



# Town's ban on electronic billboards ruled unconstitutional



The State Supreme Court ruled that Franklin Township's ban on electronic billboards was unconstitutional. (File photo)



By **Dave Hutchinson** | NJ Advance Media for NJ.com

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**FRANKLIN** — The State Supreme court Thursday reversed a decision by the Appellate Division and ruled that the township's ban on digital billboards is unconstitutional.

Justice Mary Catherine Cuff delivered the unanimous decision by the Supreme Court, Justices Barry T Albin and Jaynee LaVecchia didn't participate, ruling that Franklin's Township's ban on electronic or animated billboards violated the First Amendment.

In the 47-page opinion — **overruling the Appellate Division** - Cuff wrote that "Billboards generally or specific types of billboards are a medium of communication, and any regulation of that medium may not transgress the United States Constitution or the Constitution of this state."

The Appellate Division had overturned an earlier trial court decision determining the billboards constituted protected speech. The township allows non-electronic billboards but voted 8 to 1 to ban electronic billboards.

The township, **which spent a significant amount to defend the law**, had argued that electronic billboards can distract drivers, ruin the aesthetics of the community and pose a potential safety hazard. It dismissed an argument that the electronic billboards could be used for emergency communications, stating it had other methods to communicate with residents.



### **NJ town bans leaf blowers**

Maplewood recently enacted a temporary ban to address residents' concerns about noise and air pollution.

"The township is disappointed," said township attorney Louis Rainone. "While the court upheld our legal arguments, it found there was insufficient evidence to support the township's claims concerning the protection of aesthetic values of the community and public safety in terms of traffic."

Franklin P. Linnus — the attorney for E&J Equities, a subsidiary of Rotor Clip that had applied to post two electronic billboards in the township — didn't return a phone call seeking comment.

In 2010, the township passed an ordinance banning electronic billboards. It stated exceptions should be considered on a case-by-case bases as variance applications.

In making its case, the township stated that Department of Transportation (DOT) statistics on I-287 in the area of the billboard showed 181 crashes in 2010 and 171 crashes in 2011. That stretch had the **highest number of accidents in 2010 and second-highest in 2011.**

Not all stretches of the highway where digital billboards stand are dangerous. In 2010 near an electronic billboard in South Plainfield, there were only 70 crashes in 2010 and 48 crashes in 2011, according to the DOT.

E&J applied for two variances, and was denied. The trial court ruled that the denial was handled properly, but the ban itself was a Constitutional violation.

In the court's decision, Cuff wrote that records provide "scant support for several propositions that informed the Township's decision and no support for the decision that the aesthetics of three billboards are more palatable than the aesthetics of a single digital billboard."

Electronic billboards, Cuff wrote, are "subject to the protection of the First Amendment."

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