



MEMORANDUM

To: Community Development Committee
Dana L. McDaniel, City Manager

From: Jennifer D. Readler, Law Director
Thaddeus M. Boggs

Date: November 1, 2019

Re: Reed v. Town of Gilbert, Arizona

Supreme Board of Sign Review: Supreme Court Declares Provisions of Town's Sign Code Unconstitutional

On June 18, 2015, the United States Supreme Court issued a 9-0 decision in *Reed v. Town of Gilbert, Arizona*, holding that ordinances governing the display of outdoor signs in the Town of Gilbert's sign code were unconstitutional regulations of speech under the First Amendment. The Town's sign code prohibited the display of outdoor signs without a permit, but exempted 23 categories of signs from the permit requirement if they met the sign code's requirements. Three of these categories were addressed by the Court: "Ideological Signs," which communicated a message or idea; "Political Signs," which sought to influence the outcome of an election; and "Temporary Directional Signs Relating to a Qualifying Event," which sought to direct individuals to events sponsored by non-profit groups. Each of these sign categories were subject to different restrictions in terms of size, location, and duration. For example, "Ideological Signs" could be up to 20 square feet, "Political Signs" could be up to 16 square feet on residential property and up to 32 square feet on nonresidential property, but "Temporary Directional Signs" could only be six square feet. The Supreme Court took issue with this differentiation. Writing for the majority, Justice Thomas found that provisions that provided different requirements based on the content of the sign were unconstitutional.

Background

The case involved Good News Community Church and its pastor, Clyde Reed, who wished to advertise the time and location of their Sunday service. Due to financial constraints, the Church held its services at various public locations in the Town and relied on posting outdoor signs to direct the public to the services. However, this practice ran afoul of the Town's sign code because

the Church exceeded the time limits for displaying the temporary directional signs and failed to include the event date on the signs. As a result, the Town cited the Church for those violations. After failing to reach a resolution with the Town, the Church and its pastor filed a complaint in the United States District Court for the District of Arizona, arguing that the sign code abridged their freedom of speech in violation of the First Amendment.

Legal Analysis

The Supreme Court addressed two issues in the case: (1) did the sign code constitute content-based restrictions on speech; and (2) if so, were the restrictions narrowly tailored to achieve a compelling public interest. In answering the first question, the Court held that the sign code explicitly created distinctions based on the content of the speech: “[i]f a sign informs its reader of the time and place a book club will discuss John Locke’s Two Treatises of Government, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke’s followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke’s theory of government.” The Court found these distinctions problematic even though there was no evidence that the ordinances were enacted to censor certain viewpoints or content. Rather, the Court held that “regardless of the government’s benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech,” sign ordinances were subject to *strict scrutiny* because they were facially content-based.

Strict scrutiny requires a governmental body to demonstrate that its restriction furthers a compelling interest and that the restriction is narrowly tailored to achieve that interest. This judicial test requires courts to address both whether the government’s interest is “compelling,” and whether the restrictions are narrowly tailored to achieve that interest. In this case, the Court assumed two possible compelling interests furthered by the sign code: preserving the Town’s aesthetic appeal and promoting traffic safety. However, despite these assumptions, the Court held that the sign code was too under-inclusive to realize those compelling interests. The Court reasoned that “[t]he Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town while at the same time allowing unlimited numbers of other types of signs that create the same problem.” The Court continued: “[t]he Town . . . has not shown that limiting temporary directional signs is necessary to eliminate threats to traffic safety, but that limiting other types of signs is not.” Because the Court found the differential treatment to be arbitrary, it held that the sign ordinances failed under the strict scrutiny analysis.

Implications

The Supreme Court’s holding that strict scrutiny applies to sign ordinances that regulate signs differently based on their content will impact many local sign ordinance across Ohio and across the country. The Court did, however, provide some guidance to help local governments ensure their sign ordinances are constitutional. The Court stated that sign ordinances that are content-neutral are subject to a lesser degree of scrutiny, indicating that they would be more likely to be upheld as constitutional. This means that a sign ordinance may still restrict the time, place, and manner of a sign posting, but only if that restriction applies in an even-handed, content-neutral manner. In a concurring opinion, Justice Alito provided a non-comprehensive list of rules that would be content-neutral, including: rules regulating the size of signs; rules regulating the

locations in which signs may be placed; rules distinguishing between lighted and unlighted signs; rules that distinguish between the placement of signs; rules restricting the total number of signs allowed per mile of roadway; and rules imposing time restrictions on signs advertising a one-time event. This last item, however, demonstrates the potential broad reach of the Court's holding in this case. Because the Court held that "the Code single[d] out signs bearing a particular message: the time and location of a specific event" and was therefore content-based, it would appear that restrictions that rely on the date of the event being advertised would run afoul of the Court's decision. Ultimately, this is just one of the many issues local governments must address when drafting, amending, or enforcing their sign ordinances.