

**To: Members of the House Business and Labor Committee**  
**From: Save America's Visual Environment Board**  
**Re: SB 411**  
**Date: March 15, 2005**

Mr. Chairman, Members of the Committee,  
My name is Sara Busey. I am speaking on behalf of the members of our organization, Save America's Visual Environment. I was a member of Governor Racicot's Task Force on Outdoor Advertising that lobbied successfully for the 1995 changes to Montana's Outdoor Advertising law as it applies to federal roads.

**Before you today is an effort—SB 411— to change local outdoor advertising rules. Those rules don't need to be changed.** The existing local regulation of off-premise outdoor advertising signs is pro-business. Sign regulation levels the playing field for every business and protects Montana's landscapes from clutter so customers are attracted to both commercial and noncommercial areas of our state. For that reason, Montana Legislatures have always allowed cities and counties the authority to enact their own outdoor advertising regulations for roads within their jurisdiction.

**SB 411 restricts the right of local governments to regulate their own outdoor advertising (ODA) signs.**

**It prohibits every city and county from amortizing any conforming or nonconforming off-premise outdoor advertising sign along their roads. Without that authority, local governments can ill afford to rid their areas of nonconforming signs, which state law still considers "a public nuisance." (MCA75-15-133)**

Local governments expect nonconforming ODA signs eventually to be upgraded or removed to reflect the new standards they want their communities to achieve. Otherwise, businesses with larger and taller signs would have an unfair advantage over their competitors. Consequently, local governments have placed repair, replacement, relocation and removal restrictions on them. **SB 411 eliminates those restrictions.**

**Amortization is recognized by the courts as a legal exercise of government power.** It allows sign owners to recoup their investment over a period of years, then relocate their sign to another site to continue earning revenue. Ever since the landmark *San Diego v. Metromedia* decision in which Supreme Court Justice White described billboards as an "esthetic harm," communities have sought legal ways to protect and improve their visual appearance. Amortization has consistently proved a valuable tool.

Although the ODA industry in 1978 managed to insert a prohibition on amortization on federal primary, interstate, and National Highway System roads into the Highway Beautification Act, **amortization has always been legal on non-federal roads** except where the ODA industry has convinced state legislatures to ban it.

**• Amortization of nonconforming ODA off-premise signs does not constitute a "takings" under the Fifth Amendment.**

No "invasion of personal property" occurs. Governments don't take possession of the sign structure. It merely requires that it be moved. "In *Major Media of the Southeast Inc. v. City*

of *Raleigh*, the Court noted that “the city has no intention of seizing non-conforming billboards, and plaintiff will be able to salvage at least parts of those structures and use them elsewhere.”

- **Property rights need to be analyzed as a whole.** Removal of several ODA signs of a company’s entire stock does not constitute a “takings.”

“Clearly the unit is not composed of the affected billboards, like the coal pillars in *Keystone* and do not constitute a separate segment of property for taking purposes... the unit of property to be considered for takings purposes is the combined group of Durham metro area signs.”—*Naegele Outdoor Advertising Inc., v. City of Durham*, 803 F.Supp 1068, (U.S. Middle Dist. Of N.C., 1992)

- **The loss of beneficial use occurs only if an ordinance denies an owner total economically viable use of his property.**

In *Barton Wilson V. City of Louisville*, 1997, the court upheld the city’s removal of several ODA signs, stating that, “The outdoor advertising company could market those signs outside the city where 80% of his inventory was located. Even if he could not, a 20 percent decrease in the value of his inventory does not necessarily constitute a takings.”

In *Brown Derby v. City of Missoula*, District Judge Green said, “An Ordinance requiring the eventual abatement or amortization of a non-conforming use does not violate Due Process Clause of the Constitution of the United States or the State of Montana.” He also found that, “The 10-year amortization period generally bears a reasonable relationship to the physical, economic, and practical lives of signs, as well as functional obsolescence of a sign and its depreciation for income tax purposes.”

- **SB 411 places an unfunded mandate on local governments** by requiring that they pay for the structure, lost future income, land owner and removal costs of an ODA sign on non-federal roads that their regulations deem nonconforming and undesirable.

**We urge you to vote “NO” on SB 411.**

**Save America’s Visual Environment (SAVE)**

**P.O Box 8952, Missoula, MT 59807**

**Board of Directors**

**Lee Ballard • Sara Busey • Lane Coddington • Bill Everingham • Howard Reinhardt • Joanne Rubie  
John Talbot • Kent Watson**

## Court Cases Validating Amortization

Excerpted from "The Takings Issue in Billboard Control," by Charles F. Floyd,

**The principle of using amortization as a method to remove non-conforming billboards has won overwhelming support in the courts. In addition to those cases cited elsewhere in this article, the list of cases upholding amortization of outdoor advertising signs is quite extensive and includes:**

Ackerley Communications v. City of Seattle, 602 P.2d 1177. (Supreme Court of Washington, 1979). (Amortization upheld.); Art Neon Co. v. City and County of Denver, 488 F.2d 488, (U.S. Court of Appeals, Tenth Circuit, 1974). (5 year amortization upheld.); Beals v. County of Douglas, 560 P.2d 1373, (Supreme Court of Nevada, 1977). Amortization upheld.); Board of Zoning Appeals, Bloomington, Indiana v. Leisz, 702 N.E.2d 1026, Indiana Sup. Ct., 1998. Amortization valid); City of Doraville v. Turner Communications Corp., 223 S.E.2d 798, (Supreme Court of Georgia, 1976). (Amortization valid.); City of Fayetteville v. McIlroy Bank & Trust Company, 647 S.W.2d 439 (Ark. 1983). (Seven year amortization valid.); City of Houston v. Harris County Outdoor Advertising, Association, 732 S.W.2d 42 (Tex. App. 1987). (Amortization valid.); County of Cumberland v. Eastern Federal Corp., 269 S.E.2d 672 (N. C. App. 1980). (3 year amortization upheld.); Donnelly Advertising Corp. v. City of Baltimore, 370 A.2d 1127, (Court of Appeals of Maryland, 1977). (Amortization valid.); Donrey Communications Company, Inc. v. City of Fayetteville, 660 S.W.2d 900, (Supreme Court of Arkansas, 1983). (4 year amortization reasonable.); Elliott Advertising v. Dade County, 425 F.2d 1141, (5th Cir. Ct. App., 1970) (5 year amortization period valid; Fisher Buick v. City of Fayetteville, 689 S.W.2d 350 (Supreme Court of Arkansas, 1985) (Amortization valid.); Grant v. Mayor and City Council of Baltimore, 129 A.2d 363, (Court of Appeals of Maryland, 1957). (5 year amortization valid.); Inhabitants, Town Of Boothbay v. National Adv. Co., 347 A.2d 419, (Supreme Judicial Court of Maine, 1975). (10 month amortization upheld.); John Donnelly & Sons, Inc. v. Outdoor Advertising Board, 339 N.E.2d 709, (Supreme Judicial Court of Massachusetts, 1975). (Amortization upheld.); Lamar Advertising v. City of Daytona Beach, 450 So.2d 1145 (Fla. App. 5 Dist. 1984). (10 year amortization valid.); Lubbock Poster Co. v. City of Lubbock, 569 S.W.2d 935, (Court of Civil Appeals of Texas, Amarillo, 1978). (Amortization valid.); Major Media of the Southeast, Inc., v. City of Raleigh, 792 F.2d 1269, (U.S. Court of Appeals, Fourth Circuit, 1986). (Amortization valid.); Markham Advertising Company v. State, 439 P.2d 248, (Supreme Court of Washington, 1968). (Amortization valid.); Mayor and Council of New Castle v. Rollins Outdoor Advertising, Inc., 475 A.2d 355 (Del. Supr. 1984). (Amortization valid.); Modjeska Sign Studios, Inc. v. Berle, 373 N.E.2d 255, (Court of Appeals of New York, 1977). (Amortization upheld.); Naegele Outdoor Advertising Company of Minnesota v. Village of Minnetonka, 162 N.W.2d 206, (Supreme Court of Minnesota, 1968). (3 year amortization valid.); Naegele Outdoor Advertising, Inc., v. City of Durham, 844 F.2d 172, (4th U.S. Circuit Ct. App. 1988.) (Amortization valid but remand for determination of whether five and one-half year period was reasonable.); National Advertising Company v. City of Ashland, Oregon, 678 F.2d 106 (U.S. Court of Appeals, Ninth Circuit, 1982). (5 year amortization not preempted by Highway Beautification Act.); National Advertising Company v. County of Monterey, 464 P.2d 33, (Supreme Court of California, 1970). (1 year amortization valid.); New York State Thruway A. v. Ashley Motor Court, 176 N.E.2d 566, (1961). (Instant removal of a billboard as a safety hazard valid.); R. O. Givens, Inc. v. Town of Nags Head, 294 SE2d 388, (Court of Appeals of North Carolina, 1982). (Five and one-half year amortization period reasonable.); Salinas v. Ryan Outdoor Advertising, Inc., 234 Cal.Rptr. 619, (California Court of Appeal, First District, 1987). (Amortization concept valid and 5 year amortization period reasonable.); Sign Supplies of Texas, Inc. v. McConn, 517 F.Supp. 778, (Fifth Circuit Court of Appeals, 1980). (Amortization valid.); State v. National Advertising Co., 409 A.2d 1277, (Supreme Judicial Court of Maine, 1979). (5 year amortization period valid.); Suffolk Outdoor Advertising v. Southampton, 455 N.E.2d 1245, (Court of Appeals of New York, 1983). (Amortization

valid and not preempted by Highway Beautification Act.); *Syracuse Sav. Bank v. Town of DeWitt*, 436 N.E.2d 1315, (Court of Appeal of New York, 1982). (4 year amortization valid.); *Temple Baptist Church, Inc. v. City of Albuquerque*, 646 P.2d 565 (N.M. 1982). (Amortization valid.); *Veterans of For. Wars v. Steamboat Springs*, 575 P.2d 835 (Colo. 1978). (Amortization valid.); *Village of Skokie v. Walton on Dempster, Inc.* 456 N.E.2d 293, (App. Ct. Ill., 1st Dist., 1983). (7 year amortization upheld.); *Webster Outdoor Advertising v. City of Miami*, 256 So.2d 556, (District Court of Appeal of Florida, Third District, 1972). (5 year amortization period valid.)

**In addition to those noted earlier, decisions striking down amortization are few.** One is a decision by the Georgia Supreme Court invalidating the state's "bonus law" which is widely quoted for its lack of judicial reasoning and hysterical tone:

Georgia courts, to their eternal credit, have never allowed taking or damaging private property without first paying therefore, and this court stands ready to strike down this legislative attempt to do so.

We believe this matter is important enough to justify the following observations. Private property is the antithesis of Socialism or Communism. Indeed, it is an insuperable barrier to the establishment of either collective system of government. Too often, as in this case, the desire of the average citizen to secure the blessings of a good thing like beautification of our highways, and their safety, blinds them to a consideration of the property owner's right to be saved from harm even by the government. The thoughtless, the irresponsible, and the misguided will likely say that this court has blocked the effort to beautify and render our highways safer. But the actual truth is that we have only protected constitutional rights by condemning the unconstitutional method to attain such desirable ends, and to emphasize that there is a perfect constitutional way which must be employed for that purpose. Those whose ox is not being gored by this Act might be impatient and complain of this decision, but if this court yielded to them and sanctioned this violation of the Constitution we would thereby set a precedent whereby tomorrow when the critics are having their own ox gored, we would be bound to refuse them any protection. Our decisions are not just good for today but they are equally valid tomorrow. [*State Highway Department v. Branch*, 152 S.E.2d 372 (Ga. Supreme Ct., 1966)].

The Georgia Court reaffirmed its position in *Lamar v. City v Albany*, 389 SE2d 216 (Ga. Sup. Ct., 1990)]

The Colorado Supreme Court struck down a Denver ordinance on the basis that it destroyed an entire business, which exceeded the City's powers. [*Combined Communications Corp. v. City & Cty., Denver*, 512 P.2d 79 (Supreme Court of Colorado, 1975)].

**"The Takings Issue in Billboard Control," Charles F. Floyd, University of Georgia, 4/17/99.**