

学校编码: 10384

分类号\_\_\_\_\_密级\_\_\_\_\_

学号: 12920071150296

UDC\_\_\_\_\_

厦门大学

硕士学位论文

美国法上户外广告管制的合宪性问题研究

A Study on the Constitutionality of Outdoor Advertising

Regulation in American Law

苏桔海

指导教师姓名: 朱福惠教授

专业名称: 宪法学与行政法学

论文提交日期: 2010年4月

论文答辩时间: 2010年 月

学位授予日期: 2010年 月

答辩委员会主席: \_\_\_\_\_

评阅人: \_\_\_\_\_

2010年4月

美国法上户外广告管制的合宪性问题研究

苏桔海

指导教师

朱福惠教授

厦门大学

# 厦门大学学位论文原创性声明

本人呈交的学位论文是本人在导师指导下,独立完成的研究成果。本人在论文写作中参考其他个人或集体已经发表的研究成果,均在文中以适当方式明确标明,并符合法律规范和《厦门大学研究生学术活动规范(试行)》。

另外,该学位论文为( )课题(组)的研究成果,获得( )课题(组)经费或实验室的资助,在( )实验室完成。(请在以上括号内填写课题或课题组负责人或实验室名称,未有此项声明内容的,可以不作特别声明。)

声明人(签名):

年 月 日

厦门大学博硕



# 厦门大学学位论文著作权使用声明

本人同意厦门大学根据《中华人民共和国学位条例暂行实施办法》等规定保留和使用此学位论文，并向主管部门或其指定机构送交学位论文（包括纸质版和电子版），允许学位论文进入厦门大学图书馆及其数据库被查阅、借阅。本人同意厦门大学将学位论文加入全国博士、硕士学位论文共建单位数据库进行检索，将学位论文的标题和摘要汇编出版，采用影印、缩印或者其它方式合理复制学位论文。

本学位论文属于：

1. 经厦门大学保密委员会审查核定的保密学位论文，  
于 年 月 日解密，解密后适用上述授权。

2. 不保密，适用上述授权。

（请在以上相应括号内打“√”或填上相应内容。保密学位论文应是已经厦门大学保密委员会审定过的学位论文，未经厦门大学保密委员会审定的学位论文均为公开学位论文。此声明栏不填写的，默认为公开学位论文，均适用上述授权。）

声明人（签名）：

年 月 日



## 内 容 摘 要

在美国，户外广告有着悠久的历史。在 20 世纪以前，美国的地方政府以安全和财产权等理由管制户外广告。自 20 世纪以来，户外广告的大量增殖引发公众对户外广告的反感，户外广告被认为是一种“视觉污染”。美国各级政府开始以美学（aesthetics）为理由对户外广告进行管制，由此引发合宪性问题的讨论。本文主要从目的合宪性和手段合宪性两个维度对美国法上户外广告管制的合宪性问题展开分析。

全文分为引言、正文和结论三大部分，正文分成四章：

第一章介绍美国户外广告管制的主要理由及相关立法。首先介绍美国户外广告管制的几个主要理由，包括财产权和安全、美学和其它公共利益；然后，简单介绍其管制立法的四个历史发展阶段。

第二章分析美国户外广告管制的目的合宪性，梳理美国法院对待以美学为理由的户外广告管制的态度转变及其缘由。首先，讨论了美学目的的主观性；其次，梳理美国法院从拒绝美学管制到接受美学管制的转变过程；最后，从警察权力的扩张这一角度讨论法院态度转变的原因。

第三章着重讨论美国户外广告管制与言论自由的问题。首先，简单介绍户外广告管制可能与公民的财产权和言论自由发生冲突；其次，介绍联邦最高法院的有关户外广告管制的第一修正案判例；再次，梳理判例并分析各种管制策略的合宪性；最后，分析法院审查过程中利益衡量考虑的几种因素。

第四章讨论美国户外广告管制的经验给予我国的启示。一方面，分析我国市容市貌管理中的问题，美国的经验启发我们应当通过立法程序整合社会民众对市容市貌的意见，以达到一定的共识；另一方面，虽然我国户外广告管制中出现更多的是财产权方面的问题，美国的经验仍启发我们在市容市貌管理和户外广告管制中，应适当平衡各种不同利益。

**关键词：**户外广告；合宪性；美学管制



**ABSTRACT**

Outdoor advertising has a long history in the U.S..For security, property rights and other reasons, the government began to regulate outdoor advertisings. Since the 20th century, the unlimited proliferation of outdoor advertisings caused public resentment, outdoor advertising was considered as some kind of "visual pollution."All levels of governments began to regulate outdoor advertising on the ground of aesthetics, which caused constitutional issues. This article focuses on the two latitudes of its constitutional issues: the constitutionality of purpose and the constitutionality of means.

Besides preface and conclusion, this article is divided into four chapters:

Chapter 1 introduces the main purposes of outdoor advertising regulation and the overview of outdoor advertising legislation. First, it introduces main purposes of outdoor advertising regulation, including property rights, security, aesthetics and other public interest; then, it hackles the four stages of development of outdoor advertising legislation.

Chapter 2 analyzes the constitutionality of purposes of outdoor advertising regulation, hackling how the American courts has changed their attitude towards aesthetic regulation and its reasons. First, it discusses the subjectivity of aesthetic regulation; then, it hackles the changing process of the courts' attitude from rejection to acceptance of aesthetic regulation; finally, it discusses that the reason for this changing is the expansion of police power.

Chapter 3 mainly discusses relations between outdoor advertising regulation and freedom of speech. First, it introduces some conflict of interests that can be brought from outdoor advertising regulation which may infringe citizens' property rights and freedom of speech; then, it retrieves some judgements about outdoor advertising regulation made by the U.S. Supreme Court; after that, it hackles these judgements, and summarizes the constitutionality of different strategies of outdoor advertising regulation; finally it summarizes the main factors that courts would consider when balancing test is adopted.



Chapter 4 discusses on what inspiration can we get from this lesson of American outdoor advertising regulation. On the one hand, it analyzes the problems exist in the management of the appearance of cities in our country, lesson of the USA inspired us to integrate the people`s views on the appearance of the cities through the legislative process, so that we can reach certain consensus; on the other hand, although there are more property rights issues in the regulation of outdoor advertisings in China, lesson of the USA still inspired us that government should try to balance between various different interests when it is protecting the appearance of cities and regulating outdoor advertisings.

**Key Words:** outdoor advertising; constitutionality; aesthetic regulation.

厦门大学博硕

目 录

引 言.....	1
<b>第一章 美国户外广告管制的主要理由及相关立法.....</b>	<b>2</b>
<b>第一节 户外广告管制的主要理由 .....</b>	<b>2</b>
一、财产权和安全.....	2
二、美学.....	2
三、其它的公共利益.....	3
<b>第二节 户外广告管制的相关立法 .....</b>	<b>3</b>
一、早期的城市立法.....	3
二、州政府的立法.....	3
三、联邦国会的立法.....	4
四、立法现状.....	5
<b>第二章 美国户外广告管制目的的合宪性分析 .....</b>	<b>6</b>
<b>第一节 美学目的的主观性 .....</b>	<b>6</b>
一、户外广告的美丑之争.....	6
二、法院对户外广告的描述.....	7
三、主观性难题.....	7
<b>第二节 法院对待美学管制的态度转变 .....</b>	<b>9</b>
一、20 世纪 20 年代以前.....	9
二、20 世纪 20 年代至 20 世纪 50 年代.....	10
三、20 世纪 50 年代以后.....	11
<b>第三节 法院态度转变的原因：警察权力的扩张 .....</b>	<b>12</b>
一、传统的警察权力的范围.....	12
二、警察权力的扩张.....	13
三、警察权力扩张的背景.....	14
<b>第三章 美国户外广告管制与言论自由 .....</b>	<b>16</b>
<b>第一节 户外广告管制与公民权利 .....</b>	<b>16</b>

一、户外广告管制与财产权.....	16
二、户外广告管制与第一修正案.....	16
<b>第二节 有关户外广告管制的第一修正案判例 .....</b>	<b>17</b>
一、Linmark Associates, Inc. v. Willingboro 案 .....	17
二、Metromedia, Inc. v. City of San Diego 案 .....	19
三、Members of City Council v. Taxpayers for Vincent 案.....	23
四、City of Ladue v. Gilleo 案 .....	25
五、Lorillard Tobacco Co. v. Reilly 案 .....	26
<b>第三节 各种管制策略及其合宪性 .....</b>	<b>27</b>
一、针对户外广告内容的管制.....	28
二、非针对户外广告内容的管制.....	36
<b>第四节 司法审查中的利益衡量 .....</b>	<b>37</b>
一、户外广告判例中的利益衡量.....	38
二、利益衡量时考虑的主要因素.....	38
<b>第四章 美国户外广告管制经验对我国的启示 .....</b>	<b>40</b>
<b>第一节 美国经验对我国市容管理的启示 .....</b>	<b>40</b>
一、我国的市容市貌管理立法.....	40
二、缺乏共识的市容市貌.....	40
三、通过立法凝聚共识.....	41
<b>第二节 美国经验对我国户外广告管制的启示 .....</b>	<b>41</b>
一、我国的户外广告管制立法及其问题.....	41
二、启示.....	42
<b>结 论 .....</b>	<b>43</b>
<b>参考文献.....</b>	<b>44</b>
<b>致 谢 语.....</b>	<b>48</b>

**CONTENTS**

**Preface..... 1**

**Chapter 1 Main purposes of outdoor advertising regulation and related legislation in U.S. .... 2**

**Subchapter 1 Main purposes of outdoor advertising regulation..... 2**

..... 2

Section 1 porperty rights and security ..... 2

Section 2 aesthetic..... 2

Section 3 Other public interests ..... 3

**Subchapter 2 realted legislation ..... 3**

Section 1 Laws made by cities in the early days ..... 3

Section 2 Legislation by state government ..... 3

Section 3 Legialation by federal government ..... 4

Section 4 Current legislation..... 5

**Chapter 2 Analyzing of the constitutionality of purpose of outdoor advertising regulation in U.S. .... 6**

**Subchapter 1 Subjectivity of aesthetic ..... 6**

Section 1 Controversy over the beauty and ugliness of outdoor advertising 6

Section 2 How does the courts describe outdoor advertising ..... 7

Section 3 Problem of subjectivity ..... 7

**Subchapter 2 Changing attitude of the courts toward aesthetic regulation. 9**

Section 1 Before 1920s ..... 9

Section 2 1920s to 1950s ..... 10

Section 3 after 1950s..... 11

**Subchapter 3 Reason of the changing attitude:expansion of police power 12**

Section 1 Scope of traditional police power ..... 12

Section 2 Expansion of police power..... 13

Section 3	Background of the expansion of police power .....	14
<b>Chapter 3</b>	<b>Outdoor advertising regulation in U.S. and freedom of</b>	
<b>speech</b> .....		<b>16</b>
<b>Subchapter 1</b>	<b>Outdoor advertising regulation and civil rights</b> .....	
.....		<b>16</b>
Section 1	Outdoor advertising regulation and property rights.....	
.....		16
Section 2	Outdoor advertising regulaton and the First Amendment.....	
.....		16
<b>Subchapter 2</b>	<b>Judgements of the First Amendment about outdoor</b>	
<b>advertising regulation</b> .....		<b>17</b>
Section 1	Linmark Associates, Inc. v. Willingboro .....	17
Section 2	Metromedia, Inc. v. City of San Diego.....	19
Section 3	Members of City Council v. Taxpayers for Vincent.....	23
Section 4	City of Ladue v. Gilleo .....	25
Section 5	Lorillard Tobacco Co. v. Reilly .....	26
<b>Subchapter 3</b>	<b>Constitutionality of different strategies of regulation</b> .....	
.....		<b>27</b>
Section 1	Content-based outdoor advertising regulation .....	
.....		28
Section 2	Content-neutral regulations.....	36
<b>Subchapter 4</b>	<b>Balancing test in judicial review</b> .....	<b>37</b>
Section 1	Balancing rest in outdoor advertising judgements.....	38
Section 2	Main factors considered in balancing test.....	38
<b>Chapter 4</b>	<b>Inspirations from lesson of ourdoor advertising</b>	
<b>regulation in U.S.</b> .....		<b>40</b>
<b>Subchapter 1</b>	<b>Inspiration from lesson of the U.S.for managing appearance</b>	
<b>of cities in our country</b> .....		<b>40</b>

Section 1	Legislation of city management in out country .....	40
Section 2	Aesthetics lack of consensus.....	40
Section 3	Reaching consensus through legislative process .....	41
<b>Subchapter 2</b>	<b>Inspiration from lesson of the U.S.for outdoor advertising regulation in out country.....</b>	<b>41</b>
Section 1	Outdoor advertising legislation in China and its problems.....	41
Section 2	Inspiration .....	42
<b>Conclusion</b> .....		<b>43</b>
<b>Bibliography</b> .....		<b>44</b>
<b>Acknowledgements</b> .....		<b>48</b>

廈門大學博碩



## 引 言

标识或许是大众传播工具中最古老的方式,已知的最古老的户外广告出现在埃及,是底比斯城投放的对捕获逃亡奴隶的奖赏海报。<sup>①</sup>在美国,户外广告有着悠久的历史,最早可以追溯到费城会议时期,当时一副描绘费城制宪会议的画在费城街道上挂出来,群众通过该画得以识别会议的代表。革命战争期间,波士顿茶叶协会通过海报组织起来,户外广告成为美国革命的传媒。<sup>②</sup>对户外广告の利用,既有商业性的,也有非商业性的,如竞选广告、反战广告等。但由于各种原因,政府对户外广告展开了管制。尤其是,自20世纪以来,户外广告的大量增殖引发公众对户外广告的反感,户外广告被认为是一种“视觉污染”。美国各级政府以美学(aesthetics)为理由对户外广告进行管制,由此引发合宪性问题,其中有两个主要问题:一是基于美学理由进行管制是否合宪,二是更有实践意义的,如何处理户外广告管制引起的第一修正案问题。分析这两个问题是本文的主要任务。

本文主要采取实证分析和案例分析的研究方法,第一章介绍美国户外广告管制的主要理由及其相关立法,第二章分析户外广告管制的目的合宪性,梳理美国法院对待以美学为理由的户外广告管制的态度转变及其缘由,第三章讨论户外广告管制与言论自由的冲突,通过详述美国联邦最高法院审理过的涉及户外广告管制的几个判例,深入分析各种户外广告管制策略的合宪性,第四章将简要讨论我国的市容市貌管理和户外广告管制情况,并总结美国的经验可能给予我国的启示。

<sup>①</sup> JACOB,LOSHIN. Property in the Horizon:The Theory and Practice of Sign and Billboard Regulation[J]. *Environs Env'tl.L. & Pol'y J.*2006,30(Fall):101-171.

<sup>②</sup> CHARLES,R.TAYLOER & WEIH,CHANG. The History of Outdoor Advertising Regulation in the United States[J].*Journal of Macromarketing*,1995,15(1):47-59.



Degree papers are in the "[Xiamen University Electronic Theses and Dissertations Database](#)". Full texts are available in the following ways:

1. If your library is a CALIS member libraries, please log on <http://etd.calis.edu.cn/> and submit requests online, or consult the interlibrary loan department in your library.
2. For users of non-CALIS member libraries, please mail to [etd@xmu.edu.cn](mailto:etd@xmu.edu.cn) for delivery details.

廈門大學博碩