

REED V. TOWN OF GILBERT, ARIZONA - **U.S. SUPREME COURT ADDRESSES LIMITATIONS ON** **CONTENT-BASED MUNICIPAL SIGN CODES**

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Municipalities face thorny constitutional issues in attempting to regulate signs on public and private property, despite legitimate aesthetic and public safety concerns. Numerous court decisions have invalidated sign statutes, ordinances and by-laws on the basis that such legislation violates protected First Amendment speech. In 2015, in the case of Reed v. Town of Gilbert, Arizona, 135 S.Ct. 2218 (2015), the United States Supreme Court (the “Court”) reemphasized the importance of avoiding *content-based* restrictions that can easily cross the line into constitutionally impermissible limitation. The Attorney General will necessarily consider the Reed decision when evaluating adoption or amendment of sign by-laws in towns. This Memorandum summarizes the Supreme Court’s decision and examines possible implications for municipal sign regulation.

Facts:

The town of Gilbert adopted a comprehensive code of regulations governing display of outdoor signs. For example, the code contained different size and durational requirements for: “Ideological Signs,” signs “communicating a message or ideas,” no set durational limits, 20 sq. ft. maximum; “Political Signs,” signs “designed to influence the outcome of an election,” durational limits of 60 days before and 15 days after election, 32 sq.ft. maximum; and “Temporary Directional Signs,” signs directing the public to a meeting of a nonprofit group, durational limits of 12 hours before and one hour after the event, 6 sq.ft. maximum. The Good News Community Church and its pastor challenged the constitutionality of the code, which limited the ability of the Church to advertise the time and location of Sunday church services. The Ninth Circuit Appeals Court concluded that the sign code was content neutral and did not conflict with the First Amendment, but on appeal, the Supreme Court agreed to take the case.

Decision:

The Supreme Court unanimously reversed the Ninth Circuit, holding that Gilbert’s sign code imposed different rules based on the words or message, i.e., the content of the sign, triggering the First Amendment’s protections. The Court reasoned that 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 if it does not discriminate among viewpoints and has a benign motive. The Reed court held further that content based regulation of signs is unconstitutional unless it passes a “strict scrutiny” standard of review, meaning that the government would need to prove that the content-based law furthers a compelling interest and is narrowly tailored to achieve that interest.

Gilbert defended its ordinance as preserving aesthetic appeal and traffic safety. However, the majority determined that Gilbert had not shown a compelling interest that justified the differing treatment. For example, the Court

concluded that the Town could not claim that placing strict limits on temporary directional signs was necessary to beautify the Town where other types of signs pose the same problem. Similarly, the Court indicated that the Town had failed to show that temporary directional signs pose a greater threat to public safety than ideological or political signs. The Court concluded, therefore, that the demanding strict scrutiny test had not been met.

Potential Consequences of Decision

Although all nine Supreme Court justices agreed with the judgment in Reed, a minority of justices disagreed with the reasoning of the majority decision and raised concerns about its potential consequences. The minority pointed out that countless municipalities across the country have adopted valid and reasonable ordinances regulating the posting of signs, while exempting certain categories of signs based on their subject matter. The minority also stated that if the majority's strict scrutiny approach is automatically applied to all content-based sign regulations, municipalities "will find themselves in an unenviable bind: they will have to either repeal the exemptions that allow for helpful signs on streets and sidewalks, or else lift their sign restrictions altogether and resign themselves to the resulting clutter." The minority justices urged a less restrictive analysis for local content-based sign laws, one that would prohibit only a regulation that "works harm to First Amendment interests that is disproportionate in light of the relevant regulatory objectives."

The Reed decision casts new attention on the issue of sign regulation, and may trigger an increase in legal challenges to the validity of municipal sign by-laws or ordinances. Further, there can be no doubt that the Attorney General's office, which must review and approve all new by-laws in towns, will be required to apply the Reed decision when reviewing sign by-laws.

Permissible Sign Regulation

The Court's decision in Reed maintains that there are still reasonable sign regulations that municipalities may enact and enforce. For example, rules regulating the size, location or construction of signs are not based on the speech content of the signs and do not require First Amendment analysis. By-laws and ordinances may, with certain limitations, distinguish between: free-standing signs and those attached to buildings; signs on commercial and residential property; lighted and unlighted signs; signs placed on private land and public land; signs placed on-premise and off-premise; and time restrictions on signs for a one-time event. In general, a municipality may also restrict or even prohibit signs on public property, but limitations will still be judged on whether they infringe upon First Amendment considerations.

In conclusion, the Reed decision should not prevent municipalities from regulating signs in a manner that protects public safety and serves legitimate aesthetic objectives, including directional signs and signs pointing out historic sites and scenic spots. Any provision of an ordinance or by-law that differentiates types of signs based on the content of the sign, however, must be analyzed to ensure that it does not run into the same issues that invalidated portions of the Gilbert, Arizona sign code.

Should you have any questions concerning the impact of the Reed decision to adoption, amendment or enforcement of sign bylaws or ordinances, please contact Attorney Brian W. Riley by e-mail at briley@k-plaw.com or by phone at 617.556.0007.

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