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MAIN ARTICLE

# Municipal Regulation *of Signs*

*What Reed v. Town of Gilbert could mean for your borough*

The United States Supreme Court’s recent decision in *Reed v. Town of Gilbert*<sup>i</sup> has called into question the provisions of many municipal ordinances regulating signs and other forms of speech. The effect of the decision is being widely debated among constitutional law scholars. Advocates of free speech have praised the decision while others predict it will undermine First Amendment law. Most agree that the U.S. Supreme Court has broadly expanded the understanding of what constitutes a content-based sign ordinance.

Political, religious, and similar signs have enjoyed special protection under the free speech provisions of the First Amendment. Under the First Amendment municipal governments have no power to restrict expression because of its message, its ideas, its subject matter, or its content. However, prior to the *Reed* decision, courts throughout the country permitted municipalities to establish different regulations for various categories of signs. For example, a municipality could subject election signs to different regulations than real estate signs or temporary directional signs. In the aftermath of *Reed*, many of these distinctions will be suspect. Regulation of such messages or expression is now subject to strict scrutiny even if the regulation does not discriminate among the viewpoints of the particular subject matter. Consequently, boroughs are advised to have their solici-

tors carefully review their sign ordinances to determine what provisions remain valid.

The *Reed* case involved the Good News Community Church, a small cash-strapped church that had no fixed place of worship but held services at elementary schools and other locations throughout the town of Gilbert,

speech, and seeking to enjoin the town from enforcing the ordinance. The federal trial court denied the church’s request for injunctive relief and dismissed the church’s suit. The U.S. Court of Appeals for the Ninth Circuit affirmed the decision. The U.S. Supreme Court reversed it, finding that the town’s sign ordinance was unconstitutional.



Arizona. Each Saturday, the church would put up signs to announce the time and location of its Sunday service. The church removed the signs about midday on Sunday; however, the town issued several citations against the church for violating the town’s sign ordinance by failing to take down the signs within one hour after the conclusion of the Sunday service.

The church filed suit in federal court, alleging that the town’s sign ordinance violated the church’s right to freedom of

The Supreme Court held the town’s sign ordinance regulated speech by imposing different regulations for various categories of signs based on the content of information they conveyed. Content-based laws – those that target speech based on its communicative content – are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. The commonsense meaning of the phrase “content-based” requires

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a court to consider whether a regulation of speech “on its face” draws distinctions based on the message a speaker conveys. The Supreme Court opined that “a law that is content-based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification or lack of animus toward the ideas contained in the related speech.”

*It appears that boroughs may continue to enact different regulations for various categories of signs as long as the distinctions between the categories are not content-based.*

The Supreme Court found the distinctions between the three classifications of signs, i.e., “ideological sign,” “political sign,” and “temporary directional sign,” were content-based. Under the facts of this particular case, the church’s signs, which identified the time and location of the weekly church service, qualified as “temporary directional signs”. The church’s signs were thus subject to strict regulations, including a restriction that they could be displayed no more than 12 hours before the church service and no more than one hour afterward. This regulation was more stringent

than the regulations for “ideological signs”, which could be displayed permanently, or “election signs”, which could be displayed for up to 15 days following a general election. The Supreme Court concluded the distinctions between the three categories of signs were facially content-based.

The U.S. Court of Appeals for the Ninth Circuit had upheld the town’s sign ordinances on the basis that the town’s justifications for regulating temporary directional signs were unrelated to the content of the signs and that the town’s regulations did not single out any idea or viewpoint for differential treatment.

The Supreme Court disagreed, noting that the government’s good faith motive for wanting temporary directional signs taken down within a reasonable time of the event was irrelevant because the sign ordinance facially distinguished between speech based on content, and that speech regulation targeted at specific subject matter is content based, even if it does not discriminate among viewpoints within that subject matter.

The burden placed on municipalities to justify content-based restrictions, known as strict scrutiny, is nearly impossible to overcome. The municipality must demonstrate a compelling state interest, and prove that the sign ordinance is narrowly tailored to achieve that interest. In this case, the Supreme Court disagreed

that the town’s regulations were narrowly tailored to address the town’s concerns regarding aesthetic appeal and traffic safety. The town could not prove that temporary directional signs created any more of an eyesore or threat to driver safety than ideological or political signs.



The Supreme Court advised that its decision will not prevent governments from enacting effective sign laws. For example, regulations of size, building materials, lights, moving parts, and portability, are content-neutral options available to resolve problems with safety and aesthetics.

Several of the Justices expressed concern that the majority opinion would be interpreted overly broadly or had gone too far. Justice Samuel Anthony Alito Jr., joined by Justices Anthony M.

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Kennedy and Sonia Sotomayor, wrote a concurring opinion to emphasize that municipalities may continue to enact reasonable sign regulations. For example, he found the following regulations would be reasonable:

- Rules regulating the size of signs. These rules may distinguish among signs based on any content-neutral criteria, including any relevant criteria listed below.
- Rules regulating the locations in which signs may be placed. These rules may distinguish between free-standing signs and those attached to buildings.
- Rules distinguishing between lighted and unlighted signs.
- Rules distinguishing between signs with fixed messages and electronic signs with messages that change.
- Rules that distinguish between placement of signs on commercial and residential property.
- Rules distinguishing between on-premises and off-premises signs.
- Rules restricting the total number of signs allowed per mile of roadway.
- Rules imposing time restrictions on signs advertising a one-time event. Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral

speech or music is allowed.

It should be noted, however, that these rules may still be subject to challenge because Alito’s viewpoint was not adopted by the majority of the court. On the other hand, it should also be noted that some constitutional scholars predict that *Reed* will have little impact on municipal regulation of signs.

However, it appears that boroughs may continue to enact different regulations for various categories of signs as long as the distinctions between the categories are not content-based. Different regulations may be enacted for on-premise and off-premise signs, digital billboards, and different regulations based on the zoning classification where signs are located. For example, a borough could limit the size of signs in residential neighborhoods, or the amount of signs that may be displayed on a commercial property.

The full impact of *Reed* is not yet known. Following the court decision, the Seventh Circuit

Court of Appeals, through *Norton v. City of Springfield, Illinois*<sup>1</sup>, has invalidated an ordinance prohibiting panhandling in the “downtown historic district” of



Springfield, Illinois. It is anticipated that *Reed* will be used to challenge municipal sign ordinances and other ordinances regulating forms of speech.

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<sup>1</sup> 135 S.Ct. 2218 (2015)

<sup>#</sup> 612 Fed. Appx. 386 (2015)