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Category-Specific Sign Regulations Fail Constitutional Challenge in *Reed v. Gilbert*

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In *Reed v. Town of Gilbert, Arizona*, the U.S. Supreme Court ruled that a town's sign ordinance which prescribed different standards for several broad categories of signs was content-based regulation subject to the most rigorous level of constitutional review, the "strict scrutiny" standard. Applying that standard, the Supreme Court held that (i) the town had failed to demonstrate a compelling government interest justifying the disparate treatment among the signs at issue; and (ii) the regulations were not narrowly tailored to meet the town's purported objectives of protecting local aesthetics and traffic safety.

The *Reed* decision could potentially open the doors to review of local sign ordinances nationwide, in particular, those regulations concerning temporary signs (e.g. campaign signage) and signs which have been traditionally exempt from local permitting requirements.

The Town of Gilbert, Arizona, enacted a sign ordinance which prohibited the display of outdoor signs anywhere in the town without a permit. However, the ordinance exempted 23 categories of signs, including "Ideological Signs," "Political Signs" and "Temporary Directional Signs Relating to Qualifying Events." Although all three categories were exempt from the general permit requirement, they were each subject to individual restrictions concerning size, number and duration of posting.

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The Good News Community Church, headed by Pastor Clyde Reed, challenged Gilbert's sign ordinance after the town issued the Church citations for violating the duration restrictions governing the Church's weekly signs inviting the public to Sunday services. The Church opposed the sign ordinance claiming it abridged its right to free speech as guaranteed under the First and Fourteenth Amendments to the U.S. Constitution.

On appeal from the Ninth Circuit Court of Appeals, which upheld the sign ordinance, the U.S. Supreme Court reversed.

At the outset, the Supreme Court rejected the lower courts' finding that the ordinance should be subject to a lesser standard of intermediate constitutional review. The Court ruled that, on its face, the law was content based and, therefore, was subject to the strictest standard of constitutional review. The Court stated:

The Town's Sign Code is content based on its face. It defines "Temporary Directional Signs" on the basis of whether a sign conveys the message of directing the public to church or some other "qualifying event." It defines "Political Signs" on the basis of whether a sign's message is "designed to influence the outcome of an election." And it defines "Ideological Signs" on the basis of whether a sign "communicat[es] a message or ideas" that do not fit within the Code's other categories. It then subjects each of these categories to different restrictions. The restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign.

Because the Town's Sign Code imposes content-based restrictions on speech, those provisions can stand only if they survive strict scrutiny, "which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest..."

Applying the strict scrutiny standard of review, the Court found the town's compelling interests in protecting local aesthetics and traffic safety did not justify or explain the disparate restrictions on the size, number and duration among the different categories of signs. Thus, the sign ordinance failed to satisfy the strict scrutiny standard.

The Court's decision does not prohibit municipal sign regulations. A municipal sign ordinance, however, must be content neutral to survive. The Supreme Court itself noted: "*The Town has ample content-neutral options available to resolve problems with safety and aesthetics. For example, its current Code regulates many aspects of signs that have nothing to do with a sign's message: size, building materials, lighting, moving parts, and portability.*" With respect to signs on public property, the Court noted "*on public property, the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner.*"

In his concurring opinion, Justice Alito elaborated on a municipality's ability to regulate signs by providing examples of rules that would not be content based:

- Rules regulating the locations in which signs may be placed;
- Rules distinguishing between lighted and unlighted signs;
- Rules distinguishing between signs with fixed messages and electronic signs with messages that change;
- 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;
- Rules distinguishing between on-premises and off-premises 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.

Justice Alito also stressed that municipalities can erect their own signs on public property as governmental speech and *"may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots."*

Under *Reed*, a well-reasoned and view-point neutral sign ordinance may nevertheless be susceptible to strict constitutional scrutiny if it prescribes different standards among even the broadest categories of speech. For example, temporary campaign signs, which many municipalities seek to control using specific size, number and duration restrictions are almost certainly subject to review under strict scrutiny and, further, cannot be justified based the protection of aesthetics or public safety alone.

The Court's Opinion and the concurring Opinions raise questions and pose uncertainty as to how a municipality should view its existing sign ordinance with respect to placement of signs 1) by the government on public property; 2) by private parties on public property; and 3) by private parties on private property. The attorneys in Keane & Beane's Municipal Law Practice Group will be reviewing our clients' sign ordinance for consistency with the Court's decision as we further evaluate the impact of this decision. Please contact Nicholas Ward-Willis at nward-willis@kblaw.com or any of our other municipal law attorneys if you have any questions or would like a copy of the decision.

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