



California Corporate & Securities Law

A Win for Queequeg: The Ninth Circuit Holds that Tattooing is Constitutionally Protected

Posted In [California Sui Generis](#)

Occasionally, I can't resist the temptation to digress into other legal areas. Today's opinion by the Ninth Circuit Court of Appeals in *Anderson v. City of Hermosa Beach* (Case No. 08-56914, Sept. 9, 2010) is one of these irresistible temptations.

That case involved a challenge to a city's ban on tattoo parlors. No, the city didn't ban tattoos, just the parlors. In finding the ban unconstitutional, the court held that "tattooing is purely expressive activity rather than conduct expressive of an idea, and is thus entitled to full First Amendment protection". In other words, not only is a tattoo protected speech, the process of getting a tattoo is protected as well. Notably, the Ninth Circuit is in disagreement with other federal courts on the topic. *Hold Fast Tattoo, LLC v. City of North Chicago*, 580 F.Supp. 2d 656, 659-61 (N.D. Ill. 2008); *Yurkew v. Sinclair*, 495 F. Supp. 1248, 1253-55 (D. Minn. 1980); *State v. Brady*, 492 N.E.2d 34, 39 (Ind. Ct. App. 1986); *People v. O'Sullivan*, 409 N.Y.S.2d 332, 333 (App. Div. 1978); *State v. White*, 560 S.E.2d 420, 423-24 (S.C. 2002); *Blue Horseshoe Tattoo, V, Ltd. v. City of Norfolk*, 72 Va. Cir. 388, 390 (Cir. Ct. 2007).

So, the question may some day require the attention of the Supreme Court. In the meantime, we here in California can enjoy our constitutional right to inject ink into the living parchment of others.

Please contact **Keith Paul Bishop** at Allen Matkins for more information kbishop@allenmatkins.com

<http://www.calcorporatelaw.com/>