



Sign Regulation

A Division of the New York Department of State

Topics to be covered



- First Amendment issues
- Regulation of signs
- Drafting sign regulations
- Nonconforming signs & billboards

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Signs as Speech

Signs are speech protected by the First Amendment to the U.S. Constitution under its "Free Speech Clause":

"Congress shall make no law... abridging the freedom of speech..."



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Types of Speech

Commercial speech relates to the economic interests of a speaker and audience



Non-commercial speech is expression not defined as commercial (i.e., personal, political or religious)



Speech Protection

Commercial

- Protected by the First Amendment if not misleading, inaccurate or relating to unlawful activity
 - Time, place, manner
- Less protected
- Commercial Speech Test

Noncommercial

- Protected by the 1st Amendment
 - Time, place, manner
- Most protected
- Searching Court Review (i.e., Intermediate Scrutiny)

Noncommercial Signs

Content-Neutral Regulations Intermediate Scrutiny

Regulations are constitutional if they

- Impose valid time, place, and manner restrictions without reference to content
- Are narrowly tailored to serve a significant governmental interest
- Provide ample alternative channels for communication of information

Content-Based Restrictions Strict Scrutiny

Constitutional only if they:

- Serve a compelling governmental interest
- Are necessary to serve the asserted compelling governmental interest
- Are precisely tailored to serve the compelling governmental interest
- Is the least restrictive means readily available for that purpose

Content Neutrality

Regulate:

- Time
- Place
- Manner

Narrowly tailored to serve significant government interest

Ample alternative channels

- Clark v. Community for Creative Nonviolence



Temporary signs

Whitton v. City of Gladstone:

The local law restricted "political signs within zones"

It also imposed time limits when signs can be posted before & after election

These provisions were deemed content-based and unconstitutional



Too restrictive of free speech

Temporary sign & other content neutral regulations must be narrowly tailored

Allowing only two temporary signs on private residential property would not be narrowly tailored, because it would infringe on political speech & the rights of homeowners.

- Arlington County Republican Committee v. Arlington County, VA

Ample alternative channels

Regulation of signs posted at private homes determined to be unconstitutional because there were no adequate alternative channel for speech:

- Residential signage not allowed
 - City of Ladue v. Gilleo
- Complete ban on posting any lawn signs
 - Cleveland Area Board of Realtors v. City of Euclid
- Posting of "for sale" or "sold" signs prohibited
 - Linmark Associates v. Township of Willingboro

Narrowly tailored local law

Use Less Restrictive Approaches:

- Regulate the design & condition of signs
- Prevent posting of sign too close to street
- Limit duration of signs



Content neutrality

Local governments may forbid the posting of signs on public property, as long as it's in an evenhanded, content-neutral manner



People v. On Sight Mobile Opticians: upheld a ban against posting signs on public property.

Commercial Signs

Commercial Speech Test



Central Hudson Test

1. Protected by the First Amendment?
2. Substantial governmental interest?
3. Directly advance the governmental interest?
4. Narrowly tailored to advance that interest?

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Strict regulation of color and design

Required signs to be similar in color & design to other signs in the immediate area of a shopping center.

- Content/viewpoint neutral
- Party City of Nanuet, Inc. v. Board of Appeals of the Town of Clarkstown



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Off-premises advertising

The Court of Appeals has upheld local laws that prohibit all off-premises commercial billboards.

- The Town of Southampton's prohibition on erecting all non-accessory billboards
 - The local law did not regulate the content of the commercial speech
 - It regulated the place & manner of billboards
 - Suffolk Outdoor Advertising v. Hulse

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Non-traditional Commercial Signs

- LED/Animated signs
- Flags, streamers & balloons
- Moving billboards
 - Signs on vehicles whose sole purpose is advertising

Time, place & manner

- Medium of expression
- People v. Target Advertising



State regulation of signs

Uniform Fire Prevention & Building Code

- Electrical standards
- Wind pressure
- Anchoring

DEC permit required for off-premises signs outside of incorporated villages in the Catskill Park & the Adirondack Park



Regulation by NYS DOT

Restricts advertising devices within 660 feet of Interstate, National Highway System & primary highways.

Signs beyond 660 feet outside urban areas intended to be read from interstate or primary highways are prohibited

Regional DOT offices have sign permit applications

DOT sign program includes registration, limitation on size, placement & lighting.

More restrictive local regulations often apply

Commercial vs. Non-Commercial Signs

Municipalities may permit non-commercial signs in some districts while restricting commercial signs

- Municipalities cannot permit commercial signs while ignoring or restricting similar non-commercial signage in the same district

Implications of Reed v. Town of Gilbert

Reed v. Town of Gilbert, AZ

Town of Gilbert Sign Regulations:

- Several categories based on information signs convey, subject to different restrictions.
- Display of outdoor signs prohibited without a permit.
- 23 categories of signs were exempted from permit.

3 Categories of Signs Exempt from Permit

<p>Ideological</p> <ul style="list-style-type: none"> • Message or idea for noncommercial purposes <p>Display Rules</p> <p>All zoning districts Up to 20 square feet No time limit Without permit</p> <ul style="list-style-type: none"> • Most favored 	<p>Political</p> <ul style="list-style-type: none"> • Temporary sign designed to influence election outcome <p>Display Rules</p> <ul style="list-style-type: none"> • Depends on location of display • Residential property - up to 16 square feet; Nonresidential property, undeveloped municipal property and rights of ways - up to 32 square feet • 60 days before a primary election and up to 15 days following a general election • Less favored than Ideological signs 	<p>Directional</p> <ul style="list-style-type: none"> • sign intended to direct pedestrians, motorists, and other passersby to a qualifying event <p>Display Rules</p> <ul style="list-style-type: none"> • Displayed on private property as well as in a public right of way • Limited to 4 such signs per property • No larger than 6 square feet • 12 hours before the "qualifying event" and no more than 1 hour afterward • Least Favored
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Distinctions

Distinctions drawn within speech categories are content based and must survive strict scrutiny



Compelling interest must be identified and restrictions must be Narrowly Tailored and not under-inclusive



Justice Thomas:

"If 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. More to the point, the Church's signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas."

Content based discrimination

Court determined the law was content based on its face because restrictions applied depend on sign's communicative content.

It signals out specific subject matter even if it does not target viewpoints within that subject matter



Concurring Opinion: Munis may adopt

Rules regulating the size of signs.

- These rules may distinguish among signs based on any content-neutral criteria, including any relevant criteria listed below.

Rules regulating the locations in which signs may be placed.

- These rules may distinguish between free-standing signs and those attached to buildings.



Concurring Opinion: Munis may adopt

Rules distinguishing between lighted and unlighted signs.

Rules distinguishing between signs with fixed messages and electronic signs with messages that change.



Concurring Opinion: Munis may adopt

Rules that distinguish between the placement of signs on private and public property.

Rules distinguishing between the placement of signs on commercial and residential property.



Concurring Opinion: Munis may adopt

Rules distinguishing between on-premises and off-premises signs.

Rules restricting the total number of signs allowed per mile of roadway.

Rules imposing time restrictions on signs advertising a one-time event.
- Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed



Drafting Sign Regulations

Drafting sign regulations

- Planning process
 - Do existing regulations regulate content?
- Study the issue
 - Sign inventory
 - Establish a record of legally existing signs
 - Are existing sign regulations being enforced?
 - Which signs are consistent with community character?
 - Which one are not working?
 - Take photographs
 - Public input
- Relate findings to the Comprehensive Plan

- Keep in mind the needs of businesses
 - Identification
 - Advertising
 - Readability
 - Cost



Regulatory options

Without zoning through
 Site Plan Review
 Sign Permit

Restrict by signage structure and size

Restrict location by property type (i.e., public rights-of-ways)



Regulatory options

With zoning

Prohibit certain signs by structure, location

Allow some as-of-right

Allow others special permit or site plan review

A sign matrix for each district & use indicates

Number, size & type of signs allowed

Approvals necessary



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Typical provisions

<ul style="list-style-type: none"> Purpose Statement Definitions Schedule of Allowed Locations Construction & Design Standards Sign Permit Procedures Specific provisions Review & Appeals Enforcement & Remedies <ul style="list-style-type: none"> Enforcement Officer, appeals & penalties Severability 	<p>Specific provisions</p> <ul style="list-style-type: none"> Standards Sign Permit Procedures State Sign Permit Reference Existing/Nonconforming Signs Prohibited Signs Substitution Clauses Illumination Sign Maintenance
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Purpose Statements

<p>Examples of purposes:</p> <ul style="list-style-type: none"> Promote & protect public health, welfare & safety Protect property values Create a more attractive business climate Reinforce & strengthen community identity Preserve scenic beauty 	<p>Regulating for aesthetic purposes is permissible.</p> <p>Aesthetics may be addressed in detail by local design guidelines</p> <p style="text-align: center;">Suffolk Outdoor Advertising v. Hulse</p>
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Definitions & Standards

<ul style="list-style-type: none"> Definitions <ul style="list-style-type: none"> Sign <ul style="list-style-type: none"> Types of signs <ul style="list-style-type: none"> Portable signs Permanent or temporary Standards <ul style="list-style-type: none"> Construction <ul style="list-style-type: none"> Mounting Materials Design <ul style="list-style-type: none"> Lighting/illumination Materials Size 	<ul style="list-style-type: none"> • PORTABLE SIGN <p>A sign, whether on its own trailer, wheels, motor vehicle or otherwise, designed to be movable & not structurally attached to the ground, a building, a structure or another sign.</p> <p style="text-align: center;">Village of Pittsford, New York Zoning Chapter 168. SIGNS</p>
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Design Considerations

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Types of signs

Wall signs	Banners, streamers & flags
Projecting signs	Marquee
Freestanding signs	Billboards
Roof	Off-Premises
Canopy & awning	Portable /mobile
Window & door	

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Design considerations

Mounted	Bureau of Land Management Recommended Size of Letters on Signs <ul style="list-style-type: none">• Standing still<ul style="list-style-type: none">- 1 inch• 25 to 35 mph<ul style="list-style-type: none">- 3 inches• 55+ mph<ul style="list-style-type: none">- 6 inches.
Size, area & height	
Location	
Lighting/illumination	
Landscaping	
Materials	
Architectural design	
Color	

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Types of signs



Freestanding – sandwich board

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Types of signs



Canopy

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Types of signs



Awning

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Types of signs



Band sign

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Types of signs



Wall

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Types of signs



Window

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Types of signs



Projecting

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Types of signs



Monument

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Types of signs



Pylon or pole-mounted

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Types of signs



Marquee

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Lighting/illumination



Neon

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Lighting/illumination



Indirect / external

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Lighting/illumination



Direct/internal

Nonconforming Signs and Enforcement

Enforcement

- Who is authorized to enforce the sign law?
- How violations are handled?
- What are the criminal penalties?
- Is the municipality authorized to institute civil proceedings?
- What is the process for appeal?



Enforcement

- Notice to owner(s) specifying the violation
- Require sign be brought into compliance or removed
- State period of time in which to conform or remove sign
- Authorize enforcement officer to revoke the sign permit & remove the sign for noncompliance
 - Within timeframes as specified in the sign regulations
- Authorized to assess all costs & expenses incurred for such service against the owner(s)

Sign maintenance

Local regulations should include provisions for the proper maintenance of all signs

Example:

“...Sign must be kept clean, neatly painted & free from all hazards, such as, but not limited to, faulty wiring & loose fastenings, & the sign must be maintained at all times in such safe condition so as not to be detrimental to the public health or safety.”

– Village of South Glens Falls Code: Chapter 115-9

Billboards & off-premises signs

- Temporary moratorium while considering law
- Prohibit new billboards
- Restrict billboards
 - By district, special use permit or setbacks
 - Removal of non-conforming billboards

Billboard

A sign for a business, profession, activity commodity, or service not on the premises where the sign is located

Can be commercial or non-commercial

Pre-existing nonconforming signs

Protected status

- Sign legally existed prior to the effective date of the current regulations
- Does not need to comply with specifications of current regulations
 - Municipal regulations should include provisions for the termination of this protected status
 - Upon termination, such signs must either be brought into compliance or removed

Nonconforming signs

If specified in local regulations, nonconforming status may be terminated for the following reasons:

- Alterations
 - Change in size
 - Moved from original location on site
 - Improved, repaired or reconstructed beyond the sign's original condition
- Replaced by another nonconforming sign
- Change in use on the premises
 - Not a change in ownership
- Abandonment of use for a specified period

Elimination of nonconforming signs

Amortization

- Allows the sign owner to recuperate their investment
- A specified period of time based on the fair market value
 - Depreciation
 - No compensation

Local Law Example:

In the event a sign lawfully erected prior to the effective date of the local law does not conform to the provisions & standards of the local law, then such signs should be modified to conform or be removed according to the following regulations

Elimination of nonconforming signs

Zoned industrial or manufacturing

Municipality must compensate owner pursuant to Eminent Domain Procedure Law

NOT zoned industrial or manufacturing:

Municipality may allow amortization period pursuant to General Municipal Law §74-c

“Voluntary” removal of non-conforming signs

“Exchange only”

- Prohibit new commercial signs where a non-conforming sign remains

Provide bonuses in size, height, or number of allowable signs

- Must remove by a specified date

Offer incentives to remove & replace

- Community grants or low interest loans



Summary

- Significant governmental interest
- Time, place, manner
- Content neutrality
 - Compelling governmental interest
- Can't permit commercial signage and restrict similar non-commercial signage



Case Citations

Clark v. Community for Creative Nonviolence, 468 U.S. 288, 293, 82 L.Ed.2d 221, 227, 104 S.Ct. 3065 (1984)

Hobbs v. County of Westchester, 397 F.3d 133 (2d Cir. 2005)

Whitton v. City of Gladstone, Missouri, 54 F. 3d 1400 (8th. Cir. 1995)

Arlington County Republican Committee v. Arlington County, VA, 983 F.2d 587 (4th Cir.1993)

Case Citations

City of Ladue v. Gilleo, 512 U.S. 43, 129 L.Ed.2d 36, 114 S.Ct. 2038 (1994)

Cleveland Area Bd. Of Realtors v. City of Euclid, 88 F.3d 382 (6th Cir. 1996)

Linmark Associates v. Township of Willingboro, 431 U.S. 85 (1977)

Central Hudson Gas v. Public Service Commission, 447 U.S. 557, 65 L.Ed.2d 341, 100 S.Ct. 2343 (1980)

Case Citations

Party City of Nanuet, Inc. v. Board of Appeals of the Town of Clarkstown, 212 A.D.2d 618, 622 N.Y.S.2d 331 (2d Dept. 1995)

Suffolk Outdoor Advertising v. Hulse, 43 N.Y.2d 483 (1977)

People v. Target Advertising, 184 Misc.2d 903 (NY City Crim.Ct. 2000)

Reed v. Town of Gilbert, Arizona, 135 S.Ct. 2218 (2015)

Resources

New York State Department of State
James A. Coon Local Government Technical Series
Publication
Municipal Control of Signs

New York Department of State

(518) 473-3355 Division of Local Government

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Email: localgov@dos.ny.gov

Website: www.dos.ny.gov
www.dos.ny.gov/lq/index.html

General Municipal Law §74-c.

Taking of billboards.

1. If any local law, ordinance or resolution adopted by a municipal corporation in the exercise of its police power shall require the removal of any legally erected and maintained billboard or like outdoor advertising device, which is leased or rented for profit in areas zoned industrial or manufacturing, just compensation for said taking shall be determined in accordance with the provisions of article five of the eminent domain procedure law; provided, however, section five hundred two of such law shall not be applicable in any such proceeding.

2. Unless compensation therefore is provided pursuant to section eighty-eight of the highway law, if any local law, ordinance or resolution adopted by a municipal corporation in the exercise of its police power shall require the removal of any legally erected and maintained billboard or like outdoor advertising device, which is leased or rented for profit, and which is located in an area or zone, other than an industrial or manufacturing zone, the display shall be allowed to remain in existence for the period of time set forth below after giving notice of the removal requirement:

fair market value on date of notice of removal requirement	minimum years allowed
under \$1,999	3
\$2,000 to \$3,999	4
\$4,000 to \$5,999	6
\$6,000 to \$7,999	7
\$8,000 to \$9,999	9
\$10,000 and over	10

If the removal is required sooner than the amortization periods specified herein, such removal by any local law, ordinance or resolution adopted by the municipal corporation shall be with just compensation being paid for such taking and removal determined in accordance with the provisions of article five of the eminent domain procedure law or in accordance with any table of values established by the state department of transportation; provided however section five hundred two of the eminent domain procedure law shall not be applicable to any such proceeding.

Notwithstanding any other law, rule or regulation, all amortization periods under such laws, ordinances or resolutions shall commence not earlier than January first, nineteen hundred ninety.

3. The provisions of this section shall not apply to any city having a population of one million or more.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

REED ET AL. *v.* TOWN OF GILBERT, ARIZONA, ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 13–502. Argued January 12, 2015—Decided June 18, 2015

Gilbert, Arizona (Town), has a comprehensive code (Sign Code or Code) that prohibits the display of outdoor signs without a permit, but exempts 23 categories of signs, including three relevant here. “Ideological Signs,” defined as signs “communicating a message or ideas” that do not fit in any other Sign Code category, may be up to 20 square feet and have no placement or time restrictions. “Political Signs,” defined as signs “designed to influence the outcome of an election,” may be up to 32 square feet and may only be displayed during an election season. “Temporary Directional Signs,” defined as signs directing the public to a church or other “qualifying event,” have even greater restrictions: No more than four of the signs, limited to six square feet, may be on a single property at any time, and signs may be displayed no more than 12 hours before the “qualifying event” and 1 hour after.

Petitioners, Good News Community Church (Church) and its pastor, Clyde Reed, whose Sunday church services are held at various temporary locations in and near the Town, posted signs early each Saturday bearing the Church name and the time and location of the next service and did not remove the signs until around midday Sunday. The Church was cited for exceeding the time limits for displaying temporary directional signs and for failing to include an event date on the signs. Unable to reach an accommodation with the Town, petitioners filed suit, claiming that the Code abridged their freedom of speech. The District Court denied their motion for a preliminary injunction, and the Ninth Circuit affirmed, ultimately concluding that the Code’s sign categories were content neutral, and that the Code satisfied the intermediate scrutiny accorded to content-neutral regulations of speech.

Held: The Sign Code’s provisions are content-based regulations of

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speech that do not survive strict scrutiny. Pp. 6–17.

(a) 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. *E.g.*, *R. A. V. v. St. Paul*, 505 U. S. 377, 395. Speech regulation is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *E.g.*, *Sorrell v. IMS Health, Inc.*, 564 U. S. ___, ___–___. And courts are required to consider whether a regulation of speech “on its face” draws distinctions based on the message a speaker conveys. *Id.*, at ___. Whether laws define regulated speech by particular subject matter or by its function or purpose, they are subject to strict scrutiny. The same is true for laws that, though facially content neutral, cannot be “justified without reference to the content of the regulated speech,” or were adopted by the government “because of disagreement with the message” conveyed. *Ward v. Rock Against Racism*, 491 U. S. 781, 791. Pp. 6–7.

(b) The Sign Code is content based on its face. It defines the categories of temporary, political, and ideological signs on the basis of their messages and then subjects each category to different restrictions. The restrictions applied thus depend entirely on the sign’s communicative content. Because the Code, on its face, is a content-based regulation of speech, there is no need to consider the government’s justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny. Pp. 7.

(c) None of the Ninth Circuit’s theories for its contrary holding is persuasive. Its conclusion that the Town’s regulation was not based on a disagreement with the message conveyed skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. A law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of “animus toward the ideas contained” in the regulated speech. *Cincinnati v. Discovery Network, Inc.*, 507 U. S. 410, 429. Thus, an innocuous justification cannot transform a facially content-based law into one that is content neutral. A court must evaluate each question—whether a law is content based on its face and whether the purpose and justification for the law are content based—before concluding that a law is content neutral. *Ward* does not require otherwise, for its framework applies only to a content-neutral statute.

The Ninth Circuit’s conclusion that the Sign Code does not single out any idea or viewpoint for discrimination conflates two distinct but related limitations that the First Amendment places on government regulation of speech. Government discrimination among viewpoints

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is a “more blatant” and “egregious form of content discrimination,” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829, but “[t]he First Amendment’s hostility to content-based regulation [also] extends . . . to prohibition of public discussion of an entire topic,” *Consolidated Edison Co. of N. Y. v. Public Serv. Comm’n of N. Y.*, 447 U. S. 530, 537. The Sign Code, a paradigmatic example of content-based discrimination, singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter.

The Ninth Circuit also erred in concluding that the Sign Code was not content based because it made only speaker-based and event-based distinctions. The Code’s categories are not speaker-based—the restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. And even if the sign categories were speaker based, that would not automatically render the law content neutral. Rather, “laws favoring some speakers over others demand strict scrutiny when the legislature’s speaker preference reflects a content preference.” *Turner Broadcasting System, Inc. v. FCC*, 512 U. S. 622, 658. This same analysis applies to event-based distinctions. Pp. 8–14.

(d) The Sign Code’s content-based restrictions do not survive strict scrutiny because the Town has not demonstrated that the Code’s differentiation between temporary directional signs and other types of signs furthers a compelling governmental interest and is narrowly tailored to that end. See *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 564 U. S. ___, ___. Assuming that the Town has a compelling interest in preserving its aesthetic appeal and traffic safety, the Code’s distinctions are highly underinclusive. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town when other types of signs create the same problem. See *Discovery Network, supra*, at 425. Nor has it shown that temporary directional signs pose a greater threat to public safety than ideological or political signs. Pp. 14–15.

(e) This decision will not prevent governments from enacting effective sign laws. The Town has ample content-neutral options available to resolve problems with safety and aesthetics, including regulating size, building materials, lighting, moving parts, and portability. And the Town may be able to forbid postings on public property, so long as it does so in an evenhanded, content-neutral manner. See *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U. S. 789, 817. An ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—*e.g.*, warning signs marking hazards on private property or signs directing traffic—might also survive strict scrutiny. Pp. 16–17.

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707 F. 3d 1057, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, ALITO, and SOTOMAYOR, JJ., joined. ALITO, J., filed a concurring opinion, in which KENNEDY and SOTOMAYOR, JJ., joined. BREYER, J., filed an opinion concurring in the judgment. KAGAN, J., filed an opinion concurring in the judgment, in which GINSBURG and BREYER, JJ., joined