



Supreme Court Case Requires Rewrite of Municipal Sign Laws

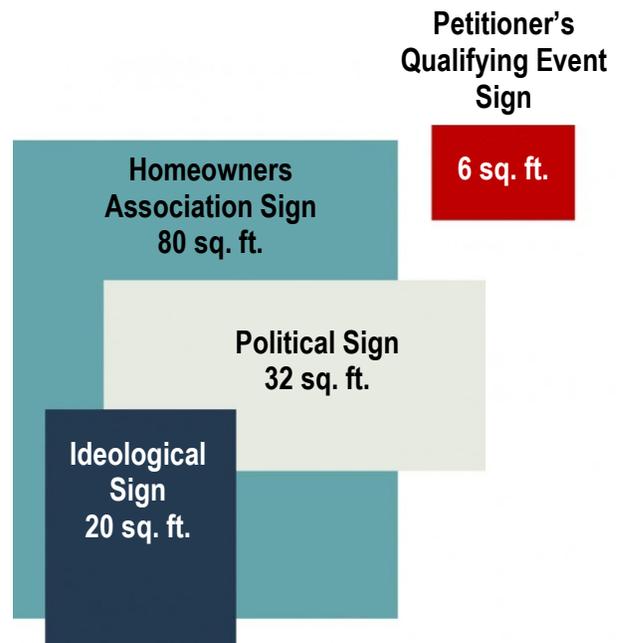
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On June 18, 2015, the Supreme Court decided the case of Reed v. Town of Gilbert, Arizona¹, which invalidated the Town of Gilbert’s (Gilbert) sign law as an unconstitutional restriction on speech. As a result, municipal sign laws throughout the country should be reevaluated to determine whether they pass constitutional muster. The following provides an explanation of the Reed case and guidance on the regulation of signs post-Reed.

Town of Gilbert’s Sign Code

Like many municipalities, Gilbert, Arizona adopted a sign code which identified various categories of signs based on the type of information they conveyed. Each category of signs was subjected to different regulations. Categories included “temporary directional signs relating to a qualifying event”, “ideological signs”, “construction signs”, “directional signs”, “garage sale signs”, “political signs” and “bazaar signs”, among others.

Gilbert’s sign code generally required a permit for outdoor signs with 23 different categories of signs exempted from the permit requirement. The Supreme Court considered three of the exemptions in some detail before ultimately deciding that the sign law constituted a content-based restriction on speech: ideological signs, political signs and temporary directional signs. Under Gilbert’s sign code, these three sign types were treated differently with regard to size, location, and timeframe, as follows:



Graphic depiction showing some of the different allowances for non-commercial signs in the Town of Gilbert’s sign regulations. (Photo credit: The Becket Fund for Religious Liberty)

Sign Type:	Ideological	Political		Temporary Directional
Allowed Square Footage:	20 square feet	16 square feet	32 square feet	6 square feet
Allowed Location:	All zoning districts	Residential property	Non-residential or undeveloped municipal property	No more than 4 signs per property
Allowed Timeframe:	No time limit	60 days prior to primary election to 15 days following general election		12 hours prior to 1 hour after the qualifying event

Reed v. Town of Gilbert

The petitioner in the case is Clyde Reed, the Pastor of Good News Community Church. The Church is described by the Court as a “small cash-strapped entity that owns no building,” causing it to hold services at available locations throughout the Town. The Church began placing 15-20 temporary signs around the Town advising the public of the time and place of its services. Signs would be posted on Saturday and removed on Sunday. The Town cited the Church for exceeding the durational limit on temporary directional signs and for failing to include the date of the event on the signs.



The temporary signs placed around Gilbert by the Good News Community Church. (Photo credit: www.legalbroadcastnetwork.com)

The Church filed a complaint in Federal Court, claiming that its first amendment right to freedom of speech was being violated by Gilbert’s sign code. The District Court and the Court of Appeals ruled in favor of Gilbert. The Supreme Court overturned the decision, holding that Gilbert’s sign code was an unconstitutional content-based regulation of speech.

The Supreme Court analyzed the sign law and whether it violated the First Amendment, which prohibits laws “abridging the freedom of speech.” A municipality may not “restrict expression because of its message, its ideas, its subject matter, or its content.”² Content-based restrictions are “presumptively unconstitutional” unless the municipality can provide that the restrictions are “narrowly tailored to serve compelling state interests,”³ such as traffic safety or aesthetics.

The court identified Gilbert’s sign code as a subtle form of content-based speech regulation which defines speech by its purpose or function. The Court reasoned that the “restrictions in the Sign Code that apply to any given sign . . . depend entirely on the communicative content of the sign.”⁴ Even though Gilbert’s sign code did not distinguish between different viewpoints on the sign or express disagreement with any messages on the signs, ***the act of regulating a sign by its function rendered the regulation a content-based regulation.***

Gilbert defended the sign code by arguing that the code served two compelling interests: preserving aesthetics and traffic safety. The Court found that the regulations were “underinclusive” and therefore ineffective. For example, “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.”⁵ With respect to aesthetics, the Court did not find the regulation to be narrowly tailored because it allowed an unlimited number of ideological signs while placing significant limits on directional signs.

With respect to traffic safety, the Court was not persuaded that limiting threats to safety from directional signs, but not from ideological or political signs, was a narrowly tailored approach, given the Court’s opinion that “a sharply worded ideological sign seems more likely to distract a driver than a sign directing the public to a nearby church meeting.”⁶



An example similar to one provided in the Reed brief showing temporary political signs in comparison to the temporary church event sign. (Photo credit: www.westerncity.com)

The Outcome

The outcome of the Reed case is that any municipal sign law which regulates signs based on their function – ie, political, garage sale, non-profit – will be subject to the “strict scrutiny” test and will be presumed unconstitutional unless the municipality can prove that the regulations further a compelling government interest and are narrowly tailored to serve that interest. The Supreme Court’s decision involved only non-commercial signs. It is unclear whether a future case will apply the same test to commercial signage.

Unfortunately, the Court’s opinion means that common exemptions in sign codes for historical markers, home occupations, hidden driveways and no trespassing signs would probably fail under a strict reading of the decision. Communities may act to “repeal the exemptions that allow for helpful signs on streets, or else lift their sign restrictions altogether and resign themselves to the resulting clutter”⁷. Neither option is desirable.

After dealing a huge blow to sign codes throughout the Country, the Court did offer guidance on regulations that are not content-based. The following is a non-exclusive list of sign regulations that are not content-based and therefore presumed constitutional, along with examples of such regulations adopted by Dutchess County communities.

1. **Size of Signs:** The Town of Pleasant Valley regulates the size of permanent signs based on the location and make of the sign. The permitted size of a wall sign is based on the size of the establishment’s principal façade, while a monument sign can be no larger than 16 square feet on each side and no taller than six feet.⁸
2. **Lighting of Signs:** The Village of Fishkill has adopted different sign regulations for different zoning districts within the Village. Internally illuminated signs are permitted along Route 9 and I-84 but prohibited within the historic main street area.⁹
3. **Electronic Message Display Signs:** The Town of Poughkeepsie prohibits electronic message display signs (EMDs) in all residential districts, hamlet districts and in certain commercial districts. Where such signs are permitted, the Town regulates the distance

between EMDs, the location of EMDs, and requires a message to be displayed for no less than 12 hours without change.¹⁰

4. **Placement of Signs:** The Town of Red Hook prohibits signs in the public right of way.¹¹
5. **On-Premises and Off-Premises Signs:** The Town of LaGrange prohibits billboards in all district. A Billboard is defined as “an off-premises sign that is leased or rented for profit.”¹²
6. **Total Number of Signs Permitted:** The Town of Hyde Park regulates signs on establishments within a shopping center. Each establishment may have a sign no more than one square foot for each lineal foot that the establishment occupies, up to 100 square feet.¹³
7. **Building Materials and Moving Parts:** The Town of Dover Zoning Law prohibits signs from containing or consisting “of any moving, rotating, or revolving device.”¹⁴
8. **Permanent versus Temporary Signage:** The Town of Poughkeepsie permits one a-frame or sidewalk sign per business, provided it does not obstruct the sidewalk or an egress door and further provided it is made of durable, weather resistant materials.¹⁵
9. **Time Restrictions:** Rules imposing time restrictions on signs advertising a one-time event or allowing signs leading up to an election or other event, so long as signs of any topic whatsoever are permitted.

Next Steps to Consider

This ruling by the Supreme Court has the potential to fundamentally change the way municipalities regulate non-commercial signs, which in turn could have a dramatic effect on our community aesthetics. Local municipalities should be prepared to adjust their sign codes accordingly. To that end, if your community has not already begun reviewing its sign law, proactive steps should be taken to convene a sign committee and review the local sign law prior to an expensive and costly legal challenge. Community officials should also review enforcement priorities with their municipal attorney and discuss whether provisions which would not satisfy the strict scrutiny test should continue to be enforced by the municipality.

¹ 138 S. Ct. 2218 (2015).

² Id. at 2226, citing *Police Department of Chicago v. Mosley*, 408 US 92 (1972).

³ Id., citing *R.A.V. v. St. Paul*, 505 US 377 (1992).

⁴ Id. at 2227.

⁵ Id. at 2221 (syllabus).

⁶ Id. at 2232.

⁷ Id. at 2237.

⁸ Town of Pleasant Valley Zoning Law § 98-46I(1)(a).

⁹ Village of Fishkill Zoning Law § 171-49C.

¹⁰ Town of Poughkeepsie Zoning Law § 210-123.1.

¹¹ Town of Red Hook Zoning Law § 143-27B(3).

¹² Town of LaGrange Zoning Law § 240-43B &D(1)(b).

¹³ Town of Hyde Park Zoning Law § 108-24.2C(2)(b).

¹⁴ Town of Dover Zoning Law § 145-39E(4).

¹⁵ Town of Poughkeepsie Zoning Law § 210-123.2.

More Information

[Reed v. Gilbert Supreme Court Opinion](#)

[Municipal Control of Signs](#) (updated), NYS DOS

[Opinion Analysis: The message determines the right](#), SCOTUSblog

[Court's Free-Speech Expansion Has Far-Reaching Consequences](#), NYTimes

[Supreme Court reaffirms broad prohibition on content-based speech restrictions, in today's Reed v. Town of Gilbert decision](#), The Washington Post

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