



Supreme Court Decision Will Affect Local Sign Ordinances

A recent ruling by the U.S. Supreme Court may have a major effect on local ordinances regulating signage.

In *Reed v. Town of Gilbert*, the Court ruled that the Town of Gilbert's sign ordinances violated the First Amendment. Gilbert's ordinances differentiated between different types of signs including "ideological signs," "political signs," and "temporary directional signs relating to a qualifying event." These types of signs (along with other categories) were restricted to various size limits and were only allowed to be displayed for various lengths of time. As a result, the time and size limit of the signs varied with the category of sign, or, as the Supreme Court ruled, with the content of the speech.

Reed filed suit when his church was cited for violating the time limit for "temporary directional signs relating to a qualifying event" when they displayed signs with information regarding weekly church services around the community for more than the allowed time. The church used different schools and other temporary locations to host their services every week, so in order to inform the public of the service, it was necessary to post signs stating where the weekly service would be held. Reed claimed the sign ordinance violated the First Amendment.

The Court determined that the sign ordinance was a content-based law because the town's ordinance "singles out signs bearing a particular message." The Court explained that a regulation is content-based if it applies to particular speech because of the topic discussed or the idea or message expressed. Reed's signs were singled out because they displayed the time and place of a church service. The Court rejected the argument that the fact that the town had no intent to single out a certain kind of speech did not make the regulation content-neutral. The Court ruled that the sign regulation violated the First Amendment because it was content-based.

The Court reiterated the long-standing principle that a content-based regulation is valid only if it serves a compelling state interest and is narrowly tailored to achieve that interest. The Court ruled that the sign regulation did not further a compelling government interest nor was it narrowly tailored to achieve that interest.

The Town of Gilbert claimed that the laws "preserved the town's aesthetic appeal and traffic safety." However, the Court found that temporary signs do not provide more of an eyesore than other signs that were subject to different size and time limits, and that limiting temporary directional signs (but not other types of signs) did nothing to further traffic safety. In light of this,

the Court concluded the law did not further a compelling government interest and was not narrowly tailored and therefore violated Reed's First Amendment rights.

The ruling in this case does not mean that all local sign ordinances are now unconstitutional. There is an important distinction between "content-based" and "content-neutral" laws. Content-based laws face strict scrutiny under the law while content-neutral laws are subject to lesser scrutiny. Local ordinances should reflect a content-neutral approach to signs. In *Reed*, the Court listed several content-neutral options for regulating signage, including: "size, building materials, lighting, moving parts, and portability." All of these restrictions have nothing to do with the sign's message and are therefore content-neutral. The Court also recognized that local governments may forbid signs altogether on public property if it is done in "an evenhanded, content-neutral manner."

In *Reed*, the Supreme Court acknowledged that a local government may have a compelling interest to have content-based sign regulations to protect public safety or other important purpose. If these laws are narrowly tailored to further a compelling government interest, then the laws may not be unconstitutional even though they are content-based. The Court used the example of warning signs marking hazards on private property as an appropriate content-based restriction. However, in most cases, Virginia's local governments should review their sign ordinances to make sure they are content-neutral as the rule is set out in the *Reed* opinion.

The Fourth Circuit United States Court of Appeals addressed sign ordinances in the 2012 case of *Wag More Dogs v. Cozart*. *Wag More* considered Arlington's sign ordinances that required permits for 'business signs' that identified the products or services available on the premises or advertising and restricted the size of such signs. *Wag More Dogs* filed suit after being told a mural outside of the business, which showed dogs, bones, and paw prints was a business sign under Arlington County ordinance and was illegally displayed without a permit.

The *Wag More* Court found that even though the Arlington ordinances distinguished between "business signs" and other types of signs, the law was content neutral. The Supreme Court held in *Reed* that "a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter." In light of *Reed*, the types of regulations in *Wag More* may well be considered content-based, and without a compelling government interest, the ordinances would be unconstitutional.

Local government sign ordinances must either be content-neutral or may be content-based if the law is narrowly tailored to further a legitimate government interest in order to be constitutional and in line with the First Amendment. In light of the *Reed* decision, local ordinances should be carefully examined to ensure compliance with the *Reed* decision.