/* The full text of the U.S. Supreme Court opinion in the matter of City of Cloumbia vs. Omni Outdoor advertising. This is an interesting case on the immunity of a governmental entity for anti-competitive acts. */
Subject: COLUMBIA v. OMNI OUTDOOR ADVERTISING, INC., Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Lumber Co., 200 U. S. 321, 337. SUPREME COURT OF THE UNITED STATES

Syllabus

CITY OF COLUMBIA et al. v. OMNI OUTDOOR ADVERTISING, INC.

certiorari to the united states court of appeals for the fourth circuit

No. 89-1671. Argued November 28, 1990 -- Decided April 1, 1991

After respondent Omni Outdoor Advertising, Inc., entered the billboard market in petitioner Columbia, South Carolina, petitioner Columbia Outdoor Advertising, Inc. (COA), which controlled more than 95% of the market and enjoyed close relations with city officials, lobbied these of ficials to enact zoning ordinances restricting billboard construction. After such ordinances were passed, Omni filed suit against petitioners under 15 1 and 2 of the Sherman Act and the State's Unfair Trade Practices Act, alleging, inter alia, that the ordinances were the result of an anticompetitive conspiracy that stripped petitioners of any immunity to which they might otherwise be entitled. After Omni obtained a jury verdict on all counts, the District Court granted petitioners' motions for judgment notwithstanding the verdict on the ground that their activities were outside the scope of the federal antitrust laws. The Court of Appeals reversed and reinstated the verdict.

Held:

1. The city's restriction of billboard construction is immune from federal antitrust liability under Parker v. Brown, 317 U. S. 341, 352 -- which held that principles of federalism and state sovereignty render the Sherman Act inapplicable to anticompetitive restraints imposed by the States "as an act of government" -- and subsequent decisions according Parker immunity to municipal restriction of competition in implementation of state policy, see, e. g., Hallie v. Eau Claire, 471 U. S. 34, 38. Pp. 4-13.

(a) The Court of Appeals correctly concluded that the city was prima facie entitled to Parker immunity for its billboard restrictions. Although Parker immunity does not apply directly to municipalities or other political subdivisions of the States, it does apply where a municipality's restriction of competition is an authorized implementation of state policy. South Carolina's zoning statutes unquestionably authorized the city to regulate the size, location, and spacing of billboards. The additional Parker requirement that the city possess clear delegated authority to

suppress competition, see, e. g., Hallie, supra, at 40-42, is also met here, since suppression of competition is at the very least a foreseeable result of zoning regulations. Pp. 4-7.

(b) The Court of Appeals erred, however, in applying a "conspiracy" exception to Parker, which is not supported by the language of that case. Such an exception would swallow up the Parker rule if "conspiracy" means nothing more than agreement to impose the regulation in question, since it is both inevitable and desirable that public officials agree to do what one or another group of private citizens urges upon them. It would be similarly impractical to limit "conspiracy" to instances of governmental "corruption," or governmental acts "not in the public interest"; virtually all anticompetitive regulation is open to such charges and the risk of unfavorable ex post facto judicial assessment would impair the States' ability to regulate their domestic commerce. Nor is it appropriate to limit "conspiracy" to instances in which bribery or some other violation of state or federal law has been established, since the exception would then be unrelated to the purposes of the Sherman Act, which condemns trade restraints, not political activity. With the possible exception of the situation in which the State is acting as a market participant, any action that qualifies as state action is ipso facto exempt from the operation of the antitrust laws. Pp. 8-13.

2. COA is immune from liability for its activities relating to enactment of the ordinances under Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U. S. 127, 141, which states a corollary to Parker: the federal antitrust laws do not regulate the conduct of private individuals in seeking anticompetitive action from the government. The Court of Appeals erred in applying the "sham" exception to the Noerr doctrine. This exception encompasses situations in which persons use the governmental process itself -- as opposed to the outcome of that process -- as an anticompetitive weapon. That is not the situation here. California Motor Transport Co. v. Trucking Unlimited, 404 U. S. 508, 512, distinguished. Omni's suggestion that this Court adopt a "conspiracy" exception to Noerr immunity is rejected for largely the same reasons that prompt the Court to reject such an exception to Parker. Pp. 13-17.

3. The Court of Appeals on remand must determine (if the theory has been properly preserved) whether the evidence was sufficient to sustain a verdict for Omni based solely on its assertions that COA engaged in private anticompetitive actions, and whether COA can be held liable to Omni on its state-law claim. P. 18.

891 F. 2d 1127, reversed and remanded.

Scalia, J., delivered the opinion of the Court, in which Rehnquist, C. J., and Blackmun, O'Connor, Kennedy, and Souter, JJ., joined. Stevens, J., filed a dissenting opinion, in which White and Marshall, JJ., joined.

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Subject: 89-1671 -- OPINION, COLUMBIA v. OMNI OUTDOOR ADVERTISING, INC.

SUPREME COURT OF THE UNITED STATES

No. 89-1671

CITY OF COLUMBIA and COLUMBIA OUTDOOR ADVERTISING, INC., PETITIONERS v. OMNI OUTDOOR ADVERTISING, INC.

on writ of certiorari to the united states court of appeals for the fourth circuit

[April 1, 1991]

Justice Scalia delivered the opinion of the Court.

This case requires us to clarify the application of the Sherman Act to municipal governments and to the citizens who seek action from them.

I

Petitioner Columbia Outdoor Advertising, Inc. (COA), a South Carolina corporation, entered the billboard business in the city of Columbia, South Carolina (also a petitioner here), in the 1940's. By 1981 it controlled more than 95% of what has been conceded to be the relevant market. COA was a local business owned by a family with deep roots in the community, and enjoyed close relations with the city's political leaders. The mayor and other members of the city council were personal friends of COA's majority owner, and the company and its officers occasionally contributed funds and free billboard space to their campaigns. According to respondent, these beneficences were part of a "longstanding" "secret anticompetitive agreement" whereby "the City and COA would each use their [sic] respective power and resources to protect . . . COA's monopoly position," in return for which "City Council members received advantages made possible by COA's monopoly." Brief for Respondent 12, 16.

In 1981, respondent Omni Outdoor Advertising, Inc., a Georgia corporation, began erecting billboards in and around the city. COA responded to this competition in several ways. First, it redoubled its own billboard construction efforts and modernized its existing stock. Second-- according to Omni -- it took a number of anticompetitive private actions, such as offering artificially low rates, spreading untrue and malicious rumors about Omni, and attempting to induce Omni's customers to break their contracts. Finally (and this is what gives rise to the issue we address today), COA executives met with city officials to seek the enactment of zoning ordinances that would restrict billboard construction. COA was not alone in urging this course; a number of citizens concerned about the city's recent explosion of billboards advocated restrictions, including writers of articles and editorials in local newspapers.

/* One of the reasons that the Court does not choose to interfere in the governmental arena, since there are diverse political reasons that such decisions are taken. If politics, within normal bounds, works to help a particular party, then so be it. */

In the spring of 1982, the city council passed an ordinance requiring the council's approval for every billboard constructed in downtown Columbia. This was later amended to impose a 180-day moratorium on the construction of billboards throughout the city, except as specifically authorized by the council. A state court invalidated this ordinance on the ground that its conferral of unconstrained discretion upon the city council violated both the South Carolina and Federal Constitutions. The city then requested the State's regional planning authority to conduct a comprehensive analysis of the local billboard situation as a basis for developing a final, constitutionally valid,

ordinance. In September 1982, after a series of public hearings and numerous meetings involving city officials, Omni, and COA (in all of which, according to Omni, positions contrary to COA's were not genuinely considered), the city council passed a new ordinance resticting the size, location, and spacing of billboards. These restrictions, particularly those on spacing, obviously benefited COA, which already had its billboards in place; they severely hindered Omni's ability to compete.

In November 1982, Omni filed suit against COA and the city in Federal District Court, charging that they had violated 15 1 and 2 of the Sherman Act, 26 Stat. 209, as amended, 15 U. S. C. 15 1, 2, {1} as well as South Carolina's Unfair Trade Practices Act, S.
/* The convention of {} refers to footnotes. */

C. Code MDRV 39-5-140 (1976). Omni contended, in particular, that the city's billboard ordinances were the result of an anticompetitive conspiracy between city officials and COA that stripped both parties of any immunity they might otherwise enjoy from the federal antitrust laws. In January 1986, after more than two weeks of trial, a jury returned general verdicts against the city and COA on both the federal and state claims. It awarded damages, before trebling, of $600,000 on the MDRV 1 Sherman Act claim, and $400,000 on the MDRV 2 claim. {2} The jury also answered two special interrogatories, finding specifically that the city and COA had conspired both to restrain trade and to monopolize the market. Petitioners moved for judgment notwithstanding the verdict, contending among other things that their activities were outside the scope of the federal antitrust laws. In November 1988, the District Court granted the motion.

A divided panel of the United States Court of Appeals for the Fourth Circuit reversed the judgment of the District Court and reinstated the jury verdict on all counts. 891 F. 2d 1127 (1989). We granted certiorari, 496 U.S. --- (1990).

II

In the landmark case of Parker v. Brown, 317 U. S. 341 (1943), we rejected the contention that a program restricting the marketing of privately produced raisins, adopted pursuant to California's Agricultural Prorate Act, violated the Sherman Act. Relying on principles of federalism and state sovereignty, we held that the Sherman Act did not apply to anticompetitive restraints imposed by the States "as an act of government." 317 U. S., at 352.

Since Parker emphasized the role of sovereign States in a federal system, it was initially unclear whether the governmental actions of political subdivisions enjoyed similar protection. In recent years, we have held that Parker immunity does not apply directly to local governments, see Hallie v. Eau Claire, 471 U. S. 34, 38 (1985); Community Communications Co. v. Boulder, 455 U. S. 40, 50-51 (1982); Lafayette v. Louisiana Power & Light Co., 435 U. S. 389, 412-413 (1978) (plurality opinion). We have recognized, however, that a municipality's restriction of competition may sometimes be an authorized implementation of state policy, and have accorded Parker immunity where that is the case. The South Carolina statutes under which the city acted in the present case authorize municipalities to regulate the use of land and the construction of buildings and other structures within their boundaries. {3} It is undisputed that, as a matter of state law, these statutes authorize the city to regulate the size, location, and spacing of billboards. It could be argued, however, that a municipality acts beyond its delegated authority, for Parker purposes, whenever the nature of its regulation is substantively or even procedurally defective. On such an analysis it could be contended, for example, that the city's regulation in the present case was not "authorized" by S. C. Code MDRV 5-23-10 (1976), see n. 3, supra, if it was not, as that statute requires, adopted "for the purpose of promoting health, safety, morals or the general welfare of the community." As scholarly commentary has noted, such an expansive interpretation of the Parker-defense authorization requirement would have unacceptable consequences.

"To be sure, state law `authorizes' only agency decisions that are substantively and procedurally correct. Errors of fact, law, or judgment by the agency are not `authorized.' Erroneous acts or decisions are subject to reversal by superior tribunals because unauthorized. If the antitrust court demands unqualified `authority' in this sense, it inevitably becomes the standard reviewer not only of federal agency activity but also of state and local activity whenever it is alleged that the governmental body, though possessing the power to engage in the challenged conduct, has actually exercised its power in a manner not authorized by state law. We should not lightly assume that Lafayette's authorization requirement dictates transformation of state administrative review into a federal antitrust job. Yet that would be the consequence of making antitrust liability depend on an undiscriminating and mechanical demand for `authority' in the full administrative law sense." P. Areeda & H.Hovenkamp, Antitrust Law MDRV 212.3b, p. 145 (Supp. 1989).

/* Layman may be surprised to find out that Courts will often rule in particular ways to avoid work in the future. The point which the Court is making here is that if the opinion is allowed to stand, then each time a city passes a law with economic affect, the federal courts would be used as an "appeal." */

We agree with that assessment, and believe that in order to prevent Parker from undermining the very interests of federalism it is designed to protect, it is necessary to adopt a concept of authority broader than what is applied to determine the legality of the municipality's action under state law. We have adopted an approach that is similar in principle, though not necessarily in precise application, elsewhere. See Stump v. Sparkman, 435 U. S. 349 (1978). It suffices for the present to conclude that here no more is needed to establish, for Parker purposes, the city's authority to regulate than its unquestioned zoning power over the size, location, and spacing of billboards.

Besides authority to regulate, however, the Parker defense also requires authority to suppress competition -- more specifically, "clear articulation of a state policy to authorize anticompetitive conduct" by the municipality in connection with its regulation. Hallie, 471 U. S., at 40 (internal quotation omitted). We have rejected the contention that this requirement can be met only if the delegating statute explicitly permits the displacement of competition, see id., at 41-42. It is enough, we have held, if suppression of competition is the "foreseeable result" of what the statute authorizes, id., at 42. That condition is amply met here. The very purpose of zoning regulation is to displace unfettered business freedom in a manner that regularly has the effect of preventing normal acts of competition, particularly on the part of new entrants. A municipal ordinance restricting the size, location, and spacing of billboards (surely a common form of zoning) necessarily protects existing billboards against some competition from newcomers. {4}

The Court of Appeals was therefore correct in its conclusion that the city's restriction of billboard construction was prima facie entitled to Parker immunity. The Court of Appeals upheld the jury verdict, however, by invoking a "conspiracy" exception to Parker that has been recognized by several Courts of Appeals. See, e. g., Whitworth v. Perkins, 559 F. 2d 378 (CA5 1977), vacated, 435 U. S. 992, aff'd on rehearing, 576 F. 2d 696 (1978), cert. denied, 440 U. S. 911 (1979). That exception is thought to be supported by two of our statements in Parker: "[W]e have no question of the state or its municipality becoming a participant in a private agreement or combination by others for restraint of trade, cf. Union Pacific R. Co. v. United States, 313 U. S. 450." Parker, 317 U. S., at 351-352 (emphasis added). "The state in adopting and enforcing the prorate program made no contract or agreement and entered into no conspiracy in restraint of trade or to establish monopoly but, as sovereign, imposed the restraint as an act of government which the Sherman Act did not undertake to prohibit." Id., at 352 (emphasis added). Parker does not apply, according to the Fourth Circuit, "where politicians or political entities are involved as conspirators" with private actors in the restraint of trade. 891 F. 2d, at 1134.

There is no such conspiracy exception. The rationale of Parker was that, in light of our national commitment to federalism, the general language of the Sherman Act should not be interpreted to prohibit anticompetitive actions by the States in their governmental capacities as sovereign regulators. The sentences from the opinion quoted above simply clarify that this immunity does not necessarily obtain where the State acts not in a regulatory capacity but as a commercial participant in a given market. That is evident from the citation of Union Pacific R. Co. v. United States, 313 U. S. 450 (1941), which held unlawful under the Elkins Act certain rebates and concessions made by Kansas City, Kansas, in its capacity as the owner and operator of a wholesale produce market that was integrated with railroad facilities. These sentences should not be read to suggest the general proposition that even governmental regulatory action may be deemed private -- and therefore subject to antitrust liability -- when it is taken pursuant to a conspiracy with private parties. The impracticality of such a principle is evident if, for purposes of the exception, "conspiracy" means nothing more than an agreement to impose the regulation in question. Since it is both inevitable and desirable that public officials often agree to do what one or another group of private citizens urges upon them, such an exception would virtually swallow up the Parker rule: All anticompetitive regulation would be vulnerable to a "conspiracy" charge. See Areeda & Hovenkamp, supra, MDRV 203.3b, at 34, and n. 1; Elhauge, The Scope of Antitrust Process, 104 Harv. L. Rev. 667, 704-705 (1991). {5}

Omni suggests, however, that "conspiracy" might be limited to instances of governmental "corruption," defined variously as "abandonment of public responsibilities to private interests," Brief for Respondent 42, "corrupt or bad faith decisions," id., at 44, and "selfish or corrupt motives," ibid. Ultimately, Omni asks us not to define "corruption" at all, but simply to leave that task to the jury: "[a]t bottom, however, it was within the jury's province to determine what constituted corruption of the governmental process in their community." Id., at 43. Omni's amicus eschews this emphasis on "corruption," instead urging us to define the conspiracy exception as encompassing any governmental act "not in the public interest." Brief for Associated Builders and Contractors, Inc. as Amicus Curiae 5.

A conspiracy exception narrowed along such vague lines is similarly impractical. Few governmental actions are immune from the charge that they are "not in the public interest" or in some sense "corrupt." The California marketing scheme at issue in Parker itself, for example, can readily be viewed as the result of a "conspiracy" to put the "private" interest of the State's raisin growers above the "public" interest of the State's consumers. The fact is that virtually all regulation benefits some segments of the society and harms others; and that it is not universally considered contrary to the public good if the net economic loss to the losers exceeds the net economic gain to the winners. Parker was not written in ignorance of the reality that determination of "the public interest" in the manifold areas of government regulation entails not merely economic and mathematical analysis but value judgment, and it was not meant to shift that judgment from elected officials to judges and juries. If the city of Columbia's decision to regulate what one local newspaper called "billboard jungles," Columbia Record, May 21, 1982, p. 14-A, col. 1; App. in No. 88-1388 (CA4), p. 3743, is made subject to ex post facto judicial assessment of "the public interest," with personal liability of city officials a possible consequence, we will have gone far to "compromise the States' ability to regulate their domestic commerce," Southern Motor Carriers Rate Conference, Inc. v. United States, 471 U. S. 48, 56 (1985). The situation would not be better, but arguably even worse, if the courts were to apply a subjective test: not whether the action was in the public interest, but whether the officials involved thought it to be so. This would require the sort of deconstruction of the governmental process and probing of the official "intent" that we have consistently sought to avoid. {6} "[W]here the action complained of . . . was that of the State itself, the action is exempt from antitrust liability regardless of the State's motives in taking the action." Hoover v. Ronwin, 466 U. S. 558, 579-580 (1984). See also Llewellyn v. Crothers, 765 F. 2d 769, 774 (CA9 1985) (Kennedy, J.).

The foregoing approach to establishing a "conspiracy" exception at least seeks (however impractically) to draw the line of impermissible action in a manner relevant to the purposes of the Sherman Act and of Parker: prohibiting the

restriction of competition for private gain but permitting the restriction of competition in the public interest. Another approach is possible, which has the virtue of practicality but the vice of being unrelated to those purposes. That is the approach which would consider Parker inapplicable only if, in connection with the governmental action in question, bribery or some other violation of state or federal law has been established. Such unlawful activity has no necessary relationship to whether the governmental action is in the public interest. A mayor is guilty of accepting a bribe even if he would and should have taken, in the public interest, the same action for which the bribe was paid. (That is frequently the defense asserted to a criminal bribery charge -- and though it is never valid in law, see, e. g., United States v. Jannotti, 673 F. 2d 578, 601 (CA3) (en banc), cert. denied, 457 U. S. 1106 (1982), it is often plausible in fact.) When, moreover, the regulatory body is not a single individual but a state legislature or city council, there is even less reason to believe that violation of the law (by bribing a minority of the decisionmakers) establishes that the regulation has no valid public purpose. Cf. Fletcher v. Peck, 6 Cranch 87, 130 (1810). To use unlawful political influence as the test of legality of state regulation undoubtedly vindicates (in a rather blunt way) principles of good government. But the statute we are construing is not directed to that end. Congress has passed other laws aimed at combatting corruption in state and local governments. See, e. g., 18 U. S. C. MDRV 1951 (Hobbs Act). "Insofar as [the Sherman Act] sets up a code of ethics at all, it is a code that condemns trade restraints, not political activity." Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U. S. 127, 140 (1961).

For these reasons, we reaffirm our rejection of any interpretation of the Sherman Act that would allow plaintiffs to look behind the actions of state sovereigns to base their claims on "perceived conspiracies to restrain trade," Hoover, 466 U. S., at 580. We reiterate that, with the possible market participant exception, any action that qualifies as state action is "ipso facto . . . exempt from the operation of the antitrust laws," id., at 568. This does not mean, of course, that the States may exempt private action from the scope of the Sherman Act; we in no way qualify the well established principle that "a state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful." Parker, 317 U. S., at 351 (citing Northern Securities Co. v. United States, 193 U. S. 197, 332, 344-347 (1904)). See also Schwegmann Brothers v. Calvert Distillers Corp., 341 U. S. 384 (1951).

III

While Parker recognized the States' freedom to engage in anticompetitive regulation, it did not purport to immunize from antitrust liability the private parties who urge them to engage in anticompetitive regulation. However, it is obviously peculiar in a democracy, and perhaps in derogation of the constitutional right "to petition the Government for a redress of grievances," U. S. Const., Amdt. 1, to establish a category of lawful state action that citizens are not permitted to urge. Thus, beginning with Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., supra, we have developed a corollary to Parker: the federal antitrust laws also do not regulate the conduct of private individuals in seeking anticompetitive action from the government. This doctrine, like Parker, rests ultimately upon a recognition that the antitrust laws, "tailored as they are for the business world, are not at all appropriate for application in the political arena." Noerr, supra, at 141. That a private party's political motives are selfish is irrelevant: "Noerr shields from the Sherman Act a concerted effort to influence public officials regardless of intent or purpose." United Mine Workers of America v. Pennington, 381 U. S. 657, 670 (1965).

/* All's fair in love and war and getting favorable state legislation. */

Noerr recognized, however, what has come to be known as the "sham" exception to its rule: "There may be situations in which a publicity campaign, ostensibly directed toward influencing governmental action, is a mere sham to cover what is actually nothing more than an attempt to interfere directly with the business relationships of a competitor and the application of the Sherman Act would be justified." 365 U. S., at 144. The Court of Appeals concluded that the

jury in this case could have found that COA's activities on behalf of the restrictive billboard ordinances fell within this exception. In our view that was error.

The "sham" exception to Noerr encompasses situations in which persons use the governmental process -- as opposed to the outcome of that process -- as an anticompetitive weapon. A classic example is the filing of frivolous objections to the license application of a competitor, with no expectation of achieving denial of the license but simply in order to impose expense and delay. See California Motor Transport Co. v. Trucking Unlimited, 404 U. S. 508 (1972). A "sham" situation involves a defendant whose activities are "not genuinely aimed at procuring favorable government action" at all, Allied Tube & Conduit Corp. v. Indian Head, Inc., 486 U. S. 492, 500, n. 4 (1988), not one "who `genuinely seeks to achieve his governmental result, but does so through improper means,' " id., at 508, n. 10 (quoting Sessions Tank Liners, Inc. v. Joor Mfg., Inc., 827 F. 2d 458, 465, n. 5 (CA9 1987)).

Neither of the Court of Appeals' theories for application of the "sham" exception to the facts of the present case is sound. The court reasoned, first, that the jury could have concluded that COA's interaction with city officials "was `actually nothing more than an attempt to interfere directly with the business relations [sic] of a competitor.' " 891 F. 2d, at 1139 (quoting Noerr, supra, at 144). This analysis relies upon language from Noerr, but ignores the import of the critical word "directly." Although COA indisputably set out to disrupt Omni's business relationships, it sought to do so not through the very process of lobbying, or of causing the city council to consider zoning measures, but rather through the ultimate product of that lobbying and consideration, viz., the zoning ordinances. The Court of Appeals' second theory was that the jury could have found "that COA's purposes were to delay Omni's entry into the market and even to deny it a meaningful access to the appropriate city administrative and legislative fora." 891 F. 2d, at 1139. But the purpose of delaying a competitor's entry into the market does not render lobbying activity a "sham," unless (as no evidence suggested was true here) the delay is sought to be achieved only by the lobbying process itself, and not by the governmental action that the lobbying seeks. "If Noerr teaches anything it is that an intent to restrain trade as a result of government action sought . . . does not foreclose protection." Sullivan, Developments in the Noerr Doctrine, 56 Antitrust L. J. 361, 362 (1987). As for "deny[ing] . . . meaningful access to the appropriate city administrative and legislative fora," that may render the manner of lobbying improper or even unlawful, but does not necessarily render it a "sham." We did hold in California Motor Transport, supra, that a conspiracy among private parties to monopolize trade by excluding a competitor from participation in the regulatory process did not enjoy Noerr protection. But California Motor Transport involved a context in which the conspirators' participation in the governmental process was itself claimed to be a "sham," employed as a means of imposing cost and delay. ("It is alleged that petitioners `instituted the proceedings and actions . . . with or without probable cause, and regardless of the merits of the cases.' " 404 U. S., at 512.) The holding of the case is limited to that situation. To extend it to a context in which the regulatory process is being invoked genuinely, and not in a "sham" fashion, would produce precisely that conversion of antitrust law into regulation of the political process that we have sought to avoid. Any lobbyist or applicant, in addition to getting himself heard, seeks by procedural and other means to get his opponent ignored. Policing the legitimate boundaries of such defensive strategies, when they are conducted in the context of a genuine attempt to influence governmental action, is not the role of the Sherman Act. In the present case, of course, any denial to Omni of "meaningful access to the appropriate city administrative and legislative fora" was achieved by COA in the course of an attempt to influence governmental action that, far from being a "sham," was if anything more in earnest than it should have been. If the denial was wrongful there may be other remedies, but as for the Sherman Act, the Noerr exemption applies.

Omni urges that if, as we have concluded, the "sham" exception is inapplicable, we should use this case to recognize another exception to Noerr immunity -- a "conspiracy" exception, which would apply when government officials conspire with a private party to employ government action as a means of stifling competition. We have left open the possibility of such an exception, see, e. g., Allied Tube, supra, at 502, n. 7, as have a number of Courts of Appeals.

See, e. g., Oberndorf v. Denver, 900 F. 2d 1434, 1440 (CA10 1990); First American Title Co. of South Dakota v. South Dakota Land Title Assn., 714 F. 2d 1439, 1446, n. 6 (CA8 1983), cert. denied, 464 U. S. 1042 (1984). At least one Court of Appeals has affirmed the existence of such an exception in dicta, see Duke & Co. v. Foerster, 521 F. 2d 1277, 1282 (CA3 1975), and the Fifth Circuit has adopted it as holding, see Affiliated Capital Corp. v. Houston, 735 F. 2d 1555, 1566-1568 (1984) (en banc).

Giving full consideration to this matter for the first time, we conclude that a "conspiracy" exception to Noerr must be rejected. We need not describe our reasons at length, since they are largely the same as those set forth in Part II above for rejecting a "conspiracy" exception to Parker. As we have described, Parker and Noerr are complementary expressions of the principle that the antitrust laws regulate business, not politics; the former decision protects the States' acts of governing, and the latter the citizens' participation in government. Insofar as the identification of an immunitydestroying "conspiracy" is concerned, Parker and Noerr generally present two faces of the same coin. The Noerr-invalidating conspiracy alleged here is just the Parker-invalidating conspiracy viewed from the standpoint of the private-sector participants rather than the governmental participants. The same factors which, as we have described above, make it impracticable or beyond the purpose of the antitrust laws to identify and invalidate lawmaking that has been infected by selfishly motivated agreement with private interests likewise make it impracticable or beyond that scope to identify and invalidate lobbying that has produced selfishly motivated agreement with public officials. "It would be unlikely that any effort to influence legislative action could succeed unless one or more members of the legislative body became . . . `coconspirators' " in some sense with the private party urging such action, Metro Cable Co. v. CATV of Rockford, Inc., 516 F. 2d 220, 230 (CA7 1975). And if the invalidating "conspiracy" is limited to one that involves some element of unlawfulness (beyond mere anticompetitive motivation), the invalidation would have nothing to do with the policies of the antitrust laws. In Noerr itself, where the private party "deliberately deceived the public and public officials" in its successful lobbying campaign, we said that "deception, reprehensible as it is, can be of no consequence so far as the Sherman Act is concerned." 365 U. S., at 145.

/* Again a recognition of the problem of ascertaining the truth or falsity of public policy justifications for actions. */

IV

Under Parker and Noerr, therefore, both the city and COA are entitled to immunity from the federal antitrust laws for their activities relating to enactment of the ordinances. This determination does not entirely resolve the dispute before us, since other activities are at issue in the case with respect to COA. Omni asserts that COA engaged in private anticompetitive actions such as trade libel, the setting of artificially low rates, and inducement to breach of contract. Thus, although the jury's general verdict against COA cannot be permitted to stand (since it was based on instructions that erroneously permitted liability for seeking the ordinances, see Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co., 370 U. S. 19, 29-30 (1962)) if the evidence was sufficient to sustain a verdict on the basis of these other actions alone, and if this theory of liability has been properly preserved, Omni would be entitled to a new trial.

There also remains to be considered the effect of our judgment upon Omni's claim against COA under the South Carolina Unfair Trade Practices Act. The District Court granted judgment notwithstanding the verdict on this claim as well as the Sherman Act claims; the Court of Appeals reversed on the ground that "a finding of conspiracy to restrain competition is tantamount to a finding" that the South Carolina law had been violated, 891 F.2d, at 1143. Given our reversal of the "conspiracy" holding, that reasoning is no longer applicable.

We leave these remaining questions for determination by the Court of Appeals on remand. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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Note 1:

Section 1 provides in pertinent part: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." 15 U. S. C. MDRV 1.

Section 2 provides in pertinent part: "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony." 15 U. S. C. MDRV 2.

Note 2:

The monetary damages in this case were assessed entirely against COA, the District Court having ruled that the city was immunized by the Local Government Antitrust Act of 1984, 98 Stat. 2750, as amended, 15 U. S. C. 15 34-36, which exempts local governments from paying damages for violations of the federal antitrust laws. Although enacted in 1984, after the events at issue in this case, the Act specifically provides that it may be applied retroactively if "the defendant establishes and the court determines, in light of all the circumstances . . . that it would be inequitable not to apply this subsection to a pending case." 15 U. S. C. MDRV 35(b). The District Court determined that it would be, and the Court of Appeals refused to disturb that judgment. Respondent has not challenged that determination in this Court, and we express no view on the matter.

Note 3:

S.C. Code MDRV 5-23-10 (1976) ("Building and zoning regulations authorized") provides that "[f]or the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns may by ordinance regulate and restrict the height, number of stories and size of buildings and other structures."

S.C. Code MDRV 5-23-20 (1976) ("Division of municipality into districts") provides that "[f]or any or all of such purposes the local legislative body may divide the municipality into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this article. Within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land."

S.C. Code MDRV 6-7-710 (1976) ("Grant of power for zoning") provides that "[f]or the purposes of guiding development in accordance with existing and future needs and in order to protect, promote and improve the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare, the governing authorities of municipalities and counties may, in accordance with the conditions and procedures specified in this chapter, regulate the location, height, bulk, number of stories and size of buildings and other structures. . . . The regulations shall . . . be designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers, to promote the public health and the general welfare, to provide adequate light and air; to prevent the overcrowding of land; to avoid

undue concentration of population; to protect scenic areas; to facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements."

Note 4:

The dissent contends that, in order successfully to delegate its Parker immunity to a municipality, a State must expressly authorize the municipality to engage (1) in specifically "economic regulation," post, at 4, (2) of a specific industry, post at 7. These dual specificities are without support in our precedents, for the good reason that they defy rational implementation.

If, by authority to engage in specifically "economic" regulation, the dissent means authority specifically to regulate competition, we squarely rejected that in Hallie, as discussed in text. Seemingly, however, the dissent means only that the State authorization must specify that sort of regulation whereunder "decisions about prices and output are not made by individual firms, but rather by a public body." Post, at 4. But why is not the restriction of billboards in a city a restriction on the "output" of the local billboard industry? It assuredly is -- and that is indeed the very gravamen of Omni's complaint. It seems to us that the dissent's concession that "it is often difficult to differentiate economic regulation from municipal regulation of health, safety, and welfare," post, at 9, is a gross understatement. Loose talk about a "regulated industry" may suffice for what the dissent calls "antitrust parlance," post, at 4, but it is not a definition upon which the criminal liability of public officials ought to depend.

Under the dissent's second requirement for a valid delegation of Parker immunity -- that the authorization to regulate pertain to a specific industry -- the problem with the South Carolina statute is that it used the generic term "structures," instead of conferring its regulatory authority industry-by-industry (presumably "billboards," "movie houses," "mobile homes," "TV antennas," and every other conceivable object of zoning regulation that can be the subject of a relevant "market" for purposes of antitrust analysis). To describe this is to refute it. Our precedents not only fail to suggest but positively reject such an approach. "The municipality need not `be able to point to a specific, detailed legislative authorization' in order to assert a successful Parker defense to an antitrust suit." Hallie, 471 U. S., at 39 (quoting Lafayette, 435 U. S., at 415).

Note 5:

The dissent is confident that a jury composed of citizens of the vicinage will be able to tell the difference between "independent municipal action and action taken for the sole purpose of carrying out an anticompetitive agreement for the private party." Post, at 12. No doubt. But those are merely the polar extremes, which like the geographic poles will rarely be seen by jurors of the vicinage. Ordinarily the allegation will merely be (and the dissent says this is enough) that the municipal action was not prompted "exclusively by a concern for the general public interest," post, at 3 (emphasis added).