INFORMATION REGARDING BILLBOARD RIGHTS

This is a very interesting case related to trees and billboards on Century

Blvd:  <https://casetext.com/case/regency-v-los-angeles>

I haven't yet found the articles about Regency killing the trees on Century --- which they did to improve the view of their billboards.

I have copied much of this article below: “Trees, Billboards and the Right to be Seen From the Road,” by Charles Floyd. This document outlines the history of the billboard battle over treecutting along with numerous court rulings that have declared that billboards do not retain any legal “right to be seen.”

  Court Rulings

Perlmutter v. Green 182 N.E. 5 (1932) A New York Supreme Court ruling held that the state had the right to erect a screen of trees blocking the view of a billboard near the Hudson bridge in Poughkeepsie. It held: “If trees interfere with the view of the adjacent property from the road, no right is interfered with…No contract exists between the state and the owner that the latter may forever use his property to erect billboards…the adjacent owner has no title to the highway.”

Kelbro, Inc. v. Myrick 30 A. 2d 527 (1943) The Supreme Court of Vermont, upholding a state billboard control ordinance, held “there is no inherent right to use the highways for commercial purposes.”

OAAA of Tennessee v. Shaw 598 SW 2d 783 (1980) The billboard industry argued that if trees on public, or even private land, blocked the view of a billboard, they must be chopped down. The court held this was a “novel theory” with “no common law, constitutional, or statutory” support. It further declared that there was no “special right of visibility” for billboards.

John Donnelly & Sons v. Campbell 639 F. 2d6 (1980) The Maine court upheld a total ban of commercial billboards, finding “the use of land adjoining the highway for commercial advertising is really use of the highway itself.”

Adams Outdoor Advertising of Charlotte v. NC Department of Transportation 434 S.E. 2d 666 (1993) The court held that the billboard company’s loss of a view does not constitute a “taking” and that the billboard carries no “right to be seen.”

The Garden Club of Georgia, Inc. v. Shackelford, 266 Ga. 24, 463 S.E. 2d 470 (1995) The Georgia Supreme Court held that letting billboard companies chop down trees on public property constituted an illegal “gratuity” or gift to a private corporation, which violated the Georgia Constitution. “By implementing regulations allowing private companies to remove public property that blocks their signs, the state is giving an illegal gratuity,” the court held. It reasoned that “the state’s tree-trimming regulations favor private individuals” while “the state fails to receive a substantial benefit for use of this property.”

Regency Outdoor Advertising, Inc. v. City of Los Angeles et al, 39 Cal. 4th 507, 139 P.3d 119 (2006) The California Supreme Court upheld the city of LA’s right to plant palm trees along a major thoroughfare without compensating companies whose billboards were partially blocked from view. The court held that “owners and occupiers of roadside property do not possess a ‘right to be seen’ that requires the payment of compensation for municipal landscaping efforts having no injurious effect on any property rights other than the claimed right to visibility.” The court further made clear that the government has a right to plant trees as part of an effort to beautify the city’s roadways and that if, in so doing, it should block the view of adjacent property from the road “no right is interfered with.”

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Charles Floyd article:

  All across America, billboard companies are suing local and state governments, petitioning transportation departments (which oversee tree-cutting along the highways and sometimes local thoroughfares), and lobbying state legislators for the right to cut down or drastically trim trees that grow anywhere near their signs. Never mind that more than 70,000 of the roughly 450,000 billboards punctuating our federal highway system no longer conform to state and federal laws, and that tens of thousands of trees are cut down each year so we can all get a better look at them. Never mind that these trees were planted at public expense, often as part of local beautification projects designed to add color and beauty to the harsh look of concrete and asphalt. Never mind that the billboard industry is the only commercial enterprise to so boldly lay claim to the public right of way for its own private benefit. And never mind that the courts have repeatedly ruled that they simply have no right to do so.

Every year, the billboard industry gains new ground in its efforts to establish the right to “view zones” surrounding its signs, often taking rights away from taxpayers in the process. This year alone, the industry succeeded in launching legislation in at least half a dozen states. While some bills stalled in committee, others, such as one in Wisconsin that codifies the industry’s right to cut trees at no charge for up to 600 feet, sailed through with overwhelming support.

One of the most egregious pieces of legislation came out of Florida, which may be the first state to give billboard operators compensatory property rights to public assets. The law forces local governments to allow tree cutting in a football-field-sized zone surrounding roadside ads. If governments refuse to issue such permits, taxpayers will be forced to compensate the billboard owner for lost revenues. “We’re talking about the state giving away an element of property rights to a private company for financial gain,” said Bill Brinton (*Florida attorney and anti-billboard advocate - now deceased*). In the process, the state relinquishes its ability to get the “highest and best use” from its own property because it cannot plant trees that stand in the way of privately erected signs, often advertising services such as tattoos and strip joints. “I’m not aware of any other state that has this type of legislation,” said Brinton, adding that the industry is most successful at peddling its influence at state capitols. “State legislators are far removed from localities and small towns often have no influence with the legislature.”

Billboard operators contribute heavily to lawmakers’ campaigns and offer free advertising space to legislators or to the lawmakers’ favorite charities, giving them a powerful edge when legislation hits the floor. “They’ve got a lot of money,” said Charles Floyd, a retired real estate professor from the University of Georgia and one of the leading experts on billboard case law. “This is so flagrant. The only reason they’re cutting down trees is to provide a private benefit to the billboard companies.” The public often fails to speak out against tree-cutting bills because they don’t know enough about them. Even environmental organizations sometimes fail to make these bills top priority because of limited resources and the pressure to fight so many other battles, such as air and water pollution. Consequently, visual pollution problems such as billboards often take a back seat. “The billboard companies will suck up all of your resources,” said Molly Diggins, state director of the Sierra Club in North Carolina, where a tree-cutting bill battle took place earlier this year. “Most of the time, environmental groups aren’t able to take up billboards because they don’t rise to the level of issues that affect public health.”

Meanwhile, the industry continues to profit at public expense, taking advantage of the lack of well-funded opposition. It’s a war they’ve successfully waged for many years. Most of the signs shouldn’t even be there to begin with. In 1965, Congress passed the Highway Beautification Act to protect natural and scenic beauty along federal roadways by restricting new billboard construction and requiring states to remove illegal or nonconforming signs. A clear measure of the law’s failure is that the total number of billboards in America grows by the thousands each year, while thousands of publicly owned trees come down so we can see them better. Part of the failure stems from a policy enacted in March of 1977, when the Federal Highway Administration gave states the right to enter into so-called “maintenance agreements” with outdoor advertising companies that would allow them to trim or remove trees that had grown in front of their signs. In 1984, the U.S. Department of Transportation’s Office of the Inspector General issued a report on the Highway Beautification Act, criticizing the tree-cutting policy on the grounds that allowing com­panies to cut down trees only prolonged the life of nonconforming billboards that didn’t belong there in the first place. The following year, a report from the General Accounting Office likewise criticized the policy, but the FHWA refused to rescind it. Finally, in 1990, the agency did rescind its policy and asked states to put an end to their tree-cutting programs.

However, the outdoor advertising industry put so much pressure on Congress that federal lawmakers ultimately told the states they could ignore this change and keep their tree-cutting programs in place. Today, the Outdoor Advertising Association of America lists on its website 28 states with tree-cutting policies or laws it considers friendly to its interests. But even in states it deems friendly, the industry keeps going back for more. “Greed is not a good enough word for this,” Brinton said. “We need a word that describes super-greed.” In North Carolina, for example, the billboard industry already had the right to cut down trees within 250 feet of its ads, a compromise which grew out of extensive discussions between  environmentalists, transpor­­tation officials and billboard operators in the 1990s. Still not satisfied, this year the industry asked the Board of Transportation to double the view zone to 500 feet, and to drop the fees they’re required to pay for removing trees over a certain diameter in size. When the Board denied their request, they took it to state lawmakers. Lawmakers added the industry’s proposal to an unrelated bill, which passed out of one committee but stalled in a second during the frenzied, waning days of the “short session.” Opponents of the bill fully expect it to return next year, when lawmakers have more time to deliberate. “We certainly anticipate that they’ll be back, and with a different set of arguments,” said Diggins, whose Sierra Club chapter is leading the opposition.

The OAAA also lists California among those states having policies or laws “reasonable to all parties.” Yet that didn’t stop them from suing when the city of Los Angeles planted palm trees in the median of Century Boulevard to spiff itself up for the 2000 Democratic National Convention. Regency Outdoor Advertising claimed fewer motorists could see its signs because of the trees and demanded the city pay them for lost revenues. The courts refused to make the city pay, instead demanding the billboard owner compensate the city for its legal costs. The case ended up at the California Supreme Court, which stood firm against the industry. Brinton said the California courts raised an issue that often gets lost in the discussion: The fact that roads are more than just concrete and pavement, but part of a city’s landscape. “Planting trees is part and parcel of any kind of road system development,” he said, noting that the California Supreme Court recognized the right of local governments to beautify roadways by planting trees, regardless of how they affected the view of adjacent property.

Giving away the public’s trees is actually illegal in some states, such as Georgia. But even where that issue hasn’t been raised, the courts have repeatedly found that erecting a billboard on private property does not give it the “right to be seen” by passersby. As far back as 1932—and as recently as 2006—state Supreme Courts have consistently held that private property owners have no title to the adjacent highway or to the air surrounding their signs on adjacent land. Some, such as Georgia’s highest court, have gone further to say that letting the billboard companies take trees from public land constitutes an “illegal gratuity.” Floyd said the illegal gratuity argument could work elsewhere, if someone was willing to raise it. “It’s going to take some heavyweight organizations to sue them,” he said. “We’ve got good ammo to do it.”