceded that much of the information required by the form—for example, plot plans and attachment specifications—was irrelevant to temporary signs. In fact, the city did not require this information on applications for temporary sign permits, but only those applicants who applied in person were made aware of this. Those who applied by mail were confronted by a statement on the form reading, "only complete application accepted."

Up to this point, *Baldwin* based the invalidity of the permit requirement on the peculiarities of the ordinance and the practices of the city. But the court went on to suggest that any permit requirement applied to temporary signs would be unconstitutional because no substantial interest was served by requiring the city to be notified that signs were going to be erected. The court distinguished permit requirements for parades and demonstrations, in which notice to government serves interests of providing police protection, traffic control, and the like.[16] Thus it is unclear whether a less burdensome permit requirement for political signs could survive under *Baldwin*. Another court has sustained a permit requirement as applied to political wall signs.[17]

More recently, an ordinance that required a bond to be posted to obtain a permit for all temporary signs, including political signs, was upheld in *Messer v. City of Douglasville*.[17.1]

[2] Fees

The Redwood City ordinance imposed two fees. One was a $1 nonrefundable inspection fee for each sign. The other was a $5 cash deposit for each sign, refundable if the sign was removed by someone other than the city.[18] Both were held unconstitutional.

As to the inspection fee, the city offered evidence that the average cost of inspection was $10 per sign. The court responded

[16] 540 F.2d at 1372 n.32.

[17] People v. Middlemark, 100 Misc. 2d 760, 420 N.Y.S.2d 151 (1979).

[17.1] 975 F.2d 1505 (11th Cir. 1992), *cert. denied*, 113 S. Ct. 2395 (1993).

[18] §3.136, in 540 F.2d at 1362–63 n.1.

that charging $1 to measure the size of one political poster was reasonable, but charging $500 to measure five hundred identical posters was not. The latter charge bore no relationship to costs and amounted to an unconstitutional tax on the exercise of speech.[19]

As to the refundable deposit, the city testified that the average removal cost was $25 per sign. The district court had sustained this charge, but *Baldwin* reversed. The court gave two reasons for overturning the deposit provision. First, the deposit "has no reasonable relationship to the cost of removing a single 50 cent political poster placed by a property owner in his front yard."[20] What the court meant by that is unclear. One possibility is that the average cost was calculated by considering all signs, including those with significant physical structures, rather than only those temporary signs covered by this part of the ordinance. Even so, however, the deposit was still only one fifth of what the city had calculated to be the average cost. The second reason given by the court is even more troublesome. "Money is most useful during a campaign," the court argued, and requiring a deposit of $5 per sign, even though it was refundable, would, "as a practical matter, preclude erection of all but a few large signs. Means less restrictive of free expression must be relied upon."[21] There are two problems with the court's argument, one practical, one theoretical.

The practical problem is how the city will collect its costs in removing the signs if it doesn't have an advance deposit to reimburse them. From long experience, printers and others dealing with political candidates have learned to insist upon payment for their services in advance because the chances of collecting anything from a losing candidate vary from slim to none, and the chances of collecting promptly from a winning candidate aren't much greater. The general rule in political campaigns seems to be to spend every available cent before election day.

The theoretical problem is trying to identify a less restrictive means. If the court's objection, like its criticisms of the inspection fee, was to calculating the deposit on a per-sign basis, one arguably less restrictive alternative would be to impose a reasonable fixed

[19] *See supra*, § 7.04[3]. The Supreme Court cases discussed in that section were decided after *Baldwin*, but they do not seem to undercut the precise holding described in the text.

[20] 540 F.2d at 1372.

[21] *Id.*

sum deposit upon every candidate rather than every sign. But just a year after it decided *Baldwin*, the same court struck down just such a scheme, one that required a $100 refundable deposit.[22] An ordinance that required a $1,000 bond for political, but not commercial, wall signs was held invalid by a different court.[23] But an ordinance that required a bond for all temporary signs, including political signs, was sustained.[23.1]

[3] Time Restrictions

The ordinance considered in *Baldwin* defined temporary signs as those "used solely for the purpose of advertising an event occurring on a specific date,"[24] and limited the time they could be displayed to sixty days, but under no circumstances more than ten days after the date of the event advertised.[25] The court purported not to rule on these time limits,[26] but that disclaimer seems to be inconsistent with the court's action. Parts of the opinion considered in the following sections struck down other provisions of the ordinance that limited the total number of signs that could be devoted to single issues, and that permitted the summary removal of signs. One of the reasons given in both instances was that the time limits contained in the ordinance were less restrictive ways for the city to achieve its interest in protecting aesthetics.[27] It is hard to understand how the time limits could have been viewed legitimately as less restrictive alternatives unless they were themselves constitutional.

Nevertheless, time limits on political signs uniformly have been declared invalid, frequently because no similar time limits were imposed on commercial messages, such as for sale signs.[28] One case

[22] Verilli v. City of Concord, 548 F.2d 262 (9th Cir. 1977).

[23] People v. Middlemark, 100 Misc. 2d 760, 420 N.Y.S.2d 151 (1979).

[23.1] Messer v. City of Douglasville, 975 F.2d 1505 (11th Cir. 1992), *cert. denied*, 113 S. Ct. 2395 (1993).

[24] § 3.134 in 540 F.2d at 1362 n.1.

[25] § 3.135 in *id.*

[26] 540 F.2d at 1368.

[27] *Id.* at 1370, 1374–75.

[28] Union City Bd. of Zoning Appeals v. Justice Outdoor Displays, Inc., 266 Ga. 393, 467 S.E.2d 875 (1996) (ordinance that in effect banned permanent political signs *held* unconstitutional); Whitton v. City of Gladstone, 54 F.3d 1400 (8th Cir. 1995) (seven-day removal requirement also stricken because not applicable to commercial signs); City of Euclid v. Mabel, 19 Ohio App. 3d 235, 484 N.E.2d 249 (1984), *cert. denied*, 474 U.S. 826 (1985); Meros v. City of Euclid, 594 F. Supp. 259 (N.D. Ohio 1984); City of Antioch v. Candidates' Outdoor Graphic Serv., 557 F. Supp. 52 (N.D. Cal. 1982); City of Lakewood v. Colfax Unlimited, 634 P.2d 52

overturned a three-week limit because it was too short.[29] More recently, however, ordinances imposing time limits on political signs, and requiring their removal within specified periods, have been approved.[29.1]

The Supreme Court of Washington, in *Collier v. City of Tacoma*,[29.2] held that the state constitution required a compelling governmental interest to support a time limit on political signs, and that it also required the burden of justifying such a limit to be on government. It struck down a provision banning signs more than sixty days prior to an election, but suggested that a seven-day post-election removal requirement was acceptable.

[4] Place Restrictions

Baldwin invalidated a provision of the Redwood City ordinance that prohibited political signs in areas zoned residential.[30] In this respect *Baldwin* anticipated *Metromedia*,[31] which was decided five years later and clearly requires that result. In *Metromedia* the Supreme Court overruled[32] its earlier decision in *Lotze v. Washington*.[33] The defendants in *Lotze* were landowners who displayed signs carrying their own political messages. The state sued to remove the signs as violations of a highway beautification statute regulating billboards. The state supreme court had upheld this application of the statute, and the Supreme Court had dismissed an appeal, the effect of which was to affirm the state court.[34] That

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(Colo. 1981); Van v. Travel Information Council, 52 Or. App. 399, 628 P.2d 1217 (1981); Orazio v. Town of North Hempstead, 426 F. Supp. 1144 (E.D.N.Y. 1977); Ross v. Goshi, 351 F. Supp. 949 (D. Haw. 1972). *Contra* Fisher v. City of Charleston, 425 S.E.2d 194 (W. Va. 1992) (dictum).

[29] John Donnelly & Sons, Inc. v. Campbell, 639 F.2d 6 (1st Cir. 1980), *aff'd*, 453 U.S. 916 (1981).

[29.1] Brayton v. City of New Brighton, 519 N.W.2d 243 (Minn. App. 1994), *cert. denied*, 115 S. Ct. 1402 (1995) ("election season," duration not specified); Messer v. City of Douglasville, 975 F.2d 1505 (11th Cir. 1992), *cert. denied*, 113 S. Ct. 2395 (1993); City of Waterloo v. Markham, 600 N.E.2d 1320 (Ill. App. 1992) (ninety days).

[29.2] 121 Wash. 2d 737, 854 P.2d 1046 (1993).

[30] § 3.138 in 540 F.2d at 1362–63 n.1.

[31] *See supra* § 7.02[3][b][i].

[32] 453 U.S. at 513–14 n.18.

[33] 444 U.S. 921 (1979).

[34] Dismissal for want of a substantial federal question is a decision on the merits. *E.g.*, Hicks v. Miranda, 422 U.S. 332 (1975). The Washington Supreme Court has disavowed its decision in *Lotze*. Collier v. City of Tacoma, 121 Wash. 2d 737, 854 P.2d 1046, 1057 (1993).

affirmance was overruled in *Metromedia*, which clearly meant that homeowners must be permitted to display political messages on their own land.[34.1]

Other courts uniformly have struck down regulations that have the effect of prohibiting the display of political signs on an owner's property.[35] Setback requirements, however, have been sustained as applied to political signs.[36] A number of cases have followed *Vincent's* lead in upholding bans on attaching political posters to public property.[37] An ordinance that prohibited the display of campaign signs within a 100-foot radius of polling places was upheld by a splintered Supreme Court in *Burson v. Freeman*.[37.1] A plurality of four Justices held that the regulation survived strict scrutiny because it advanced the government's compelling interest in preventing voter intimidation and election fraud. A concurring Justice argued that the ordinance was a reasonable, viewpoint neutral regulation of a nonpublic forum.

[5] Manner Restrictions

Large signs that are not attached to some substantial physical structure may be uprooted by winds and blown around. Thus size

[34.1] Rappa v. New Castle County, 18 F.3d 1043 (3d Cir. 1994), overturned statutes that had the effect of banning political signs along highways and other roads. But that was not the reason given for declaring the regulations unconstitutional. *See supra* § 7.02[3][b][ii] for further discussion of the case.

[35] Union City Bd. of Zoning Appeals v. Justice Outdoor Displays, Inc., 266 Ga. 393, 467 S.E.2d 875 (1996) (other place restrictions on political signs also unconstitutional); Gilleo v. City of Ladue, 986 F.2d 1180 (8th Cir. 1993) *aff'd*, City of Ladue v. Gilleo, 114 S. Ct. 2038 (1994); Fisher v. City of Charleston, 425 S.E.2d 194 (W. Va. 1992); Matthews v. Town of Needham, 596 F. Supp. 932 (D. Mass. 1984), *aff'd*, 764 F.2d 58 (1st Cir. 1985); Martin v. Wray, 473 F. Supp. 1131 (E.D. Wis. 1979); Pace v. Village of Walton Hills, 15 Ohio St. 2d 51, 238 N.E.2d 542, 44 Ohio Op. 2d 29 (1968); Peltz v. City of South Euclid, 1 Ohio St. 2d 128, 228 N.E.2d 320 (1967); Tauber v. Town of Longmeadow, 695 F. Supp. 1358 (D. Mass. 1988). *See also* Gonzales v. Superior Court, 180 Cal. App. 3d 1116, 226 Cal. Rptr. 164 (1986) (plaintiff placed signs critical of local government on his legally parked private automobile; ordinance prohibiting temporary signs on "vehicles located within the public right-of-way" held unconstitutional on its face).

[36] City of Lakewood v. Colfax Unlimited, 634 P.2d 52 (Colo. 1981).

[37] State v. Hodgkiss, 132 N.H. 376, 565 A.2d 1059 (1989) (opinion by Souter, J.); Friemer v. Cheltenham, 709 F.2d 874 (3d Cir. 1983); Candidates' Outdoor Graphic Serv. v. City and County of San Francisco, 574 F. Supp. 1240 (N.D. Cal. 1983); Sussli v. City of San Mateo, 120 Cal. App. 3d 1, 173 Cal. Rptr. 781, *cert. denied*, 454 U.S. 1085 (1981).

[37.1] 504 U.S. 191 112 S. Ct. 1846 (1992).

limitations on such signs serve governmental interests in safety and aesthetics. One provision of the ordinance in *Baldwin* limited the size of temporary signs to 16 square feet,[38] larger than the standard campaign poster. The court upheld that provision, the same result other courts have reached with similar restrictions.[39] However, when confronted in a later case with regulations that limited signs to a smaller than standard 4 square feet, and campaign headquarters signs to 64 square feet, the *Baldwin* court struck them down as being unnecessarily restrictive.[40]

The ordinance in *Baldwin* limited the aggregate area of all temporary signs on any one parcel of property to 80 square feet.[41] The effect was to limit to five the number of temporary signs any one owner could display at any one time. *Baldwin* upheld this limitation. However, another provision limiting the number of signs was overturned. That provision limited to 64 square feet the aggregate area of all temporary signs advertising a single candidate or ballot issue.[42] The effect of the provision was to permit only four temporary signs devoted to one issue or candidate in an entire city of 20 square miles and 55,000 population. An ordinance the effect of which was to limit to one the number of political signs that could be displayed on residential property was held unconstitutional on the ground that the government's interests in aesthetics and safety were not significant because homeowners' self-interest could be relied on to limit the number of signs that were displayed.[42.1]

A year after *Baldwin* was decided, the same court declared unconstitutional an ordinance that required political signs to be free-standing.[43]

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[38] § 3.137(a) in 540 F.2d at 1362–63 n.1.

[39] City of Lakewood v. Colfax Unlimited, 634 P.2d 52 (Colo. 1981); Ross v. Goshi, 351 F. Supp. 949 (D. Haw. 1972). *Accord* Davis v. City of Green, 106 Ohio App. 3d 223, 665 N.E.2d 753 (1995), *appeal dismissed*, 74 Ohio St. 3d 1523, 660 N.E.2d 743 (1996) (six square feet in residential zones); City of Waterloo v. Markham, 600 N.E.2d 1320 (Ill. App. 1992) (ten square feet).

[40] Verilli v. City of Concord, 548 F.2d 262 (9th Cir. 1977).

[41] § 3.137(a) in 540 F.2d at 1362–63 n.1.

[42] § 3.137(b) in *id.*

[42.1] Arlington County Republican Comm. v. Arlington County, 983 F.2d 587 (4th Cir. 1993).

[43] Verilli v. City of Concord, 548 F.2d 262 (9th Cir. 1977). *Accord* People v. Middlemark, 100 Misc. 2d 760, 420 N.Y.S.2d 151 (1979).

The ordinance in *Baldwin* permitted the city to remove any nonconforming sign without notice.[44] The court held that provision invalid because it made no effort to accommodate free speech values with the city's interest in removing nonconforming signs. The removal of a political sign for even a few days can deprive the speaker of first amendment rights, the court observed. The court likened a seizure to a prior restraint, subject to rigorous procedural safeguards.[45] At the very least, the court held, the city was required to notify the sign owner of its intention to remove the sign. The court went on to say that signs remaining posted after the election could be treated as abandoned and seized summarily. The same court later sustained a removal provision that required notice to be given.[46]

Whitton v. City of Gladstone[47] struck down an ordinance that imposed durational limits on political signs, prohibited their external illumination, and imposed vicarious liability on the candidate whose signs violated the ordinance. No such restrictions were imposed on other signs, including commercial signs. The ordinance therefore discriminated on the basis of content and was unsupported by a compelling governmental interest. Moreover, it discriminated in favor of commercial speech. The court rejected the argument that the ordinance should be upheld because it was viewpoint neutral.

§ 7.07 Time Regulations

Apart from political and portable signs,[1] time limitations have been litigated infrequently. *City of Lakewood v. Colfax Unlimited*[2] struck down an ordinance that imposed time restrictions on signs with traditional messages on the ground that it was unconstitutionally overbroad. But time limits on a variety of yard signs, including political signs, were upheld in a case that the Supreme Court refused to review.[2.1] An ordinance that limited all signs with

[44] § 3.89 in 540 F.2d at 1363 n.2.
[45] *See supra* § 6.07.
[46] Verilli v. City of Concord, 548 F.2d 262 (9th Cir. 1977).
[47] 54 F.3d 1400 (8th Cir. 1995).
[1] *See supra* § 7.06[3]; *infra* § 7.10.
[2] 634 P.2d 52 (Colo. 1981).
[2.1] Brayton v. City of New Brighton, 519 N.W.2d 243 (Minn. App. 1994), *cert. denied*, 115 S. Ct. 1402 (1995).

traditional messages to sixty days per year was overturned on the ground that the city had no compelling interest for favoring commercial signs in this way.[2.2]

Time limits on commercial signs have also been invalidated. In one case, government offered no explanation of how the limit served its purposes.[3] In another,[4] the time regulation failed to survive scrutiny under the four-part test governing regulations of commercial speech.[5]

§ 7.08 Zoning, Distancing, and Other Place Restrictions

Most place restrictions take the form of banning signs from certain areas. Any total ban on signs, except one limited to public property,[1] runs the risk of being declared unconstitutional because it restricts traditional or political speech.[2] This is particularly true after *City of Ladue v. Gilleo*,[2.1] in which the Supreme Court held that total bans on residential signs were unconstitutional.[2.2] The cases reviewed in this section focus on the constitutionality of limiting the places where signs may be displayed. Most of them dealt only with commercial signs. Although restrictions on commercial signs must satisfy the four-part test governing limitations on commercial speech,[3] they are more likely to be upheld than ordinances that limit signs with traditional messages.

City of San Diego v. Metromedia, Inc.[4] held that off-site commercial signs may be prohibited even though on-site commercial signs

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[2.2] Intervine Outdoor Adver. Inc. v. City of Gloucester City, 290 N.J. Super. 78, 674 A.2d 1027, *cert. denied*, 146 N.J. 68, 679 A.2d 654 (1996).

[3] Rhodes v. Gwinnett County, 557 F. Supp. 30 (N.D. Ga. 1982).

[4] Dills v. City of Marietta, 674 F.2d 1377 (11th Cir. 1982), *cert. denied*, 461 U.S. 905 (1983).

[5] *See supra* § 6.02[2].

[1] *See supra* § 7.02[2].

[2] *See supra* §§ 7.05–7.06. And see especially the discussion of new developments in § 7.03[2], *supra*.

[2.1] 114 S. Ct. 2038 (1994).

[2.2] *See supra* § 7.02[4] for a full description of *Gilleo*. *Accord* Cleveland Area Bd. of Realtors v. City of Euclid, 88 F.3d 382 (6th Cir. 1996) (ban on all yard signs except occupant identification not narrowly tailored and does not leave open adequate alternative channels).

[3] *See supra* § 7.05[2].

[4] 453 U.S. 490 (1981).

are allowed.[5] Lower court decisions since *Metromedia* have uniformly followed that ruling.[6] Prior to *Metromedia*, one court had sustained the on-site–off-site distinction[7] while another had declared it unconstitutionally arbitrary and capricious.[8]

A number of states have enacted statutes in conformity with the federal Highway Beautification Act. These statutes forbid billboards within a specified distance of federal highways. The statutes have been upheld when challenged,[9] sometimes by construing them to be applicable only to commercial signs.[10] A statute forbidding signs, except on-site signs, within 500 feet of highway interchanges was upheld, even as applied to a sign carrying a traditional message.[10.1]

Another variety of proximity regulation, one which forbade signs within 100 feet of churches or schools, was upheld on the ground that banning traditional signs only when they are close to churches and schools was an insignificant restriction on the freedom of speech.[11] Distancing requirements between signs have been upheld,[11.1] even as applied to signs with traditional speech.[11.2]

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[5] *See supra* § 7.02[3][a].

[6] Georgia Outdoor Advertising, Inc. v. City of Waynesville, 833 F.2d 43 (4th Cir. 1987); City of Cottage Grove v. Ott, 395 N.W.2d 111 (Minn. App. 1986); National Advertising Co. v. City of Bridgeton, 626 F. Supp. 837 (E.D. Mo. 1985); City of Lake Wales v. Lamar Advertising Assocs., 414 So. 2d 1030 (Fla. 1982); R.O. Givens, Inc. v. Town of Nags Head, 58 N.C. App. 697, 294 S.E.2d 388 (1982); Maurice v. Outdoor Advertising, 12 Mass. App. 536, 427 N.E.2d 25 (1981). For discussion, *see supra* § 7.05[3].

[7] John Donnelly & Sons, Inc. v. Outdoor Advertising Bd., 369 Mass. 206, 339 N.E.2d 709 (1975).

[8] Metromedia, Inc. v. Des Plaines, 26 Ill. App. 3d 942, 326 N.E.2d 59 (1975).

[9] Wheeler v. Commissioner of Highways, 822 F.2d 586 (6th Cir. 1987), *cert. denied*, 108 S. Ct. 702 (1988); Salinas v. Ryan Outdoor Advertising, Inc., 189 Cal. App. 3d 416, 234 Cal. Rptr. 619 (1987); Department of Transportation v. Shiflett, 251 Ga. 873, 310 S.E.2d 509 (1984); Weir v. Rimmeln, 15 Ohio St. 3d 55, 472 N.E.2d 341 (1984); Stuckey's, Inc. v. O'Cheskey, 93 N.M. 312, 600 P.2d 258 (1979); Donnelly Advertising Co. v. City of Baltimore, 279 Md. 660, 370 A.2d 1127 (1977).

[10] Roberts Enters., Inc. v. Secretary of Transportation, 237 Kan. 276, 699 P.2d 479 (1985).

[10.1] Burns v. Barrett, 41 Conn. Super. 66, 550 A.2d 23 (1988).

[11] Minnesota v. Hopf, 323 N.W.2d 746 (Minn. 1982).

[11.1] Rzadkowolski v. Village of Lake Orion, 845 F.2d 653 (6th Cir. 1988).

[11.2] Pigg v. State Dep't of Highways, 746 P.2d 961 (Colo. 1987). *See also* City of Boston v. Outdoor Advertising Bd., 673 N.E.2d 868 (Mass. App. 1996) (minimum distance between signs means all signs, not just those with commercial messages; hence, commercial billboard could not be located within 500 feet of noncommercial sign).

Regulations banning commercial signs from certain areas,[11.3] such as an urban renewal zone[12] and a beach area,[13] have been sustained against constitutional challenges. Regulations restricting signs to designated zoning areas[13.1] and to areas along highways[13.2] have also been upheld. *State v. J & J Painting*[14] involved an unusual application of such an ordinance. The regulation prohibited signs in residential zones, with certain exceptions that were not spelled out by the court. The defendant contractor posted a sign at the front of a house upon which it was working. The court upheld this application of the ordinance, saying that it amounted to nothing more than prohibiting commercial activity in a residential zone.

In *Members of the City Council v. Taxpayers for Vincent*,[15] the Supreme Court approved a ban on posting signs on public property.[16] A number of cases have upheld similar ordinances.[17] *VFW v. Steamboat Springs*[18] rejected a challenge to an ordinance that prohibited signs from extending more than three feet onto public property.

Supersign of Boca Raton v. City of Fort Lauderdale[19] upheld an unusual ordinance that banned "advertising vehicles" on roadways,

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[11.3] Outdoor Systems, Inc. v. City of Mesa, 997 F.2d 604 (9th Cir. 1993).

[12] Donnelly Advertising Co. v. City of Baltimore, 279 Md. 660 370 A.2d 1127 (1977). *See also* City & County v. Eller Outdoor Advertising, 192 Cal. App. 3d 643, 237 Cal. Rptr. 815 (1987).

[13] Lamar Advertising v. City of Daytona Beach, 450 So. 2d 1145 (Fla. App. 1984).

[13.1] Outdoor Systems, Inc. v. City of Mesa, 997 F.2d 604 (9th Cir. 1993); Rzadkowolski v. Village of Lake Orion, 845 F.2d 653 (6th Cir. 1988); Wheeler v. Commissioner of Highways, 822 F.2d 586 (6th Cir. 1987), *cert. denied*, 108 S. Ct. 702 (1988); Major Media of Southeast, Inc. v. City of Raleigh, 792 F.2d 1269 (4th Cir. 1986), *cert. denied*, 479 U.S. 1102 (1987); Salinas v. Ryan Outdoor Advertising, Inc., 189 Cal. App. 3d 416, 234 Cal. Rptr. 619 (1987); Gannett Outdoor Co. v. City of Troy, 156 Mich. App. 126, 409 N.W.2d 719 (1987), *correcting* 401 N.W.2d 335 (Mich. App. 1986).

[13.2] Naegele Outdoor Advertising, Inc. v. City of Durham, 844 F.2d 172 (4th Cir. 1988).

[14] 167 N.J. Super. 384, 400 A.2d 1204 (1979).

[15] 466 U.S. 789 (1984).

[16] *See supra* § 7.02[2].

[17] State v. Hodgkiss, 565 A.2d 1059 (N.H. 1989) (opinion by Souter, J.); Friemer v. Cheltenham, 709 F.2d 874 (3d Cir. 1983); Candidates' Outdoor Graphic Serv. v. City and County of San Francisco, 574 F. Supp. 1240 (N.D. Cal. 1983); Sussli v. City of San Mateo, 120 Cal. App. 3d. 1, 173 Cal. Rptr. 781 (1981).

[18] 195 Colo. 44, 575 P.2d 835 (1978).

[19] 766 F.2d 1528 (11th Cir. 1985). *See also* Gonzales v. Superior Court, 180 Cal. App. 3d 1116, 226 Cal. Rptr. 164 (1986).