

Reed v. Town of Gilbert, AZ

In June the U.S. Supreme Court handed down a landmark decision in *Reed v. Gilbert* which will require all if not most municipalities to change their sign ordinances to ensure that they are not violating the First Amendment.

The Good News Church in Gilbert, Arizona (a suburb of Phoenix) did not have a building to hold services. Each Sunday they placed a directional sign along the street for their members to locate the meeting place. Reed, the pastor, sued the town after he was cited for violating the sign ordinance when he put up the directional signs too early and removed them too late after the service.

Reed argued that according to Gilbert's sign ordinance directional signs the town judged the sign's content and were treated less favorably (size, location, duration) than political or ideological signs. The directional signs could not be placed any earlier than a couple hours before the service and had to be moved within one hour of the service's end.

The town claimed it had a compelling interest in regulating directional signs because they created an eye-sore and were dangerous to the public safety. The Court disagreed stating that directional signs were no different than political signs or ideological signs and by limiting the time frame to hours the town was judging content.

According to a webinar presented on August 19, by John M. Baker, of Greene Espel PLLP in Minnesota here is a summary of his remarks and advice to municipal attorneys for revising sign ordinances.

1. Signs are expressive conduct, courts distrust discretion. Be specific and precise.
2. Provisions regarding directional signs are content based and should be repealed.
3. Event signs are not content neutral therefore the borough cannot require the signs for the PTO's car wash benefit to be taken down the same day as the event.
4. The Honorable Justice Thomas stated "If a sign regulation on its face is content based its purpose does not matter."
5. The Honorable Justice Alito added, "Rules regulating size and setback locations are content neutral."
6. The sign ordinance can address the following: lighted vs. unlighted signs; fixed message or electronic signs which change; public vs. private signs, and commercial vs. residential signs.
7. Off premise signs (billboards) can be restricted based on the total number of signs per mile.

Concrete Responses to Common Questions

Q. What do we do at election time?

A. Allow every resident an amount of square feet of signage for any non-commercial signage on his private property. For particular periods (relating to dates of elections) all size and number restrictions on non-commercial signs are suspended.

Q. Must we outlaw signs like Drive Thru, Menu Sign, For Sale?

A. No, exempt signs based on activity on site, not content.

Q. After Reed: how should we regulate address signs?

A. Allow every parcel to post signs on front of property, side, or post no more than 48 inches high.

Q. How can we allow temporary signs for a period not based on the event's date?

A. Provide seven day sign permits, give them a stamped receipt, and place a sticker on the back of the sign with the date the permit was granted. There should be no risk of expiration date tied to the date of issuance. Remember this sticker is "government speech."

Q. How are signs treated in the right-of-way?

A. It is a public forum however; don't post on lamp posts, guy-wires as that is not considered the right-of-way.

Q. Can we place a moratorium while we review and update our sign ordinance?

A. No, this is considered prior restraint on speech and is a separate violation of the First Amendment.

Q. Do we include "holiday signs" in our definition of signs?

A. Should not be included this definition in the ordinance.

As always PSAB does not provide legal services and you should check with your borough solicitor for his/her legal advice.