

Rothfelder's OOH Legal Predictions For 2022

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Little did I know after enthusiastically bidding good riddance to 2020 in my Billboard Insider article on 2021 OOH legal predictions, there would be a few days later an insurgence at the Capital, followed by a few weeks later a crippling ice storm in my hometown of Houston and throughout Texas, and now these Delta and Omicron Covid variants. On the positive side,

however, 2021 also saw rapid development of Covid vaccines, withdrawal of our Armed Forces after decades in the Middle East, and record highs in the stock market. And, oh yeah, the Houston Astros made it to the World Series.

The out of home industry rebounded from the 2020 Year of Covid and was generally successful in 2021 as well. The public companies certainly reported higher profits, and the independent operators seemed to recover nicely after the Pandemic, including with a return to in-person conferences at IBOUSA. Let's hope these positive trends continue throughout 2022.

The legal trends and predictions for 2022 will largely follow those major developments of 2021. Starting with the Supreme Court's consideration of *Reagan vs City of Austin*, which was argued on November 10th, and will possibly establish ground breaking law on how billboards and other signs are regulated when a decision is issued this summer. The Supreme Court is expected to rule whether Austin's permission for digital displays for on-premise while prohibiting them for off-premise signs violates the First Amendment. Since most municipal sign codes and state highway beautification acts across the Country contain the same type of content-based distinctions between on and off-premise signs, the decision is likely to be far reaching.

The Supreme Court will also decide whether to entertain conflicting lower court decisions on municipal excise taxes targeting billboards. In 2021, the Ohio Supreme Court ruled that Cincinnati's billboard tax violated the First Amendment, while the Maryland Supreme Court ruled that Baltimore's virtually identical tax did not. Thus, Clear Channel in the Baltimore case and Cincinnati in its case have asked the Supreme Court to grant petitions for writs of certiorari and resolve the interstate conflict. Once again, if the Supreme Court grants the petitions and rules on the merits, the consequences on billboard taxation across the Country could be monumental.

One of the major pieces of legislation passed by Congress in 2021 was the multi-trillion Infrastructure Investments and Jobs Act. Among the numerous public projects expected to be included under the Act is the expansion and improvement of the National Highway System. And, of course, it follows that billboards located adjacent to the highways slated for such projects will likely be subject to removal or modification, usually through the process of eminent domain. Therefore, look for additional billboard condemnation cases in 2022, along with the inevitable disputes over the amounts and appraisal methods for just compensation.

Other political and social developments will lead to additional legislation and litigation in 2022, including on the billboard industry. For example, states across the Country will continue to relax the regulations on medical and recreational cannabis, thereby resulting in new rules on billboards advertising marijuana. Similarly, the whistleblowing at Facebook and

suspension of Trump's twitter account in 2021 will undoubtedly prompt litigation next year, and raise questions over the rights of billboard operators and other advertisers to convey or decline sensitive messages. Indeed, 2022 should be a good year for billboard lawyers.

Happy New Year, Everybody!

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