

SIGN REGULATION

AFTER SCOTUS DECISION IN
REED V. TOWN OF GILBERT

OVERVIEW OF PRESENTATION

- **Explanation of facts and background in *Reed***
- **The Supreme Court's decision and rationale**
- **Effect of the *Reed* decision and changes the City has made to the City sign code.**
- **Questions**

REED V. TOWN OF GILBERT

EXPLANATION OF FACTS AND BACKGROUND

The Parties

- **Plaintiffs** were a small “homeless” church, its pastor, and its members
 - They used temporary directional signs to guide people to their services
- **The Defendant** was the town of Gilbert, Arizona, a suburb of Phoenix with a population exceeding 200,000 people

REED V. TOWN OF GILBERT

EXPLANATION OF FACTS AND BACKGROUND

“Qualifying event” signs posted by the Plaintiff church



Candidates’ “political” signs



Maximum sign sizes in Town of Gilbert

Homeowners Assn signs (80 sq. ft.)

Political signs 32 sq. ft.
(nonresidential) 16 ft
(residential) areas.

Ideological signs (20 sq. ft.)

Qualifying Event signs (6. sq. ft.)

Maximum Period of Time Signs Could be Displayed in Town of Gilbert

- **Nonpolitical, non-ideological, non-commercial “qualifying event” signs** (such as the signs being used by the plaintiff church):
 - Allowed up to 12 hours before and one hour after the event
- **Political temporary signs:**
 - Allowed up to 60 days before and 15 days after elections

Reed v. Town of Gilbert: The Court's Decision

Although all nine justices ruled in the Church's favor, not all agreed on the rationale for that result.

Majority opinion (Written by Justice Clarence Thomas)

The majority held that the town's sign ordinance and the restrictions on signs therein were subject to **strict scrutiny** because they were content-based restrictions, or restrictions that were applied differently depending on the content of the sign's message.

Strict scrutiny requires the public agency with the challenged regulation to demonstrate that the regulation is **necessary to achieve a "compelling state interest"** and that the regulation is **"narrowly tailored"** to achieve the compelling interest. This case was the first in which strict scrutiny was applied in a case challenging a city/town sign ordinance. Strict scrutiny is a very difficult standard for public agencies to meet when defending their code/regulation. The result is that the challenged regulation is **often struck down as unconstitutional**.

In the Reed case, the majority held that the Town of Gilbert's **sign ordinance restrictions could not survive strict scrutiny** because the town had no compelling government interest in requiring the church's temporary event signs to be removed each day after a church service.



MAJORITY OPINION HIGHLIGHTS:

“Government regulation of speech is content based if a law **applies to particular speech because of the topic discussed or the idea or message** expressed.”

Even a purely directional message, which merely gives “the time and location of a specific event,” is one that “**conveys an idea about a specific event.**”

If a sign regulation is content-based, it is subject to strict scrutiny review regardless of the public agency’s purpose for the regulation.



THE CONCURRENCE OF JUSTICE ALITO

“I join the opinion of the Court but add a few words of further explanation.”

Justices Kennedy and Sotomayor joined in Alito’s concurrence

“I will not attempt to provide anything like a comprehensive list, **but here are some rules that would not be content-based**” (i.e. would be permissible sign regulations)



THE CONCURRENCE OF JUSTICE ALITO

Examples of permissible regulations provided by Alito include:

- Regulations concerning the size of signage not based on content,
- Regulations concerning the locations in which signs may be placed (i.e. freestanding vs. attached to buildings),
- Lighted vs unlighted signs,
- Fixed messages vs. changing electronic messages,
- Signs on private vs. public property,
- Signs on residential vs. commercial property,
- The number of signs per mile of roadway.

Implications for City Sign Code After *Reed*

- After the Court's decision in *Reed*, a municipal sign code is more likely to be deemed unconstitutional if its regulations treat signs differently based on their content. For this reason, any revisions to the City or Municipal Sign Code Should:
 - **Minimize the number of exceptions to permitting requirements.** (i.e. requiring permits in right of way for political signs but not requiring permits for special events).
 - **Avoid exceptions in the prohibited sign list** (i.e. prohibiting lighted signs except where the sign is for a once a year night time event).
 - **Consider *both* deregulation of some categories of signage, AND a flat ban on categories of signage**
 - A content neutral sign code does not necessarily mean a more permissive sign code. (i.e. a content neutral code provision could prohibit any signs in the right of way as opposed to allowing all signs in the right of way).

“Purpose” Language in City Sign Code

- 10 To regulate signs in a manner consistent with the General Plan; and,
11. To regulate signs in a manner consistent with the free speech rights guaranteed by the First Amendment to the United States Constitution and the liberty of speech and related provisions of the California Constitution.

“Purpose” language stating that the City’s intention is to regulate signage in a constitutional manner and in a manner consistent with the First Amendment should remain.

requirements of other bodies of law.

C. *Message Neutrality.* It is the City's policy to regulate signs in a constitutional manner, which is content neutral as to noncommercial signs and viewpoint neutral as to commercial signs.

D. *Message Substitution Policy.* Subject to the landowner's consent, any noncommercial message

Signs in the Right of Way

- F. *Signs on the Public Right-of-Way.* Signs on the public right-of-way, except where required by a governmental agency, shall require an encroachment permit ~~and are limited to political or other noncommercial messages~~. The encroachment permit shall be on a form as provided by the City with information as deemed fit by the City Manager or designee to review compliance with section. A maximum of six encroachments per calendar year are permitted per applicant, organization, or candidate. The maximum time limit for signs to be on display is 30 days.
1. Signs that are 24" × 18" or 432 square inches and under have the following requirements:
 - a. Maximum number of signs: 50.
 - b. Maximum size: 24" × 18" or 432 square inches.
 - c. Placement requirements: Signs shall be placed a minimum of ~~one foot from edge of sidewalk~~ five feet from edge of curb or street pavement if no curb exists and shall not obstruct pedestrian traffic ~~or line of sight for vehicle traffic~~ and a minimum of five feet from edge of curb or street pavement if no curb exists; No signs shall be placed in lawn areas, parks, medians, civic center, CRC, or other government buildings; signs shall not be attached to fences, traffic control posts, utility poles, or bus shelters; Signs shall be limited to one sign per block of street in each direction of travel in developed areas and limited to one sign per one-quarter mile spacing in each direction of travel for undeveloped areas.
 2. Signs that are over 24" × 18" or 432 square inches have the following requirements:
 - a. Maximum number of signs: 8.
 - b. Maximum size: 48" × 48".
 - c. Placement requirements: Signs shall be placed a minimum of five feet from edge of curb or street pavement if no curb exists ~~of one foot from edge of sidewalk~~ and shall not obstruct pedestrian traffic ~~or line of site for vehicle traffic~~ and a minimum of five feet from edge of curb or street pavement if no curb exists; No signs shall be placed in lawn areas, parks, medians, civic center, CRC, or other government buildings; signs shall not be attached to fences, traffic control posts, utility poles, or bus shelters; Signs shall be limited to one sign per block of street in each direction of travel.
 - d. Applicant shall submit insurance naming the City as additionally insured in an amount as required by the City Manager.
 - e. These limits on size, number and total area (but not height or placement) may be doubled during the time period which commences 45 days before and ends ten days after any general or special election.

Sign Regulations Based on Content Notwithstanding *Reed* Decision

- If the City truly wants to regulate a sign based on content, the regulation must pass strict scrutiny; there must be a record establishing that compelling governmental interests justify the regulation and that the regulation is narrowly tailored to achieve the compelling interest. (i.e. legitimate traffic safety based sign regulations). We do not recommend that the City attempt to regulate sign content on non-commercial signs.
- Before a proposed sign regulation is enacted, it is good practice to ensure that it is constitutionally sound and will withstand attack, which is most likely to occur when the city seeks to enforce the regulation.

QUESTIONS?