

## An Overview of *Reed v. Town of Gilbert*, US Supreme Court No. 135 S.Ct. 2218, 2015

The US Supreme Court, in a landmark decision rendered in June 2015, fundamentally changed the way cities and towns should approach sign regulation.

Mr. Reed is the pastor of a small church, the Good News Community Church, whose Sunday services are held at various temporary locations within the Town of Gilbert, Arizona. As they do not have a fixed location, on Saturday mornings Pastor Reed posted signs bearing the name of the church and the time (typically 9:00 am) and location of the next day's service. The signs were removed shortly after the church service.



Typical Sign used by the Church: "Temporary Directional Sign Relating to a Qualifying Event"

Source: <http://www.nytimes.com/2015/06/19/us/justices-side-with-arizona-church-in-dispute-over-sign-limits.html>

The Town of Gilbert's sign code prohibited the display of outdoor signs without a permit, except that 23 categories of signs were exempted. These included ideological signs, political signs and "temporary directional signs to direct the public to a church or other qualifying event". In addition, each of these sign types had specific area limitations and time and placement restrictions as summarized below:

Sign Type	Example Message	Area (Max.)	Where?	How long?
Ideological Signs	"Save the Whales"	20 sq.ft.	Anywhere	No limit
Political Signs	"Vote for Bob"	Res. 16 sq.ft. Com. 32 sq.ft.	Private property; not town ROW	60 days before primary election 15 days after general
Temp. Directional Sign Relating to a Qualifying Event	"Church Meeting at 9:00 am"	6 sq.ft	Public or private land; max. 4 on a property at one time	12 hours before 1 hour after

The church was cited by the Town of Gilbert for placing temporary directional signs in violation of the Town's sign code standards. Specifically, the church was cited for exceeding the time limits for displaying its temporary directional signs and for failing to include an event date on the signs. Unable to reach an accommodation with the Town, the church filed suit claiming that the sign code abridged their freedom of speech. After losing his case in front of the Arizona District Court, and the Ninth Circuit Court of Appeals, Pastor Reed sought review by the U.S. Supreme Court. The case was argued in front of the Supreme Court on January 12, 2015, and decided on June 18, 2015.

The Supreme Court's decision in this case has far reaching implications for the day-to-day regulation of signs. The key takeaways from the *Reed* decision may be summarized as follows:

- The *Reed* case clarified when a government regulation of speech is content based.
- Content-based sign regulations are presumptively unconstitutional.
- Time, place, and manner regulations are acceptable provided they are content neutral, narrowly tailored, and serve a legitimate government interest.

- All signs are affected by the outcome of the *Reed* decision, i.e. temporary signs and permanent signs.
- It appears that commercial signs may still be regulated differently than noncommercial signs (e.g., a municipality can likely still prohibit off-premise commercial signs).
- A municipality cannot exempt certain categories of signs to avoid review. Exempting a category of signs, such as political signs or real estate, is the same as allowing them without regulation. Assuming other categories of signs containing noncommercial speech are regulated, those regulations will be deemed content based and presumptively unconstitutional.
- Careful scrutiny of a sign code is essential to ensure content neutrality.

### **Three Practical Considerations to Improve a Sign Code**

1. Every city and town should carefully review their sign regulations to ensure the Code is content neutral.
2. Remove all references to the content of a sign. For example, regulations for different sign types, such as “real estate signs,” “garage sale signs,” “political signs,” or “grand opening signs,” are content based and need to be removed from the sign code. A better approach is to simply call them “temporary signs” and regulate the number, size, and location of the signs in a content-neutral manner.
3. The sign code should include a severability clause and a substitution clause. The severability clause states that if a specific provision of the Code is found to be unconstitutional, it is the intent of the legislative body that the rest of the Code remains valid. A substitution clause allows noncommercial speech to be substituted wherever commercial speech is allowed, which is intended to avoid arguments that the Code favors commercial speech over noncommercial speech.