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## TATTOOING IS EXPRESSIVE SPEECH PROTECTED BY THE FIRST AMENDMENT

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Coleman v. City of Mesa  
(Ariz. Supreme Court, September 7, 2012)

Authored by the [JSH Appellate Team](#)

Plaintiffs wanted to open a tattoo parlor in the City of Mesa. The Mesa City Code requires tattoo parlors to obtain a Council Use Permit to operate in the city. Mesa City Council denied Plaintiffs' request because the proposed use was "not appropriate for the location or in the best interest of the neighborhood." Plaintiffs sued the City for First Amendment, due process, and equal protection violations. The trial court dismissed the suit, reasoning that the Council's decision "was a reasonable and rational regulation of land use."

The Arizona Supreme Court reversed, holding that Plaintiffs' complaint stated a claim. The court rejected the City's argument that in denying the permit it was merely applying a general zoning law that incidentally affected speech-related activities. The ordinance effectively prohibited certain uses— including tattoo parlors—unless the Council issued a permit, which was entirely discretionary. And tattooing, including the business of tattooing, is a purely expressive activity protected by the federal and Arizona constitutions. While there is a split of authority on this issue, the court adopted the Ninth Circuit's approach in *Anderson v. City of Hermosa Beach*, 621 F.3d 1051 (9th Cir. 2010).

Given the foregoing, Plaintiffs' complaint sufficiently stated a claim. They alleged that the City's approval criteria did not sufficiently guide or limit the Council's discretion, and that the City's denial was arbitrary and without any legitimate government purpose. Other tattoo parlors had been allowed to operate in Mesa, but the Council denied Plaintiffs' request based on "perceptions, stereotypes and prejudice" rather than any facts that Plaintiffs' business would harm the community. The court did not comment on the merits of Plaintiffs' claim – i.e., whether Mesa's ordinance, the permit process, or the City's refusal of Plaintiffs' permit were in fact reasonable or survived constitutional scrutiny.