

Photo courtesy William Jonson.



BEAUTY *and* THE BEAST

HOW THE BILLBOARD INDUSTRY MAKES MONEY
BY CHOPPING DOWN THE PUBLIC'S TREES

WHY STATES LET THEM – *and*
What You Can Do TO STOP IT

“In life, some things are impossible to ignore. At Adams, we believe your message should be one of them.”

Source: Adams Outdoor Advertising

NEARLY 20 YEARS AGO, the city of Virginia Beach—in an effort to spruce up its busy streets and make the city more attractive—banned the construction of new billboards and planted dozens of colorful crape myrtle trees along the median strip of a major thoroughfare.

As the trees grew, their flowering branches slightly obscured the view of some of the older, remaining billboards—such as one advertising a tattoo parlor. The owner of the billboards, Atlanta-based Adams Outdoor Advertising, requested a permit to chop 67 mature trees down to just four feet, a permit the city denied.

Undeterred, Adams took its case to state legislators. It asked lawmakers to hand over to the state highway department jurisdiction for billboards erected in local cities and towns, and to grant them the right to cut or remove trees that blocked passing motorists' views of their roadside ads.

Local governments and conservationists teamed up to fight the industry, which also asked for the right to move illegal billboards to new sites, even if it meant moving them into counties where billboards had been banned. It lost that battle, but won the right this year to clear out of its way the crape myrtles and other locally planted trees.

“This bill was bad,” said Leighton Powell, Executive Director of Scenic Virginia. “But the other bill was worse.” Welcome to the battle of the billboards v. the public's trees, an ongoing struggle being played out in states all across the country, with frequently sad and often frustrating results. Conservationists, local governments and even tradition-steeped garden clubs find themselves up against an industry with deep pockets, skilled lobbyists and a relentless drive to secure public property rights for its own profit.

What happened in Virginia Beach typifies the industry's cover-all-bases strategy. Lose at the local level? Try state lawmakers. Fail in the courts? Push for what you want administratively. The law says you can't cut? Do it anyway and pay the fine. If one avenue fails, simply try another. And another. And another, until you finally get what you want.

All too often, they do.

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.

“The billboard industry thumbs their nose at the law,” said Bill Brinton, an attorney specializing in billboard law and a member of the Scenic America Board of Directors. “These are the modern-day robber barons.”

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 Brinton. 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.

“The billboard industry thumbs their nose at the law.”

“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

TALKING POINTS

The billboard industry is destroying public property simply so it can make more money. It is taking the public’s trees, which were planted at taxpayer expense to make our roadways prettier to look at and our towns nicer to live in.

When the billboard companies cut down trees, they make our roads uglier, steal our property, hurt the local economy and create a distraction for drivers.

Studies show drivers who take their eyes off the road for more than 2 seconds are far more likely to crash. The recent trend to create 500-foot no-tree zones around billboards is designed to make motorists look at signs for more than twice that long.

environmentalists (led by Scenic North Carolina), 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."



State Supreme Courts have ruled for decades that just because a state or locality allows a billboard to go up, this does NOT give it the "right to be seen." In fact, a recent California Supreme Court case held that local governments have the right to plant trees that obscure the visibility of billboards if they are part of local beautification projects. It also held that governments did not have to pay any compensation whatsoever to the billboard owner for blocking that view.

When billboard companies cut down the public's trees, they are breaking the law. The Code of Federal Regulations clearly states that even the "air space" on public highways "shall be devoted exclusively to public highway purposes." The Georgia Supreme Court held that letting the billboard industry cut trees on public property constituted an illegal gift.

Letting the billboard industry chop down public trees is not only illegal, immoral and ill advised, it's also unpopular. People don't like to look at billboards. They do like to look at trees.

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. 2d 6 (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."



Photos courtesy William Jonson.



West U.S. Highway 192 in Osceola County, Fla., after Clear Channel Outdoor demanded its right under a new state law to have trees removed within a 500 foot view corridor around its billboards. The destroyed crape myrtles top were originally planted as part of a business sponsored beautification project to attract tourists.

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."

No other business gets this kind of treatment. The right to take public property for private benefit is not given to any other kind of industry. By giving the billboard industry special privileges, we set a dangerous precedent.

In many states, the industry pays little or nothing for the trees they remove. In some cases, they don't even pay for the tree removal. Who does? Taxpayers. Even when industry foots the bill, they rarely pay for the value of the trees they remove. Taxpayers pay to plant the trees. They should not also pay to take them down. And governments should be reimbursed for the trees they give away.

Indiscriminate tree-cutting causes environmental consequences. The trees that are killed and removed may be providing barriers to erosion and runoff. When poisons are used to kill them, they leach into the groundwater and may end up in local water supplies. Often, nobody conducts an environmental assessment to see what the impact will be.

CASE STUDY

How the GARDEN CLUB of GEORGIA FOUGHT BACK—and Won

*“Since 1928,
we’ve been stewards
of the highway.”*

—Joan Brown, Garden Club of Georgia

PERHAPS SOME OF THE TOUGHEST opposition the billboard industry has faced came from an unlikely corner—a group of Southern ladies with a penchant for gardening. The Garden Club of Georgia was born of the desire to beautify state highways, as far back as 1928, when the biggest threat to local scenery was the proliferation of unsightly roadside fruit stands and a bit of trash. The Garden Club ladies motivated Mom-and-Pop operations to clean up their act by giving out annual awards for beautification efforts.

“Since 1928, we’ve been stewards of the highway,” said Joan Brown, a longtime volunteer lobbyist for the present-day club. “For many years, it was just sort of a sacred thing.”

So sacred was their mission that when billboard companies began butchering trees along Georgia’s highways in the 1990s, and the state Department of Transportation didn’t stop them, the Garden Club ladies put their collective heels down and sued. Giving away the public’s trees for free violated the state’s constitution, they claimed, and in 1995 the state’s highest court agreed. Letting the billboard companies chop down trees on public property without adequately charging for them amounted to an “illegal gratuity,” the Georgia Supreme Court held. They didn’t stop the billboard companies from cutting, but they did succeed in making them pay for the trees using an arborist’s guide to set the value.

Over time, and under pressure from the industry, the Department of Transportation eased up on the fees it charged billboard operators to clear a view to their signs and the Garden Club ladies took them back to court, where in 2002 they prevailed once more.

Never one to give up easily, the industry then took a different tack: It began raising its billboards higher, until finally they soared a full 200 feet above the ground in some places.

Finally, the industry took its case to state legislators, pushing lawmakers to introduce a bill this year that sought to circumvent the “illegal gratuity” argument by offering to “pay” for the trees by lowering their signs.

“Had this bill worked, they could have removed all the trees and taken everything we won at the Georgia Supreme Court,” said Brown. Once more, the ladies took up the charge.

“At the Capitol, we’re known as the ‘Steel Magnolias’—until you cross us,” said Brown. “And then we’re known as the ‘Pit Bulls.’”

The ladies donned their bright green jackets and started walking the halls of the Capitol, where 450 of them descended upon legislators in one day. They stopped lawmakers in the halls. They sent them repeated emails. They spoke with their wives and their mothers wherever they met up with them—at church, in the schools, at the grocery store and the beauty parlor. They followed the legislation as doggedly as their opponents, often staying well into the night to make sure language wasn’t slipped in or changed when nobody was watching. And they enlisted the help of others opposed to the bill, such as the Georgia Wildlife Federation, the state’s largest nonprofit conservation group.

In February, the House defeated the bill. On the Senate side, however, a bigger battle ensued.

“The outdoor advertising group and their supporters had run all over saying just one billboard north of Atlanta cost them more than \$50,000 to remove the trees. The Senators got angry and took their side. I looked over their materials and found out only \$16,000 of that money was for trees,” said Brown.

In fact, the bill amounted to just \$28.44 per tree, since the company had removed more than 500 trees to clear a view to the sign, Brown discovered. “I put this information on every Senator’s desk the morning of the vote.”

In the end, the industry won some ground in its effort to erect flashing signs but lost its bid to cut the trees out of its way for free.

Brown’s advice to anyone fighting the billboard industry:

- **Join forces with large environmental groups that have resources, such as paid lobbyists.** “When you work with a collaborative effort, you are powerfully strong. We didn’t make it by ourselves.”
- **Be diligent.** Send members to committee meetings, to Department of Transportation meetings, to any meeting where tree-cutting policy might be discussed. “We have a perennial watchdog approach. You can’t let up.”
- **Get to know your legislators.** “Become a vital part of their life. Nowadays you can’t be passive. You must be aggressive with a passion.”

FOR INFORMATION ABOUT WHAT YOU CAN DO
TO FIGHT THE BILLBOARD INDUSTRY, VISIT
WWW.SCENIC.ORG



ADDITIONAL RESOURCES

www.fl-counties.com/grelations/lobbytips.shtml

Provides tips for lobbying state legislators. Though the site is designed for county commissioners, the advice is useful for others and may also be useful when speaking with your local government representatives.

www.scenic.org/billboards/background/tree_cutting

Contains pointers on fighting tree-cutting in your area.

www.scenic.org/pdfs/Right_to_be_seen.pdf

“Trees, Billboards and the Right to be Seen From the Road,” by Charles Floyd. This document outlines the history of the billboard battle over tree-cutting along with numerous court rulings that have declared that billboards do not retain any legal “right to be seen.”

http://www-nrd.nhtsa.dot.gov/departments/nrd-12/pubs_rev.html

Results from a National Highway Traffic Safety Administration study that found drivers who are distracted by looking at external objects are 3.7 times more likely to crash. Distractions of as little as 2 seconds increase a driver’s risk of causing an accident, the study found. To put this into perspective, transportation officials say creating a 500-foot view zone enables passing motorists to look at roadside ads for as long as 5.3 seconds. A 250-foot view zone allows them to stare at the billboards for 2.6 seconds.



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Scenic America is the only national nonprofit organization dedicated solely to preserving and enhancing the scenic character of America’s communities and countryside. Through national advocacy efforts and technical assistance services, local and national projects, and the support of its 11 state affiliates, Scenic America fights to reduce billboard blight and other forms of visual pollution; preserve the scenic character of the nation’s highways and byways; promote context-sensitive highway solutions; ensure the mitigation of the visual impact of cell phone towers and other intrusions in the landscape; and promote scenic easements and other strategies to protect open space and preserve irreplaceable scenic resources.

Change is inevitable. Ugliness is not.

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