Topics to be covered

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

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...”
### Types of Speech

<table>
<thead>
<tr>
<th>Commercial</th>
<th>Non-commercial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial speech relates to the economic interests of a speaker and audience.</td>
<td>Non-commercial speech is expression not defined as commercial (i.e., personal, political or religious).</td>
</tr>
</tbody>
</table>

### Speech Protection

<table>
<thead>
<tr>
<th>Commercial</th>
<th>Noncommercial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protected by the First Amendment if not misleading, inaccurate or relating to unlawful activity. Time, place, manner.</td>
<td>Protected by the First Amendment. Time, place, manner.</td>
</tr>
<tr>
<td>Less protected</td>
<td>Most protected</td>
</tr>
<tr>
<td>Commercial Speech Test</td>
<td>Searching Court Review (i.e., Intermediate Scrutiny)</td>
</tr>
</tbody>
</table>

### 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 governmental 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?

**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

**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
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

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

<table>
<thead>
<tr>
<th>Ideological</th>
<th>Political</th>
<th>Directional</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Message or idea for noncommercial purposes</td>
<td>• Temporary sign designed to influence election outcome</td>
<td>• Sign intended to direct pedestrians, motorists, and other passersby to a qualifying event</td>
</tr>
<tr>
<td>Display Rules</td>
<td>Display Rules</td>
<td>Display Rules</td>
</tr>
<tr>
<td>• All zoning districts</td>
<td>• Depends on location of the sign</td>
<td>• Displayed on private property as well as in a public right of way</td>
</tr>
<tr>
<td>• Up to 20 square feet</td>
<td>• Residential property - up to 10 square feet, nonresidential property, undeveloped municipal property and municipal right of ways - up to 32 square feet</td>
<td>• Limited to 4 such signs per property</td>
</tr>
<tr>
<td>• No time limit</td>
<td>• 60 days before a primary election and up to 15 days following a general election</td>
<td>• No larger than 6 square feet</td>
</tr>
<tr>
<td>• Without permit</td>
<td>• Less favored than ideological signs</td>
<td>• 12 hours before the “qualifying event” and no more than 1 hour afterward</td>
</tr>
<tr>
<td>• Most favored</td>
<td></td>
<td>• Least Favored</td>
</tr>
</tbody>
</table>

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)

With zoning

Prohibit certain signs by structure, location

Allow some as-of-right

Allow others special use permit or site plan review

A sign matrix for each district & use indicates

Number, size & type of signs allowed

Approvals necessary
Typical provisions

Purpose Statement
Definitions
Schedule of Allowed Locations
Construction & Design Standards
Sign Permit Procedures
Specific provisions
Review & Appeals
Enforcement & Remedies
Enforcement Officer, appeals & penalties
Severability

Specific provisions
Standards
Sign Permit Procedures
State Sign Permit
Reference
Existing/Nonconforming Signs
Prohibited Signs
Substitution Clauses
Illumination
Sign Maintenance

Purpose Statements
Examples of purposes:
Promote & protect public health, welfare & safety
Protect property values
Create a more attractive business climate
Reinforce & strengthen community identity
Preserve scenic beauty

Regulating for aesthetic purposes is permissible.
Aesthetics may be addressed in detail by local design guidelines
Suffolk Outdoor Advertising v. Hulse

Definitions & Standards

Definitions
Sign
Types of signs
Portable signs
Permanent or temporary

Standards
Construction
Mounting
Materials
Design
Lighting/Illumination
Materials
Size

PORTABLE SIGN
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.
Village of Pittsford, New York Zoning Chapter 168. SIGNS
Design Considerations

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

Design considerations
- Mounted
- Size, area & height
- Location
- Lighting/illumination
- Landscaping
- Materials
- Architectural design
- Color

Bureau of Land Management
Recommended Size of Letters on Signs
- Standing still – 1 inch
- 25 to 35 mph – 3 inches
- 55+ mph – 6 inches.
Types of signs

Freestanding – sandwich board

Types of signs

Canopy

Types of signs

Awning
Types of signs

- Projecting

- Monument

- Pylon or pole-mounted
Types of signs

Marquee

Lighting/illumination

Neon

Lighting/illumination

Indirect / external
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

<table>
<thead>
<tr>
<th>Zoned industrial or manufacturing</th>
<th>NOT zoned industrial or manufacturing:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipality must compensate owner pursuant to Eminent Domain Procedure Law</td>
<td>Municipality may allow amortization period pursuant to General Municipal Law §74-c</td>
</tr>
</tbody>
</table>

"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

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

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

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)
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
(518) 474-6740 Counsel’s Office

Email: localgov@dos.ny.gov
Website: www.dos.ny.gov
www.dos.ny.gov/lg/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:

<table>
<thead>
<tr>
<th>Fair market value on date of notice of removal requirement</th>
<th>Minimum years allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>under $1,999</td>
<td>3</td>
</tr>
<tr>
<td>$2,000 to $3,999</td>
<td>4</td>
</tr>
<tr>
<td>$4,000 to $5,999</td>
<td>6</td>
</tr>
<tr>
<td>$6,000 to $7,999</td>
<td>7</td>
</tr>
<tr>
<td>$8,000 to $9,999</td>
<td>9</td>
</tr>
<tr>
<td>$10,000 and over</td>
<td>10</td>
</tr>
</tbody>
</table>

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.
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
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
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 top-
ic,” 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 con-
tent-based discrimination, singles out specific subject matter for dif-
ferential 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 catego-
ries 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 re-
lates a content preference.” Turner Broadcasting System, Inc. v.
FCC, 512 U. S. 622, 658. This same analysis applies to event-based

(d) The Sign Code’s content-based restrictions do not survive strict
scrutiny because the Town has not demonstrated that the Code’s dif-
erentiation 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 traf-
cic 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

(e) This decision will not prevent governments from enacting effec-
tive sign laws. The Town has ample content-neutral options availa-
bale to resolve problems with safety and aesthetics, including regulat-
ing 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.
Syllabus

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.