

SIGN REGULATIONS AFTER *REED*

Presented by

Barbara J. Saint Andre

Kopelman and Paige, P.C.

REED v. TOWN OF GILBERT

U.S. Supreme Court unanimous decision to invalidate certain provisions of Town of Gilbert, Arizona sign code.

135 S. Ct. 2218 (2015)

Although the decision was unanimous, some of the justices concurred in portions of the opinion

BACKGROUND

- First Amendment to U.S. Constitution provides that the government “shall make no law...abridging the freedom of speech”
- Written speech, including signs, are protected by the First Amendment
- Sign by-laws and ordinances must always be carefully drafted to comply with this constitutional mandate.

FACTS

- Sign code identified a number of categories of signs, including “ideological signs”, “political signs”, and “temporary directional signs”
- The Good News Community Church did not have a permanent location, and used temporary directional signs each weekend to advertise the time and location of services
- The sign code limited the duration of temporary directional signs to 12 hours before and one hour after the event
- After the church was unable to reach an accommodation on the temporary directional signs, the church and pastor challenged the sign code

CONTENT NEUTRAL

- Supreme Court ruled that the sign code provisions were not content neutral
- That is, one must read the content of the sign to determine what category it fits into under the regulations, and there are differing regulations based upon the content
- The level of scrutiny if regulation is not content-neutral is narrowly tailored to serve a compelling state interest
- The fact that the regulation does not discriminate based on the message or has benign motives is not relevant
- The “strict scrutiny” standard of review for content based regulations is extremely difficult to comply with

GOVERNMENT INTERESTS

- Gilbert stated that the regulations were justified by traffic safety and aesthetic concerns
- These are legitimate state interests, but they are not a compelling state interest, which is needed to justify a content-based restriction on free speech
- Town could not show that strict limits on temporary direction signs was necessary to beautify the town where other types of signs were allowed
- Similarly, traffic concerns posed by the temporary signs were no greater than other signs

OTHER CONSIDERATIONS

- In some of the concurring opinions, justices expressed concern that the strict application of the content-neutral analysis of the Court would lead to many entirely reasonable local sign regulations being ruled unconstitutional
- The Court noted that many types of regulations are still allowed, including size, number, location, lighting, placement and other content neutral regulations
- Justice Kagan: Unnecessary to apply strict scrutiny in this case, as the regulation did not pass even intermediate scrutiny

WHAT IS A MUNICIPALITY TO DO?

- As mentioned above, dimensional requirements, lighting, number, placement, etc. are allowed
- Commercial speech is not protected by strict scrutiny, only by intermediate scrutiny
- Intermediate scrutiny: the regulation must serve a significant government interest unrelated to the suppression of free speech, and with ample alternative means of communicating the message
- A municipality does not need to allow signs on public property

- A statement of purposes may be helpful in supporting a regulation; there must be a nexus between the purpose and the regulations to achieve the purpose
- Review sign by-laws and regulations for content and viewpoint neutrality
- Enforcement of an unconstitutional provision should be avoided
- Consult your legal counsel

POTENTIAL PITFALLS

- “Political signs must be removed 30 days after the election to which they relate.”
- “In the residential zones, only “for sale” signs and signs identifying the occupant or property are allowed.”
- “In residential zones, no sign may exceed 20 square feet.”

Is this a reasonable time, manner and place restriction?

NONCONFORMING SIGNS

- If signs are regulated by a zoning ordinance or by-law, may the municipality forbid any changes to the lettering of nonconforming signs?
- If signs are regulated by a general by-law or ordinance, may the municipality include a “sunset” provision for nonconforming signs?

QUESTIONS