City Attorneys Department Spring Meeting
May 19-21, 1999
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REGULATION OF POLITICAL SIGNS

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Outline of Topics

Baseline Decisions: *Metromedia* and *Taxpayers for Vincent*

Particular Regulations for Political Signs
Limits on When Displayed
Limits on Location and Size
Limits on How Displayed
Licensing and Permits
Removal Procedures
Cost of Removal
Findings Requirement

The Interaction of Regulation of Political Signs With Other Sign Regulations

Severability

Qualified Immunity

Conclusion

The posting of political signs is a form of speech clearly protected under the First Amendment. Any ordinance seeking to regulate or infringe upon First Amendment rights must overcome significant hurdles. A court's first task in reviewing an ordinance challenged as violating First Amendment rights "is to determine whether the ordinance is aimed at suppressing the content of speech, and, if it is, whether a compelling state interest justifies the suppression. . . . 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." *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent* (1984) 466 U.S. 789, 821 (Brennan, J., dissenting)(citations omitted).

Given this burden, it is not surprising there are a substantial number of cases addressing the parameters of government's ability to regulate political signs. The state of regulation in a number of these areas is discussed below.[i]

Baseline Decisions: Metromedia and Taxpayers for Vincent

The United States Supreme Court's initial foray into sign regulation was the landmark case of *Metromedia, Inc. v. San Diego* (1981) 453 U.S. 490. In *Metromedia* the Court invalidated a City of San Diego ordinance that allowed on-site commercial signs but prohibited on-site noncommercial signs. Under *Metromedia* an ordinance is invalid if it imposes greater restrictions on noncommercial speech than on commercial speech, or if it regulates noncommercial signs based upon their content, that is, if it exempts from regulation certain types of noncommercial speech, such as religious signs, historical signs and temporary political signs, but not other noncommercial signs. 453 U.S. at 513, 516.

The *Metromedia* Court's consideration of the City of San Diego's prohibition on "off-site" commercial signs did not provide clear guidance because there was no majority opinion. Moreover, a side-by-side comparison of the four-justice plurality opinion and the two-justice concurring opinion to attempt to discern their common ground, is frustrating, because the marked difference in approach of the two opinions makes it extremely difficult to reconcile them.[ii] For a cogent discussion of the problems of interpreting *Metromedia*, see *Rappa v. New Castle County* (3d Cir. 1994) 18 F.3d 1043, 1055-60.

Whatever its failings, *Metromedia* did clearly establish, however, that aesthetic considerations may constitute a legitimate governmental basis for regulating signs. 453 U.S. at 51 0 ("It is not speculative to recognize that billboards by their very nature, wherever located and however constructed, can be perceived as an 'esthetic harm.'").

Three years after Metromedia, in *Taxpayers for Vincent*, the United States Supreme Court upheld a City of Los Angeles ordinance imposing a total ban on the posting of political signs on public property.[iii]

These two key Supreme Court cases created an analytical overlay upon prior lower court decisions, particularly *Baldwin v. City of Redwood City* and *Verrilli v. City of Concord*. More importantly, they serve as the foundation for a generation of subsequent sign cases, most of which are adverse to cities.

Particular Regulations for Political Signs

Limits on When Displayed:

Preceding Election: The courts have consistently rejected attempts to regulate the display of political signs to some defined period prior to an election. (*City of Antioch v. Candidates' Outdoor Graphic Service* (N.D. Cal. 1982) 557 F. Supp. 52][finding unconstitutional a prohibition on erection of political signs more than 60 days prior to election day*]; Orazio v. Town of North Hempstead* (E.D.N.Y. 1977) 426 F.Supp. 1144 [invalidating ordinance limiting display of political signs to six weeks preceding election].)

Following Election: The courts historically have been much more tolerant of limitations requiring the removal of political signs following an election. (*Baldwin v. Redwood City* (9th Cir. 1976) 540 F.2d 1360 *cert. Den. Sub. Nom. Leipzig v. Baldwin* (1977) 431 U.S. 913, 97 S.Ct. 2173, 53 L.Ed.2d 223) [upholding requirement that signs be removed within ten days following election].)

Limits on Location and Size:

Cities have historically enjoyed substantial freedom to regulate where and how on public property political signs may be displayed. (*Taxpayers for Vincent*, 466 U.S. 789 [finding advancement of aesthetic values sufficient to justify absolute prohibition on posting of political signs on public property]. *Candidates' Outdoor Graphic Service v. City and County of San Francisco* (N.D.Cal. 1983) 574 F.Supp. 1240)(upholding San Francisco ordinance prohibiting all temporary signs on public property, except on lamp posts and utility poles, where each pole may hold one copy of a particular sign without reference to content)(signs limited to eleven inches in height and required to conform to shape of pole, so may not be longer than pole's circumference).

Regulating the posting of political signs on private property is a much more difficult question. Much of the following discussion focuses on limitations to the posting of political signs, with the primary effect upon signs displayed on private property.[iv]

Limits on How Displayed—Number of Signs per Candidate, Number of Signs per Property, Size of Signs, Height of Signs and Aggregate Area:

The law appears to be reasonably clear that limitations on the number of signs to be posted by a candidate and the number of signs that can be posted upon a single piece of property are unconstitutional. (*Baldwin v. Redwood City*, 540 F.2d at 1369 [prohibiting regulation of the total number of signs for a given candidate].) By analogy, an attempt to require that two signs for the same candidate be separated by some distance, say 100 feet apart, would also appear to be unconstitutional because the effect would be to limit the total number of signs a candidate can post. Prohibiting more than one candidate from posting a sign on a given support would also seem likely to cause a constitutional problem.

Reasonable regulations on the size of individual signs appear to be constitutionally permissible. (*Id.* At 1368 [limiting individual signs to a maximum of sixteen square feet].) Similarly, height restrictions have also been sanctioned (*Candidates' Outdoor Graphic Service v. City and County of San Francisco (*N.D.CA. 1983) 574 F.Supp. 1240 [upholding ordinance limiting size of political signs placed upon lamp posts and utility poles to eleven inches in height]), so long as the size limits do not so restrict political expression as to foreclose effective exercise of free speech. *(Verrilli v. Concord* (9th Cir. 1977) 548 F.2d 262, 265, *mod.* 557 F.2d 664.)

Limitations upon the aggregate area of political signs displayed on a single property appear to be permissible under certain circumstances. In *Baldwin* the Redwood City ordinance limited the aggregate area of signs on a single parcel to 80 square feet in order to reduce accumulation of debris (540 F.2d at 1369.) Although the court found this interest "attenuated," it thought the burden imposed on free speech so minimal that the restriction passed scrutiny. (*Id.)* Similarly, in *Verrilli* the court indicated that an aggregate area restriction of 64 square feet might have been found constitutional if the city had identified substantial public interests that could not have been protected by less restrictive regulations. (548 F.2d at 265.) The City of Concord did not make the necessary showing, however. (*Id.)*

Licensing and Permits:

Once a city determines to regulate political signs, a regulatory mechanism needs to be established. Licensing and permit schemes come immediately to mind, especially since those types of schemes are frequently used for regulation of commercial signs. Permit schemes may be constitutional, so long as the process is operated with clear, content-neutral guidelines. Official discretion will render the scheme unconstitutional. (*Hynes v. Mayor of Oradell* (1976) 425 U.S. 610, 96 S.Ct. 1755, 48 L.Ed.2d 243*; Desert Outdoor Advertising v. City of Moreno Valley* (9th Cir. 1996) 103 F.3d 814; *ACORN v. City of Tulsa* (10th Cir. 1987) 835 F.2d. 735; *Gonzales v. Superior Court* (1986) 180 Cal.App.3d 1116, 1124.)

In the political-speech context a time-consuming prior approval process is probably impermissible in most cases. *Desert Outdoor Advertising*, 103 F.3d at 818. The desire to regulate signs on private property may also lead to problems if the city attempts to require a candidate to provide a written consent from each private property owner prior to issuance of a permit to post. In any event, the consent problem can be alleviated by establishment of a "notice prior to removal" procedure, that can be implemented following a complaint by the private property owner. The question of permit fees, bonds and other security to ensure removal is discussed below.

Removal Procedures:

The law is clear that pre-election summary removal/seizure procedures are unlawful, absent some exigent public health or safety justification. At a minimum, the city must given notice to the candidate and/or owner of the sign, prior to removal and provide the candidate a reasonable opportunity to remove the signs prior to agency action. An adversary hearing or expedited judicial procedure is unnecessary, but notice and an opportunity to respond to the allegation or to remove the sign must be given. (*Baldwin*, 540 F.2d at 1373-74; *Verrilli,* 548 F.2d at 264.)

Post-election removal does not appear to present major constitutional problems. The Redwood City ordinance at issue in *Baldwin* gave candidates ten days following the election to remove their signs. Failure to remove a sign in a timely manner was evidence of abandonment, which resulted in summary removal of the signs without notice. This practice was approved by the court. (540 F.2d at 1374-75.)

Cost of Removal:

The major problem associated with post-election cleanup of political signs is ensuring that someone will be motivated to perform the act. Pre-posting license fees, bonds, security deposits, nonrefundable or even refundable removal fees will not be found constitutional unless the provisions are narrowly drawn and bear some relation to the actual cost of enforcing the ordinance or removing the sign. (*Baldwin*, 540 F.2d at 1371-72 [$5 per sign refundable "removal deposit" invalidated as disproportionately burdensome because fee bore no relation to the actual cost of removal]; *Verrilli*, 548 F.2d at 264 [$100 cash bond held unconstitutional under reasoning of *Baldwin*].) *But see Candidates' Outdoor Graphic Service*, 574 F.Supp. at 1242 n.4 (plaintiffs conceded the validity of the removal provisions of San Francisco's ordinance).

A number of cities have or have had cost-recovery provisions for those situations where signs have to be removed by city employees, but it is not clear how many of these provisions are actually being enforced. *E.g.*, the City of Los Angeles, *see Taxpayers for Vincent*, 466 U.S. at 791 n.1 ("Any hand-bill or sign found posted, or otherwise affixed upon any public property contrary to the provisions of this section may be removed by the Police Department or the Department of Public Works. The person responsible for any such illegal posting shall be liable for the cost incurred in the removal thereof and the Department of Public Works is authorized to effect the collection of said cost."); the City of San Francisco, *see Candidates' Outdoor Graphic Service*, 574 F.Supp. at 1241 n.3 ("If the City incurs any expense in removing signs posted on lamp posts and utility poles because they were posted in violation of any of the provisions of subsection (b) or were not removed within 30 days of the posting date, the person responsible for such posting may be billed as provided in Section 677.1 and, if such bill is not paid as required by that section, is subject to payment of a civil penalty as provided by Section 677.2.").

Findings Requirement:

In all situations adopting regulations imposing limitations on First Amendment speech rights, not just in cases regulating sexually-oriented businesses, cities must adopt legislative findings justifying limitations on First Amendment speech rights. Failure to do so will result in invalidation of the ordinance. *City of Cincinnati v. Discovery Network* (1993) 507 U.S 410, 417 (city's failure to address its recently developed concern about newsracks by regulating their size, shape, appearance or number was fatal defect); *Taxpayers for Vincent*, 466 U.S. at 794 n.6 (findings); Desert *Outdoor Advertising*, 103 F.3d at 819 (failure to adopt statement of purpose was fatal); *Verrilli*, 548 F.2d at 265(no attempt made to justify subsequently invalidated. ordinance); *Candidates Outdoor Graphic Service,* 574 F.Supp. at 1244 n.6 (good findings supported ordinance). *See Estevanovich v. City of Riverside* (1999) 69 Cal.App.4th 544, 554-57 *opin. Modified, no change in judgment*, __ Cal.App.4th __ (February 9, 1999)(court observed that legislative history indicated city council hadn't considered "legislative purpose" alleged after the fact)[v].

The Interaction of Regulation of Political Signs With Other Sign Regulations

A number of complexities have been introduced by the cases following in the wake of *Metromedia* and *Taxpayers for Vincent*. One can no longer look solely to narrow cases dealing only with political signs. The sign industry is taking an increasingly active role in challenging cities with restrictive sign ordinances. And the industry has been very successful.

In *National Advertising v. City of Orange* (9th Cir.1988) 861 F.2d 246, the city's sign ordinance banned all "offsite" signs, both commercial and noncommercial. The Ninth Circuit upheld the city's ban on offsite commercial signs, but invalidated the noncommercial restrictions. The city's ordinance contained eleven categories of exemptions, including the clearly noncommercial categories of governmental signs and temporary political signs. The Court of Appeal reasoned that inclusion of these categories would require enforcement personnel to undertake content-based discrimination between varying types of noncommercial signs. Thus, the ordinance was invalid as to its regulation of noncommercial speech. *Id*. at 249.

City of Cincinnati v. Discovery Network (1993) 507 U.S. 410 did little to improve an already muddled situation. In *Discovery Network* the Court held that a city ordinance banning commercial handbills which did not also apply to newsracks containing "newspapers" was not a "reasonable fit" under *Board of Trustees of the State University of New York v. Fox* (1989) 492 U.S. 469, between the city's legitimate interest in safety and aesthetics and the means chosen to serve that interest. Therefore, because the ordinance was not content-neutral, it did not constitute a valid "time, place and manner" restriction on speech rights.

Potentially the most important, and certainly the least understood, aspect of *Discovery Network* is the cryptic footnote 11, which stated:

> "While the Court of Appeals ultimately applied the standards set forth in Central Hudson and Fox, its analysis at least suggested that those standards might not apply to the type of regulation at issue in this case. For if commercial speech is entitled to 'lesser protection' only when the regulation is aimed at either the content of the speech or the particular adverse effects stemming from that content, it would seem to follow that a regulation that is not so directed should be evaluated under the standards applicable to regulations on fully protected speech, not the more lenient standards by which we judge regulations on commercial speech. Because we conclude that Cincinnati's ban on commercial newsracks cannot withstand scrutiny under Central Hudson and Fox, we need not decide whether that policy should be subjected to more exacting review."

Is the Court, by means of this footnote, trying to forshadow the ultimate overruling of the *Central Hudson* doctrine? If so, what will be the consequences for city sign regulation schemes grounded in the *Metromedia* distinction between banning off-site commercial speech, while permitting noncommercial speech? See Rappa v. New Castle County (3d Cir. 1994) 18 F.3d 1043, 1074 n.54 ("The Discovery Network Court thus undermines the Metromedia plurality's implication that a law banning commercial signs but not non-commercial signs would be constitutional. But, in any case, it seems fairly clear after Discovery Network that it is unconstitutional to ban commercial speech but not non-commercial speech – at least absent a showing that the commercial speech has worse secondary effects.")

In *Outdoor Systems v. City of Mesa* (9th Cir. 1993) 997 F.2d 602, the sign ordinances of the cities of Mesa and Phoenix, Arizona, were challenged. Both ordinances permitted "on-site" commercial signs. Mesa prohibited off-site commercial, while Phoenix severely limited off-site commercial signs to a few, predominately industrial, zones. After the litigation commenced, the cities adopted a "substitution clause," which allowed noncommercial signage to replace any authorized commercial sign.[vi]

The ordinances were upheld, because the subsequently-enacted "substitution clause" made the ordinances content neutral as between commercial and noncommercial speech, although the ordinances distinguished between on-site and off-site commercial speech. *Id*. at 611.

In *Desert Outdoor Advertising v. City of Moreno Valley* (9th Cir. 1996) 103 F.3d 814, the City of Moreno Valley's sign ordinance permitted only commercial speech on "on-site signs." Off-site signs were permitted in only three zones, principally manufacturing zones. Noncommercial political speech was permitted

only on off-site signs, in the limited zones. In addition, the city's ordinance required a conditional use permit for all off-site signs; the permit was to be issued upon a discretionary finding that approval of the permit was in the best interest of the public health, safety and welfare. The sign ordinance provisions for off-site signs included exemptions for the following types of signs: official notices; public notices; directional, warning and information signs; real estate "for sale, lease or rent signs; city boundary signs; and civic, fraternal or religious signs at the city's boundaries.

The ordinance was invalidated for several reasons: it contained a standardless CUP requirement; it failed to provide findings establishing a substantial governmental interest in regulating commercial speech; it imposed greater restrictions upon noncommercial than upon commercial speech; and certain noncommercial exemptions were content-based and not supported by a compelling governmental interest. *Id*. at 821.

City of Ladue v. Gillio (1994) 512 U.S. 43 is a case of limited scope. The small town of Ladue, a suburb of St. Louis, Missouri, has a population of about 9,000. Only 3% of the city is zoned for commercial or industrial use. During the 1990 Gulf War, a resident of Ladue, Margaret Gillio, desired to post anti-war signs on her front law. A city ordinance prohibited homeowners from displaying any signs on their property except for "residence identification" signs, "for sale" signs and signs warning of safety hazards. Commercial establishments, churches and nonprofit organizations were permitted to erect certain signs not permitted at residences.

The Supreme Court invalidated Ladue's ordinance in an opinion joined by all justices except Justice O'Connor, who concurred in the result. In reviewing the Court's prior decisions, Justice Stevens, writing for the Court, identified two analytically distinct grounds for challenging the constitutionality of municipal ordinances regulating the display of signs. One is a measure that in effect restricts too little speech because its exemptions discriminate on the basis of the signs' messages. Alternatively, sign ordinances are subject to attack on the ground that they simply prohibit too much protected speech. 512 U.S. at 50-51. Justice Stevens reviewed the effect of Ladue's ordinance, which prohibited all neighborhood comment on political, religious or personal matters. The Court was simply unconvinced that adequate "alternative channels of communication" were available to the residents of Ladue once the important medium of yard signs had been closed off.

Foti v. City of Menlo Park (9th Cir. 1998) 146 F.3d 629 is a recent Ninth Circuit opinion that invalidated a Menlo Park ordinance banning all signs on public property, except for certain exempt categories of signs. The exemptions for temporary "open house" real estate signs, signs placed by government entities, and safety, traffic and public informational signs. The Ninth Circuit had no difficulty in determining that the exemptions were content-based, "because a law

enforcement officer must read a sign's message to determine if the sign is exempted from the ordinance." 146 F.3d at 636.

In invalidating the Menlo Park ordinance the Ninth Circuit noted that it was "troubled by the wholesale exemption for government speech." *Id*. at 637. Because the plaintiffs failed to respond to the district court's request that they brief the question whether the government speech exemption was content-based under the First Amendment or speaker-based under an Equal Protection analysis, the government-exemption issue was not decided in *Foti*. And in a continuing reminder of the need to adopt strong finding justifying the imposition of restrictions on speech, the district court in *Foti* also noted that it needed fuller explanations of the city's justification for the wholesale government exemption. *Id*.[vii]

Severability

City attorneys have long assumed that the severability clause adopted as part of most ordinances will have some prophylactic effect in the event that a reviewing court finds a portion of a local sign ordinance constitutionally infirm. Unfortunately, there is no guarantee that this will be the case. Two cases serve to drive this point home*: Desert Outdoor Advertising* and *Rappa*. In *Desert Outdoor Advertising*, the Ninth Circuit sustained a challenge brought by billboard companies against Moreno Valley's sign ordinance.

The Moreno Valley ordinance under attack in *Desert Outdoor Advertising* contained a standard "severability" clause.[viii] It is the conventional wisdom among city attorneys that the severability clause will save the remainder of a partially-invalidated ordinance. Sadly, this appears not to be the case, at least when the challenged regulations restrict speech rights. *The Moreno Valley* court struck the entire ordinance, because "the balance of the ordinance [could not] function independently after [the court struck] the unconstitutional provisions*. Id*. While this is a traditional statement of how courts operate in deciding whether to invoke a severability clause (*National Advertising*, 861 F.2d at 249-50), the law in fact appears to be more complex.

In contrast to the Ninth Circuit's action in *Desert Outdoor Advertising*, the Third Circuit's decision in *Rappa* employed the severability doctrine in a different way. The *Rappa* court struck down an entire subchapter of the challenged Delaware statute, which generally prohibited signs within 25 feet of the right-of-way line of any public highway. 18 F.3d at 1051. The court was faced with the alternative of merely eliminating an exception allowing signs "announcing a town, village or city and advertising itself or its local industries, meetings, buildings, historical markers, or attractions." *Id*. at 1052.

The court noted that "[e]liminating the offending exception would mean that we would be requiring the State to restrict more speech than it currently does. All

existing restrictions would apply, plus there would be a restriction on signs advertising local industries and meetings. . . Thus, we hold that the proper remedy for content discrimination generally cannot be to sever the statute so that it restricts more speech than it did before – at least absent quite specific evidence of a legislative preference for elimination of the exception." *Id*. at 1072-73. The court then invalidated the entire subchapter of the code that restricts speech rather than eliminating an exception that allowed speech. *Id*. at 1074.

There are a number of unpleasant consequences that result from judicial invalidation of a sign ordinance. First and foremost the city is left without regulatory ability until such time as it can adopt a new ordinance. Second, a successful challenger of the ordinance may acquire a vested right to certain type of existing or proposed signage. Third, if the court has refused to invoke the invalidated ordinance's severability clause, the unintended consequences may be quite broad. The city's ability to limit signs of all types may disappear, literally overnight. Finally, the governmental officials who enacted and enforced the constitutionally-infirm ordinance may have personal liability exposure.

Qualified Immunity

Once again *Desert Outdoor Advertising* and *Rappa* are particularly instructive. In *Desert Outdoor Advertising* the district court granted judgment on the pleadings to several city officials, on a theory of qualified immunity. Those officials had attempted to enforce the city's sign ordinance against a billboard that had been constructed prior to incorporation of the city and without city or county permits. (The city's sign ordinance was based on a similar pre-existing county ordinance.)

Government officials performing discretionary acts are shielded from personal civil liability so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald (1982) 457 U.S. 800, 818. The *Desert Outdoor Advertising* court reversed the district court's grant of qualified immunity:

> "For over fifty years, it has been clearly established that a licensing scheme is impermissible if it allows officials unfettered discretion to impose prior restraints on speech. . . . Furthermore, the Supreme Court's decision in Metromedia and our holding in National Advertising make it clear that a City cannot impose greater restrictions on commercial speech than on noncommercial speech, and cannot regulate noncommercial speech on the basis of content. Because the City officials, in attempting to enforce the ordinance, violated clearly established constitutional rights of which a reasonable person would have known, they are not entitled to qualified immunity."

103 F.3d at 821.

In contrast to the *Desert Outdoor Advertising* court's refusal to affirm a grant of qualified immunity, the *Rappa* court reversed the district court's denial of summary judgment motions for qualified immunity. The court's decision to grant qualified immunity was based, at least in part, on the court's conclusion that *Metromedia*, because of its splintered reasoning, failed to establish a clear, binding standard by which to evaluate statutes regulating outdoor advertising. 18 F.3d at 1077-78.

Public officials acting in the Ninth Circuit should take little comfort from the *Rappa* decision. Of all the circuits, the Ninth Circuit is by far the most conservative in granting qualified immunity.

Conclusion

Crafting a constitutionally-valid sign ordinance that is effective in regulating what cities believe to be major problems with signage is a very challenging task. In order to avoid running afoul of the numerous constitutional pitfalls, many desired regulations will have to be discarded.

The consequences of an invalid sign ordinance are broad. Public officials in cities that overreach may face personal liability for adopting or enforcing unconstitutional ordinances. And the city attorney who failed to advise the liable officials of the potential pitfalls will also be in harm's way, whether as an individual defendant in the lawsuit challenging the sign ordinance's constitutional validity, or in the court of personal esteem with the attorney's public clients.

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[i] The starting point for this paper is another city attorneys' paper: M. Katherine Jenson & John L. Fellows III, "Avoiding Section 1983 Liability for Regulation of First Amendment Rights: Signs, Newsracks, Cable TV, Solicitation, Day Workers, Council Meetings, Local Campaigns, Elections and More" (1991 Continuing Education Seminar for Municipal Attorneys – Emerging Trends in Section 1983 Liability). Since the presentation of that earlier paper, the state of the law has become even more restrictive. For example, in 1991, many city attorneys, including this author, viewed the regulation of political signs as a particular subset of sign regulation generally. Today, it is apparent, particularly in the Ninth Circuit, that regulation of political signs is interrelated with all other aspects of sign regulation, and that a defect anywhere in a city's signage regulatory scheme may cause the entire scheme to be held unconstitutional.

[ii] Justice Rehnquist observed that it was difficult to divine what principles, if any, from Metromedia became the "law of the land," because "the Court's treatment of the subject [was] a virtual Tower of Babel, from which no definitive principles [could] be clearly drawn*." Id*. At 569 (Rehnquist, J, dissenting).

[iii] "[N]o person shall paint, mark or write on, or post or otherwise affix, any hand-bill or sign to or upon any sidewalk, crosswalk, curb, curbstone, street lamp post, hydrant, tree, shrub, tree stake or guard, railroad trestle, electric light or power or telephone or telegraph or trolley wire pole, or wire appurtenance thereof or upon any fixture of the fire alarm or police telegraph system or upon any lighting system, public bridge, drinking fountain, life buoy, life preserver, life boat or other life saving equipment, street sign or traffic sign.." Los Angeles Municipal Code § 28.04.

[iv] Private CC&Rs may provide an additional avenue for regulation of political signs on private property, but one that is beyond the scope of this discussion.

[v] *Estevanovich* should be required reading for every city attorney. The Court appeared to go out of its way to highlight what it perceived to be the city attorney's failures with respect to presentation of the ordinance, beginning

with the fact that the ordinance, which was drafted by a police officer, was recommended to the city council by the city attorney. The acting city attorney's report to the council omitted discussion of the constitutionally infirm provisions. 69 Cal.App.4th at 547-48. Given the scope of potential individual liability for enacting or attempting to enforce facially invalid sign ordinances (see the discussion below), city attorneys should pay careful attention to the drafts of ordinances prepared by the agency's operating departments.

[vi] There was no mention of any exemptions for some types of off-site signage.

[vii] In addressing another aspect of the Menlo Park ordinance, a limitation on the number and size of signs that may be carried by a picketer, the court noted *Verrilli* and *Baldwin*, in a manner that strongly suggests they are still good law. 146 F.3d at 640.

[viii] "It is the intention of the City Council in adopting this ordinance that each provision, section, sentence, clause and phrase shall be given effect and enforced to the extent legally possible without regard to whether any other provision, section, sentence, clause or phrase is found to be invalid or unenforceable." 103 F.3d at 821.