

U.S. Supreme Court Affirms That Content-Based Sign Codes Violate The First Amendment



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Now, more than ever, local municipalities should review their municipal sign laws to ensure that signs are not being regulated based on their message. This is in the wake of the U.S. Supreme Court's recent ruling that an Arizona town violated the First Amendment when it subjected a church's temporary signage to size and duration-of-display restrictions while subjecting larger signage containing a different message to less strict size and duration restrictions.

The unanimous Court struck down parts of the Town of Gilbert's sign code placing varying restrictions on signs in respect to size, location and allowed length of exhibit depending on the message conveyed. The ordinance in question was disputed by the Good News Community Church and its pastor, Clyde Reed.

In *Reed v. Town of Gilbert*, all the justices agreed on the bottom line: Gilbert's code was based on the content of the sign and therefore infringed on the church's right to free speech.

"Because content-based laws target speech based on its communicative content they are

presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests,” Justice Clarence Thomas wrote.

The Court has historically held a hard line against content-based regulations. While the ruling doesn’t show a radical shift, it emphasizes the Court’s unyielding standard of review when it comes to First Amendment violations. Content-based policies are presumed unlawful unless a local agency can prove they are narrowly focused to serve a convincing government interest.

In this case, the Town could not.

Signs are generally prohibited under Gilbert’s law without a permit. However, the Town’s sign ordinance exempts certain types of signage — ideological, campaign, garage sale, real estate, restaurant menu and temporary directional signs, among others — from the permitting process.

Each category was subject to its own regulations. The Town allowed ideological signs, of up to 20 square feet, to be displayed indefinitely and unlimited in number. Campaign signs, though, were restricted to 16 square feet when placed on residential property, and could reach up to 32 feet when on a non-residential space. These political signs could be displayed for 60 days prior and 15 days after an election.

Temporary directional signs were under the most restrictive rules.

Directional signage for local religious, charitable or community events was limited in size to six square feet. Only four such signs were allowed on a single property. Additionally, these temporary signs could be displayed no more than 12 hours before an event and had to be removed within an hour of its end.

Pastor Reed held services in various locations in and around Gilbert. Each Saturday, church members posted 15 to 20 signs showcasing the time and location of that week’s service. The signs, which were often placed in the public right-of-way, were removed by midday Sunday. However, twice the church was cited for not removing signs within the Town’s timeframe.

After failed attempts to work out an agreement, Reed filed suit.

Reed sued the Town on grounds the sign code was an impermissible, content-based regulation and violated the First Amendment's right to free speech and the Fourteenth Amendment's equal protection under the law guarantee. Two lower courts sided with the Town, finding the sign ordinance content neutral. An appellate court went so far as to offer several theories to why the code should be deemed content neutral.

The high Court disagreed, calling the code "content based on its face." Additionally, the Town failed to prove its regulations served a compelling concern. Gilbert provided two town interests in support of its regulatory sign distinctions: preserving the town's aesthetic and ensuring traffic safety.

The court dismissed both of the Town's arguments. Justice Thomas wrote that the Town could not claim that strict limits on directional signage were necessary to maintain aesthetics while at the same time allowing an unlimited number of ideological signs. Additionally, the Town failed to prove that limitations on short-term directional signs had eliminated any traffic safety threats.

"If anything, a sharply worded ideological sign seems more likely to distract a driver than a sign directing the public to a nearby church meeting," Thomas wrote.

Treating different forms of public expression with varying rules, the Court held, is a form of message regulation and thus violates the First Amendment. The ruling serves as a reminder for municipalities to review and reevaluate signage codes to ensure all signs are equally regulated. While the Court held content-based sign regulations unconstitutional, it was clear to note content neutral rules are permissible.

As long as regulations are not based on a sign's message, municipalities may regulate the size, lighting, location, display timing and number of signs. The Court noted that a sign ordinance narrowly tailored to protect the safety of pedestrians, drivers and passengers — such as warning or traffic-directing signs — might survive strict scrutiny. In this case though, the signs at issue were "far removed from those purposes."



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