

**IN THE MUNICIPAL COURT OF APPEALS
OF THE CITY OF EL PASO, TEXAS**

ANTONIO DOMINGUEZ,)	
)	
Appellant,)	
vs.)	No. 93-MCA-2268
)	
STATE OF TEXAS,)	
)	
Appellee.)	

OPINION

Appellant appeals his conviction in Municipal Court for selling newspapers on El Paso's streets. Both Appellant's attorney and the City Prosecutor's office have presented excellent briefs in respect to the constitutionality of the ordinance involved which Appellant attacks as violating his First Amendment rights.

Although commercial speech is afforded a lesser degree of protection under the First and Fourteenth Amendments, it is clear that the offering of newspapers for sale is entitled to constitutional protection. Metromedia, Inc. v. City of San Diego, _____ U.S. _____, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981); New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). Examining the ordinance under the higher standard applicable to restrictions on expressive activity within a public forum, the following criteria has been established by case law. The ordinance must be (1) content neutral; (2) the regulation must be "narrowly tailored to serve a significant government interest"; and, (3) "must leave open, ample,

alternative channels of communications". Perry Education Association v. Perry Local Educators Association, 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983); International Society for Krishna Consciousness, Inc. v. Baton Rouge, 876 F.2d 494 (5th Cir. 1989).

If the ordinance applies evenhandedly to every organization or individual, regardless of view point, it is considered "content neutral", and the present ordinance under attack complies with this requirement. Heffron v. International Society for Krishna Consciousness, Inc., 452 U.S. 640, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981).

The El Paso ordinance serves a significant government interest in seeking to assure the free movement of vehicles and promoting traffic safety on the city streets. Clearly, there are evident dangers of physical injury and traffic disruption present when individuals stand in the center of busy streets trying to engage drivers and sell newspapers. International Society for Krishna Consciousness, Inc. v. Baton Rouge, *infra*; United States Labor Party v. Oremus, 619 F.2d 683 (7th Cir. 1980). This Court is confident that the city has demonstrated a significant traffic safety interest justifying this regulation.

Lastly, this Court finds that the ordinance leaves open, ample, alternative channels of communication. There are certainly many alternative means of selling and distributing newspapers other than the dangerous and disruptive sale of newspapers in traffic, which put the vendor, buyer and traveling public at needless risk.

As concluded by the Court in Acorn v. City of Phoenix, 798 F.2d 1260 (9th Cir. 1986), this Court likewise concludes that the ordinance is "...a reasonable regulation designed to preclude solicitors from intruding upon occupants of vehicles temporarily stopped at traffic lights. It is a neutral regulation that furthers the important public interest of safety and orderly

flow of traffic, and as such, it is a reasonable time, place and manner regulation which preserves the city streets for safe and peaceful use by motorists when the streets are open to vehicle traffic".

Therefore, the Judgment of the Trial Court is hereby affirmed.

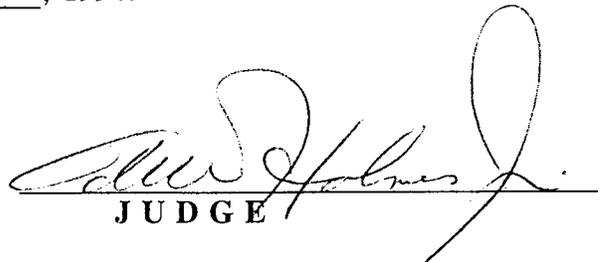
SIGNED this 28 day of Sept., 1994.


JUDGE

J U D G M E N T

This case came on to be heard on the Transcript of the Record of the Court below, the same being considered, it is ORDERED, ADJUDGED and DECREED by the Court that the Judgment be in all things affirmed, and that the Appellant pay all costs in this behalf expended, and that this decision be certified below for observance.

SIGNED this 28 day of Sept., 1994.


JUDGE