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Public Comment on Council File: 13-1493

Title: Street Vending / Special Sidewalk Vending
District Program

I'm responding to the LA.StreetsBlog.org article titled *L.A.'s Street Vending Proposal Is Unconstitutional and Unwise* authored by attorneys Salvador E. Pérez and Mr. Adam S. Sieff.

I opine, the article is meritless, misleading and factually scant. Where were the authors written [proposed] ordinance language; regulatory scheme; statutory intent formatted under the IRAC method; and, submitted as a public comment? None!

By:

Member and stakeholder in
the City of Los Angeles

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cc: Mr. Salvador E. Pérez USPS mail & attachment omitted
Mr. Adam S. Sieff USPS mail & attachment omitted

Enclosure: How to Brief a Case Using the "IRAC" Method, 2-pgs.

How to Brief a Case Using the “IRAC” Method

When briefing a case, your goal is to reduce the information from the case into a format that will provide you with a helpful reference in class and for review. Most importantly, by “briefing” a case, you will grasp the problem the court faced (the issue); the relevant law the court used to solve it (the rule); how the court applied the rule to the facts (the application or “analysis”); and the outcome (the conclusion). You will then be ready to not only discuss the case, but to compare and contrast it to other cases involving a similar issue.

Before attempting to “brief” a case, read the case at least once.

Follow the “IRAC” method in briefing cases:

*Facts**

Write a brief summary of the facts as the court found them to be. Eliminate facts that are not relevant to the court’s analysis. For example, a business’s street address is probably not relevant to the court’s decision of the issue of whether the business that sold a defective product is liable for the resulting injuries to the plaintiff. However, suppose a customer who was assaulted as she left its store is suing the business. The customer claims that her injuries were the reasonably foreseeable result of the business’s failure to provide security patrols. If the business is located in an upscale neighborhood, then perhaps it could argue that its failure to provide security patrols is reasonable. If the business is located in a crime-ridden area, then perhaps the customer is right. Instead of including the street address in the case brief, you may want to simply describe the type of neighborhood in which it is located. (Note: the time of day would be another relevant factor in this case, among others).

*Procedural History**

What court authored the opinion: The United States Supreme Court? The California Court of Appeal? The Ninth Circuit Court of Appeals? (Hint: Check under the title of the case: The Court and year of the decision will be given). If a trial court issued the decision, is it based on a trial, or motion for summary judgment, etc.? If an appellate court issued the decision, how did the lower courts decide the case?

Issue

What is the question presented to the court? Usually, only one issue will be discussed, but sometimes there will be more. What are the parties fighting about, and what are they asking the court to decide? For example, in the case of the assaulted customer, the issue for a trial court to decide might be whether the business had a duty to the customer to provide security patrols. The answer to the question will help to ultimately determine

* This applies to case briefs only, and not exams. Use the IRAC method in answering exams: Issue/Rule/Analysis/Conclusion.

whether the business is liable for *negligently* failing to provide security patrols: whether the defendant owed plaintiff a duty of care, and what that duty of care is, are key issues in negligence claims.

Rule(s):

Determine what the relevant rules of law are that the court uses to make its decision. These rules will be identified and discussed by the court. For example, in the case of the assaulted customer, the relevant rule of law is that a property owner's duty to prevent harm to invitees is determined by balancing the foreseeability of the harm against the burden of preventive measures. There may be more than one relevant rule of law to a case: for example, in a negligence case in which the defendant argues that the plaintiff assumed the risk of harm, the relevant rules of law could be the elements of negligence, and the definition of "assumption of risk" as a defense. Don't just simply list the cause of action, such as "negligence" as a rule of law: What rule must the court apply to the facts to determine the outcome?

Application/Analysis:

This may be the most important portion of the brief. The court will have examined the facts in light of the rule, and probably considered all "sides" and arguments presented to it. How courts apply the rule to the facts and analyze the case must be understood in order to properly predict outcomes in future cases involving the same issue. What does the court consider to be a relevant fact given the rule of law? How does the court interpret the rule: for example, does the court consider monetary costs of providing security patrols in weighing the burden of preventive measures? Does the court imply that if a business is in a dangerous area, then it should be willing to bear a higher cost for security? Resist the temptation to merely repeat what the court said in analyzing the facts: what does it mean to you? Summarize the court's rationale in your own words. If you encounter a word that you do not know, use a dictionary to find its meaning.

Conclusion

What was the final outcome of the case? In one or two sentences, state the court's ultimate finding. For example, the business did not owe the assaulted customer a duty to provide security patrols.

Note: "Case briefing" is a skill that you will develop throughout the semester. Practice will help you develop this skill. Periodically, case briefs will be collected for purposes of feedback. At any time, you may submit your case brief(s) for feedback.

STREETSBLOG

L.A.'s Street Vending Proposal Is Unconstitutional And Unwise

By Salvador E. Pérez and Adam S. Sieff Jan 12, 2018 20



L.A. street vendor - photo by Abissa Walker via Flickr

Last February, prodded by immigrants' rights activists, the Los Angeles City Council voted unanimously to decriminalize street vending. Commendably, our City's leaders determined that they would not play handmaiden to the Trump administration and facilitate the deportation of undocumented street vendors by continuing to mete out criminal penalties for sidewalk vending.

Nearly a year later, and months behind schedule, however, the city's estimated 50,000 street vendors languish in frustrated uncertainty and operate in a legal purgatory of sorts, subject to administrative citations and exorbitant fines.

While public statements by members of the City Council this past year seemed to indicate an intent to create a workable street vending policy, those statements have been belied by more recent reports that the city is moving forward with a proposal that would grant brick-and-mortar businesses blanket authority to ban vending on public sidewalks outside their doors.

This proposal is undemocratic, unwise, and almost certainly unconstitutional twice over. With respect to the law, the proposed delegation of untrammelled discretion to private businesses runs headlong into the longstanding prohibition that a legislative body's authority to make fundamental policy decisions (including the power to regulate municipal streets and sidewalks) may not be handed over to private actors *carte blanche*. While state constitutional law permits regulatory regimes that enlist businesses in the enforcement of already-legislated rules, it does not allow businesses to make the rules themselves.

This distinction between enforcing and making rules, observed by the California Supreme Court in 1937, makes sense. The first principle of our democracy is that the power to make law derives from the people. Accordingly, only the people or their representatives can exercise it. Enforcing the law, by contrast, is a secondary power usually vested in the executive branch by institutional necessity. And redistributing that power for practical purposes to other actors is commonplace. But by empowering brick-and-mortar stores to not just enforce but also effectively set land use policy on their block, the proposal goes too far and enables private actors with pecuniary interests in shutting down street vending (or worse: extorting vendors for the right to use public space) to usurp the legislative power for their own gain.

Separately, the proposal may also amount to a discriminatory classification that penalizes vendors based entirely on whether they can obtain permission to operate from brick-and-mortar establishments. Such discrimination bears no rational relationship to any legitimate

governmental interest beyond economic protectionism—neither alleviating congestion, nor improving circulation, nor ensuring pedestrian safety, for example. Indeed, a California appellate court reached this same conclusion in 1979, when it struck down as unconstitutional a similarly protectionist Los Angeles ordinance that prohibited the operation of food trucks within 100 feet of a restaurant, finding the ordinance constituted an arbitrary and “naked restraint of trade.”

As a matter of policy, the proposal is also deeply flawed. At a time when our city's middle class is being hollowed out, housing costs are skyrocketing, and our job market is increasingly characterized by a sharp divide between high-skill positions and minimum-wage jobs with few or no benefits, it is unimaginable that the city would so obviously imperil the entrepreneurial energies of small businesses like street vendors by subjecting their viability to the whims of their nearest competitor. These small businesses enliven our streetscapes and embody what the *Times'* celebrated food critic Jonathan Gold has called the “miracle of entry-level capitalism.” To be sure, these vendors embark on admirable and courageous journeys of upward mobility. Some, like Guerrilla Tacos' Wes Avila, have emerged among the country's most celebrated chefs. But most importantly, vending generates wealth that gets reinvested in neighborhoods that see too little of it.

How the city addresses street vending ultimately strikes at the very idea of what Los Angeles ought to be. Is this a place where anyone who works hard can carve out a rewarding life with opportunities for their children—a city of strivers, animated by a relentless creative energy—or a playground for the rich and well-connected? Are we a community that truly cares about immigrants—one that wants newcomers to not only survive but thrive—or a people content to shift from a posture of intolerance to one of indifference? Our city's leaders can try to pass the buck on street vending to private businesses, but they cannot duck responsibility for the consequences of that judgment. If the City Council follows through on this element of its proposal, we will know where they stand.

Salvador E. Pérez is a government and regulatory attorney in the Los Angeles office of Manatt, Phelps & Phillips LLP. Adam S. Sieff is a constitutional and commercial litigator in the Los Angeles office of Latham & Watkins LLP, and Executive Vice Chair of the American Constitution Society for Law & Policy. The opinions expressed are theirs alone.

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