

# Sign Ordinance Upheld

**Paul Lipman** (Senior Partner/Los Angeles Office) prevailed on appeal in *E & L Tax Services v. The City of South El Monte*, upholding the constitutionality of that city's sign ordinance, against a concerted attack that tried to strike down parts of the law as vague and unequally enforced.

The plaintiff was a tax preparer whose business was located in a strip mall along Hacienda Boulevard. He had a wooden sign affixed to the top of his van with nuts and bolts that advertised his business, and he would park the van in the strip mall's parking lot each day so that drivers coming down Hacienda Boulevard could see advertising for his business. Many other local businesses did the same or similar things, some involving more garish displays than his. However, the City of South El Monte has a sign law prohibiting vehicle signs unless they were "permanently mounted", with exceptions for certain businesses like auto dealerships, who need to put "MSRP" stickers and the likes on their cars in outdoor sales lots.

The plaintiff took videos and snapshots of other business' signs, including other vehicle signs, and outlandish walk-around signs like someone dressed as the statute of liberty. Plaintiff argued that first, his sign was "permanently mounted" because it was kept on with nuts and bolts, and not taken down during the entire tax season, and the sign ordinance defined "temporary" sign as one where the intent was to keep it up for less than 45 days. Next, he argued that the ordinance was vague as to what "permanently" affixed means, and argued that a city enforcement officer walking around with a citation booklet should not be given unfettered discretion to say what vehicle signs are "permanently" affixed without any further statutory definitions to restrain him from just making up what he, personally, considered to be "permanently affixed", thereby giving him unlimited and unchallengeable power to ticket anyone he felt like. Third, he argued that his video and photos showed that the law was being unfairly applied to him only, violating the equal protection clause and amounting to selective enforcement, because of all the other temporary, garish vehicle signs and other, uglier, signage along Hacienda Boulevard that was shown in the video and photos. Finally, he argued that the law had no real rational basis and could not be defended as a proper exercise of the legislature's power to regulate for health and safety. The above were argued to be abrogations of plaintiff's free speech rights and violations of his rights under the equal protection clause of the constitution. Senior Partner Frank D'Oro prevailed at trial and the plaintiff appealed.

On appeal, Mr. Lipman argued that the sign ordinance had a rational basis because it stated in the statute that it was concerned to increase driver safety by keeping people from being distracted by commercial signs. The law would also tend to increase business and prosperity

in the community by getting rid of the “little Tijuana” look of homemade vehicle signs up and down the boulevard, and so render the area more attractive to upscale businesses who wanted to be associated with a more upscale image. Mr. Lipman also argued that even if the law did not fully get rid of garish signs, or measurably increase business in the short run, the law had a rational basis and could not be struck down as baseless. Further, a law does not need to have perfectly defined terms, so that “permanently affixed” is no more vague than another law upheld in another case that allows city clerks to deny building permits for uses that do not conform “esthetically” with the surrounding community. And, the fact that the city might be guilty of unintentional selective enforcement in letting some illegal signs go unpunished, does not mean a second wrong makes a right – some enforcement is better than none. There was no evidence that the city purposely targeted the plaintiff for disparate treatment.

The Court of Appeal upheld each and every one of Mr. Lipman’s arguments and awarded costs to the City of South El Monte in addition to upholding it’s law.