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Ruling leaves Mesa with doughnut on its face

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The timing was lousy.

Last week's ruling in the Winchell's doughnut shop case came less than two weeks before Mesa voters decide on two important tax issues. It served as a reminder of all the things that have irked people about City Hall these past few years - and of all those things, the city's harassment of doughnut shop owner Edward Salib was among the most irksome.

The ruling by the Arizona Court of Appeals was a legal victory for municipal government, but it might have been a moral loss. It didn't exactly provide PR fodder for an election-bound city trying to put its best foot forward. Yes, that would be the foot with all the bullet holes, thanks to the city's repeated misfires over the years.

Of course, when city code enforcement officers cracked down on Salib's frozen cappuccino signs in July 2002, they weren't really thinking about PR. It was just business as usual, a ham-handed bureaucratic bludgeoning of a guy whose only crime was trying to sell coffee and doughnuts.

Salib fought back. He enlisted the support of the Institute for Justice, a pro bono legal defense fund that so famously waged battle to keep brake shop owner Randy Bailey from losing his property due to an egregious misuse of eminent domain. Coincidentally, Bailey's and Salib's businesses are across the street from one another. Must be something about that corner.

Anyway, this time the Institute for Justice lost at trial, a county judge ruling Mesa was within its rights to regulate the size of Salib's signs. Last week, the appeals court unanimously upheld that ruling.

The judges held that while Salib has a First Amendment right to free speech, that right is trumped by the city's interest in making the neighborhood look pretty.

"The exact balance between the size of the signs and the aesthetic benefits obtained is ultimately a subjective decision best left to the City Council," the court asserts.

That's scary. Aesthetic decisions left up to politicians? Have you seen the way some of those people dress?

Seriously, cities do have a legitimate role in maintaining appearances, and reasonable sign laws are part of that.

But in Salib's case there's reason to question the reasonableness and fairness of the application. The law in question limited signs to 30 percent of a store's window space, which means stores with bigger windows could post more signs. It also didn't apply to doughnut shops outside the downtown redevelopment area. That makes for an uneven playing field.

Whether Salib and his legal allies believe the case merits appeal is up to them. It seems they have a case, but so far two courts haven't seen it that way.

Meanwhile, we sure hope Mesa isn't gloating over this Pyrrhic victory. This is not

how a city wins friends and influences people. And right now, Mesa needs all the friends it can get.

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