

Bans and Moratoria

Message Points

- Public opinion supports regulation, not bans
- Outdoor advertising is an important communications medium
- Billboard bans impair commerce and impact jobs
- Local business in rural and urban areas depends on billboards

Background

The purpose of the Highway Beautification Act (HBA) of 1965 was regulation of billboards, not elimination. The Act called for the orderly development of outdoor advertising structures in business areas (commercial and industrial areas).

Public opinion supports regulation, not bans

Billboards are heavily regulated by federal, state, and local government. Since its passage in 1965, the Highway Beautification Act (HBA) has been the single most important piece of legislation regulating billboards.

In 2002, Professor Charles Taylor, PhD, Professor of Marketing at Villanova University, examined trends in American public opinion since the passage of the HBA. Dr. Taylor analyzed the collective results of major public opinion polls conducted over the last 30 years on outdoor advertising controls. Major provisions of the HBA include making billboards legal in commercial and industrial areas subject to size, spacing and height requirements, and providing just compensation for legal billboards that are removed.

Collectively, these studies contained responses from more than 26,000 Americans. The findings of this study suggest that the HBA's provisions match public opinion. Quoting from Taylor's survey, *Summary of 30 Years of Public Opinion*:

"Across the public opinion polls conducted since 1970, the norm for the proportion of the public in favor of a general ban on billboards is just 21%, suggesting that a large majority of the American public favors billboards being allowed. Notably, it is also the case that support for a ban on billboards in recent years is lower than was the case in the 1970's."

"In terms of zoning restrictions, more than 75% of Americans surveyed say billboards should be allowed in commercial and industrial areas. A majority of the public supports billboard owners being provided with just compensation if a legal billboard is removed."

The aforementioned study found that public opinion about billboards and the regulation of billboards has been constant for more than 30 years:

- Most Americans support regulated, legal billboards
- Support for a ban on billboards is lower compared to the 1970s
- An overwhelming majority believe billboards provide useful information to travelers and help create jobs

Accordingly, most states and municipalities in the United States have rejected bans and/or moratoria. In 2004, Alan Weinstein, a professor of law & urban studies at Cleveland State University-Marshall College of Law, examined the regulation of billboards in a carefully selected sample of 271 localities across the country.

The results of the study are dramatic:

- More than 80% of the cities permit billboards subject to zoning restrictions, and 61.8% permit new billboard construction "as-of-right."

In 2010, Professor Weinstein examined the type and extent of land use regulation of billboards for 215 cities in the 46 states that do not impose a state-wide ban on commercial outdoor advertising.

This study found that 66.5% of the 215 cities allowed new signs to be constructed while just 6.5% had adopted regulations aimed at entirely eliminating billboards.

Outdoor advertising is an important communications medium

Outdoor advertising is an increasingly relevant medium of commercial and non-commercial speech, as consumers spend more time outside the home and as other media fragment.

Bans and moratoria, on business development of any sort, are generally regarded as extreme measures that are not in accord with good zoning practices.

The U.S. Supreme Court has ruled that even a temporary moratorium on development can constitute a taking in violation of the Fifth Amendment. (*Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, (2002), 122 S. Ct. 1465; U.S. Lexis 3028)

In addition, because billboards are a medium of communication, a ban on outdoor advertising carries serious First Amendment implications. (*Metromedia v. San Diego*, (1981), 453 S.Ct.490).

Billboard bans impair commerce and impact jobs

Research at the state and national level shows that most businesses that use billboard advertising would lose sales without billboards.

According to *The Survey of Businesses that use Billboards*, conducted by Professor Ray Taylor of Villanova University in 2000, nationally three out of four businesses that use billboards predicted lost revenue without billboards. Of those who predicted losses without billboards, the average estimated revenue decline was 18%.

Additionally, survey results in Missouri and Texas tracked the national figures. In Missouri, 78% of those using billboards said they would lose sales if billboards were banned. The estimated average decrease was 18%.

The findings in Texas were even more dramatic. More than 81% of those using billboards in Texas said they would lose sales without billboards; the estimated average decrease exceeded 20%.

Bob Evans Farms, Inc. which owns and operates 500 full service family restaurants in 22 states is an example of how important billboards are in driving sales and generating customer awareness.

- 80% of their stores are located near interstates and major highways;
- The company has relied on billboard advertising for more than 40 years;
- Billboards used by the company are “put to the test” each year
- This “test” involves covering up billboards to verify effectiveness. When billboards are covered up, stores suffer an immediate loss of at least 10 percent of revenues.

Vermont and Maine have no billboards, and their tourism economies have lagged other states and the nation. Vermont and Maine provide revealing information about the business climate in the wake of statewide billboard bans. Vermont and Maine are two of the four states with no billboards; Alaska and Hawaii never had standardized billboards. In the early 1970s, billboards were removed in Vermont and Maine, with payment of just compensation for the assets. Using five major government indices from the early 1970s to 2000, the independent research firm iMapData “graded” the business climate in Vermont and Maine, focusing on the travel-tourism industry. Both states lag other states in tourism spending.

Additionally, economic analyses consistently show that most billboard advertisements are for local businesses, and that those businesses employ a significant percentage of the local workforce. For example, more than 1,000 local businesses use billboards in San Antonio; those companies employ nearly 45,000 workers.

According to a 2001 study entitled *Economic Impact of Outdoor Advertising*, conducted by iMapData Research, Inc., a survey of large metropolitan cities and rural small towns was conducted in order to measure the economic impact billboards have on both urban and rural economies. Specific research found:

i.) Buffalo, NY

- 377 local businesses using billboard ads employ 16,080 workers in the Buffalo area (Erie and Niagara counties).

ii.) State of Delaware

- 595 local businesses using billboard ads employ 22,120 workers in Delaware.

iii.) San Antonio, TX

- 1,064 local businesses using billboard ads employ 44,956 workers in San Antonio.

iv.) San Francisco, CA

- 334 local businesses using billboard ads employ 16,926 workers in San Francisco.

v.) Tampa, FL

- 911 local businesses using billboard ads employ 39,092 workers in Tampa.

Local business in rural and urban areas depends on billboards

Economic impact studies were conducted Bill Lilley in 1994 in rural areas of Arkansas, Minnesota and West Virginia, showing that nine of 10 billboard advertisements were for local businesses; two out of three were related to travel and tourism.

The research also concluded that for studies of large cities (Charlotte, NC; Indianapolis, IN; and (Chicago, IL) :

- Big-City markets have 7-8% of the local workforce employed by businesses that heavily use outdoor advertising.
- A Big-City market like Chicago has 6-7% of the local workforce employed by businesses that heavily use outdoor advertising.

References

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Crews, Carl, Field Marketing Manager, BOB EVANS FARMS, INC, 2002



September 27, 2002

OAAA
Kenneth Klein
1850 M Street, N.W.
Suite 1040
Washington, D.C. 20036

RE: Billboards

Dear Mr. Klein:

Bob Evans Farms, Inc. owns and operates 500 full service family restaurants in 22 states. Nearly 80% of these restaurants are located on Interstate or major US Highways and consequently require outdoor directional advertising.

Our use of outdoor billboards for nearly 40 years has confirmed the importance and cost effectiveness of this advertising medium. Billboards drive sales and generate customer awareness. Specifically they identify each restaurant location to the traveling customer. We know they work because we put each billboard to a scrutinizing evaluation each year. In some cases we test the billboards effectiveness by temporarily covering the advertising copy. The result being an immediate loss of at least 10% in sales. In other cases we have lost billboards due to storms or highway construction and have suffered a loss in sales until a replacement board could be found.

Bob Evans Farms, Inc. has a workforce of more than 40,000 employees and continues to grow. We have for the past several years been adding 30 new restaurants per year. Over the 40+ years that we have been in business we have had to close a few restaurants due to performance. It has never been easy telling employees the bad news. In terms of sales, profit and the future growth of our company we need the effectiveness of outdoor billboards.

In conclusion, the most compelling truth about the need for billboards is to have our traveling customers call us and tell us we need them. Our response has been immediate and fortunate. I do hope that billboards will continue to be viable.

Sincerely,

Carl Crews
Field Marketing Manager
BOB EVANS FARMS, INC.

CC/SM