

**Title:** Court voids heart of Texas Highway Beautification Act  
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## OUTDOOR ADVERTISING

# Court voids heart of Texas Highway Beautification Act

By Chuck Lindell

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A state appeals court has overturned a law that allowed Texas officials to regulate signs along highways and interstates, saying key sections of the 1972 Texas Highway Beautification Act violate free speech rights.

Limits on outdoor advertising, the legacy of efforts by Lady Bird Johnson to reduce eyesores along the nation's growing highway system, cannot be enforced because the law improperly regulates billboards and signs based on what they say, the Austin-based 3rd Court of Appeals ruled.

Signs, for example, are treated differently if they relate to elections, advertise activities at a business or point to a scenic or historic attraction, the court said.

Such content-based restrictions violate new standards created last year when the U.S. Supreme Court placed strict limits on when governments can infringe on speech by regulating signs, billboards and related advertising, the Texas court said.

The ruling, delivered Friday, arose from a fight over a sign supporting Republican Ron Paul's presidential campaign that was placed outside of a Planet K shop in Bee Cave in 2011. The Texas Department of Transportation cited the sign as illegal, saying Planet K's owner did not get the necessary state permit to display a sign along Texas 71. The agency also said the sign did not meet an exemption that allows political signs to be displayed without a permit for 90 days before an election and 10 days afterward.

When Planet K's owner, Michael Kleinman, refused to remove the sign, state officials took him to court, winning a judgment from state District Judge Timothy Sulak, who ordered that the sign be removed and imposed a \$3,500 fine.

Kleinman appealed, arguing that the law violated his freedom of speech.

"It took us over five years of litigation to vindicate our First Amendment rights, but

it was worth the wait," Kleinman said.

Meredith Parenti, Kleinman's lawyer, said the ruling affirms the principle that "government cannot pick and choose its favorite topics of speech."

"The ball is now in the Texas Legislature's court to rewrite the law so that it no longer infringes on citizens' First Amendment rights," Parenti said.

The ruling does not apply to city and county regulations that place limits on billboards and other outdoor signs.

The appeals court also left intact minor portions of the Highway Beautification Act, including regulations on roadside junk yards and limits on off-premises signs advertising goods, services or merchandise along specified corridors.

State officials can appeal the ruling to the Texas Supreme Court.

"We are reviewing the decision and weighing our options," said Kayleigh Lovvorn, spokeswoman for the

state attorney general's office.

The Texas law was passed in response to the U.S. Highway Beautification Act of 1965.

The U.S. law required states to regulate outdoor advertising within 660 feet of interstates and highways that received federal money or risk losing 10 percent of road funding. Signs that were farther away but intended to be visible from the roads also had to be regulated.

The Texas law essentially banned all advertising in the 660-foot zone but added a number of exemptions, including signs in commercial or industrial areas that get a state-issued permit.

Other exemptions allowed for-sale and for-lease notices, safety warnings, signs advertising activities taking place on a business's property and political signs posted within 90 days of an election.

Violators could be fined \$500 to \$1,000 per day.

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After state officials declared this political sign outside of Planet K in Bee Cave to be illegal in 2011, the shop's owner challenged the Texas Highway Beautification Act's limits on roadside signs as a violation of free speech. CONTRIBUTED