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CASE REPORT

FREE SPEECH – UTILITY POLES ARE A TRADITIONAL PUBLIC FORUM – RESTRICTIONS ON USE MUST BE CONTENT-NEUTRAL OR NARROWLY DRAWN. Because the pole portion of the traffic control devices, utility poles and lamp posts are a decades old channel of communication, restrictions on the use of such poles for handbills must be narrowly drawn to protect a compelling governmental interest. City of Seattle v. Mighty Movers, Inc., 2002 Wash.App.LEXIS 1842.

I. Facts. In 1994, the City of Seattle banned the posting of temporary signs on city-owned structures. The City itself, however, posted land use and other public agencies' notices on the pole portions of the traffic control devices, utility poles, and lamp posts. Mighty Movers contested the constitutionality of the anti-posting ordinance SMC 15.48.100. The Superior Court of King County held that such poles and other city owned structures were not a public forum and, therefore, could be reasonably regulated by the City.

II. Applicable Law and Analysis. The Washington Court of Appeals reversed the judgment of the Superior Court of King County. The appellate court invalidated as unconstitutional the application of the ordinance to the pole portion of the traffic control devices, utility poles, and lampposts. The appellate court ruled that the portion of a publicly owned pole was located on or adjacent to a street or sidewalk in the City of Seattle within the reach of pedestrians and was, thus, a traditional public forum. There is a tradition of posting information for public use on the utility poles, "a decades old channel of communication."

The City argued that the ordinance was content-neutral and was narrowly tailored to protect the following compelling governmental interests: (1) the safety hazard to utility workers posed by signs attached to utility poles; (2) the public safety hazard posed by signs posted on traffic control devices; (3) the fire hazard of multiple layer-upon-layer postings; and (4) the visual blight and clutter of the City streets. In addition, the City argued that there are ample alternatives to posting information on poles, such as designated public information kiosks and other means.

The appellate court held that the cited interests were not compelling and that the restrictions could be more narrowly drawn. For example, the ordinance did not ban the use of nails as fasteners or posting on top of other postings. The court stated that no adequate alternative means of communication are available at the same financial cost. The eleven kiosks the City installed is a poor, not ample, replacement of "the multitude of poles that have been used for posting." Also, the City makes exceptions based on content and, therefore, the ordinance is not content-neutral, as applied. The ordinance bans posting but the City makes exceptions for postings by the public agencies. For example, the City itself posts land use and other regulatory notices by public

agencies on poles, despite the safety and other hazards such postings might pose. For these reasons, the court severed the provisions restricting posting signs on poles from the balance of the ordinance.

The court stated that the City may, however, enact very specific and narrow time, place and manner restrictions, appropriate to poles identified as the traditional public forum. The City may also reasonably regulate poles not used as the traditional public "channel of communication."

III. Conclusion. The appellate court reasoned that because utility poles are located on the parking strips, streets and sidewalks, they are a traditional public forum, in which free speech may only be abridged under extremely limited circumstances. The restrictions imposed on posting signs on the utility poles must be very specific and narrow to protect a compelling governmental interest. Cities should review their sign codes and other regulations in light of this new ruling.