



NEW YORK CITY LAW DEPARTMENT
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Press Release

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For Immediate Release

FEDERAL COURT FINDS NO FREE SPEECH VIOLATION IN NEW YORK CITY LANDMARKS COMMISSION'S RETENTION OF NOTED SOHO SCULPTURE

**JUDGE RULES THAT LANDMARKS' DENIAL OF PERMIT TO REMOVE SCULPTURAL GATEWAY TO SOHO AND
REPLACE IT WITH WALL ADVERTISING DID NOT VIOLATE BUILDING OWNER'S FIRST AMENDMENT RIGHTS**

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New York, September 9, 2004 – Judge Deborah A. Batts, a United States District Court judge for the Southern District of New York, ruled yesterday that the City's Landmarks Preservation Commission's denial of a permit to remove a unique 1970's minimalist sculpture from the side of the building at the corner of Broadway and Houston Street in the Landmark SoHo-Cast Iron Historic District did not violate the State and Federal free speech rights of the building owner.

In *Board of Managers of SoHo International Arts Condominium v. City of New York*, the owners of 599 Broadway alleged that having to maintain the sculpture, entitled "The Wall," instead of being allowed to install a huge advertisement violated their First Amendment right to free speech. However, the Court found that Landmarks' denial was content-neutral and it did not unconstitutionally compel the plaintiffs to communicate an ideological message. In making this finding, the Court noted the sculpture's "historic and aesthetic value to the Historical District and its furthering of the goals of the Landmarks Law."

The sculpture, created by artist Forrest Myers, consists of aluminum horizontal projections from 42 existing channel irons on the Houston street side of the building. It is the only minimal relief sculpture of its kind in New York City, and the Landmarks Commission found that it was a gateway to – and embodiment of – SoHo, the center of the international contemporary art world. The court noted, "The Wall won the respect and support of the museum, artistic and preservation community." The sculpture has currently been taken down so that structural repairs can be made to the side of 599 Broadway. The City seeks a legal order that it be immediately reinstalled after these are complete.

The court also dismissed the plaintiffs' claims that the Landmark Commission's refusal to allow the sculpture's removal violated the building owner's rights to equal protection and due process. However, Judge Batts did not resolve the question of who actually owned the sculpture, and as a result, set down for trial the question of whether the required retention of the artwork on the building constituted an unconstitutional taking of the building owner's property rights.

Landmarks Commission Chair Robert B. Tierney applauded the Court's action. "We are very excited and gratified because the Court explicitly recognized the validity and importance of the City's Landmarks Law and that the Commission had properly exercised its authority and expertise in deciding to preserve this important artwork."

Senior Assistant Corporation Counsel Virginia Waters of the Law Department's Administrative Law Division noted, "This decision is a victory for the Landmarks Commission as well as for all New Yorkers who want preserve the City's history and the beauty of its historic districts." Waters noted that the

Municipal Arts Society participated as an “amicus” or “Friend of the Court” in support of the City.

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