

U.S. Supreme Court Ruling Impacts Sign Regulations

Introduction

On June 18, 2015, the U.S. Supreme Court decided the case of *Reed v Town of Gilbert, AZ* and held the town's sign ordinance unconstitutional. In this case, the town regulated a church's temporary directional signs differently than other noncommercial signs (e.g., political signs and ideological signs). For example, while the town of Gilbert allowed non-profit event signs to be displayed for 12 hours prior to the event and one hour after the event, the town allowed political signs to be displayed for an unlimited length of time prior to an election and required to be removed 10 days after the election. The Supreme Court found that these types of distinctions that are based on the content of the sign favored certain types of signs (i.e., speech) and violated the First Amendment of the U.S. Constitution. An important rule from this case is: If you need to read the message on a sign to determine how it is regulated, then the regulation is content-based.

How Are My Community's Sign Regulations Impacted?

Reed left many unanswered questions regarding a municipality's authority to regulate signs based on commercial content or off-premise content. However, it is clear that sign regulations must strive for as much content neutrality as possible and that signs should not be regulated based on the content of the message or the speaker. For example, many sign ordinances have different regulations for signs based on the content of the sign, such as: real estate signs, political signs, special event signs, garage sale signs, and gas station signs. Now that the Supreme Court has ruled against these types of distinctions, many communities are at risk of costly and unnecessary litigation.

What Should My Community Be Doing Right Now?

In Michigan, most communities regulate signs in their zoning ordinances in accordance with the Michigan Zoning Enabling Act. However, some communities have a separate sign ordinance that is not included in its zoning ordinance. In either case, every community should take the following steps to address content neutrality in their sign regulations:

Step 1: Conduct a Technical Audit of all Sign Regulations in your Ordinances. Almost all communities have definitions and standards for signs based on the content of the message, including: construction signs, religious signs, garage sale signs, theater signs, time/temperature signs, help wanted signs, directional signs, special event signs, and the like. All communities should conduct a thorough technical audit of their sign regulations and identify any content-based provisions, i.e. provisions that regulate signs based on the message, the speaker, or an event.

Step 2: Discuss Sign Regulations with your Municipal Attorney. Because *Reed* impacts every sign ordinance in the U.S., your municipal attorney should advise you on how much content neutrality is required in your community's sign regulations and make officials aware of any legal risks. The legal community is aware of the implications (and uncertainty) created by the *Reed* case, and it is essential for you to engage the advice of your municipal attorney early in the review process. Your municipal attorney can also advise you on enforcing (or not enforcing) existing sign regulations that are legally questionable. Finally, your municipal attorney should review any proposed amendments to your sign regulations and inform you of potential risks.

Step 3: Initiate and Adopt Amendments to your Sign Regulations. After identifying content-based provisions in your local sign regulations and reviewing them with your municipal attorney, draft text revisions that will comply with the First Amendment and reflect your community's character. Communities may still regulate the non-content aspects of signs, including sign height, area, form, materials, separation, placement, lighting, frequency of message changes, moving parts, and portability. Sign regulations reflect a community's physical character and impacts the value of the highly visible commercial development (tax base) that fronts most major thoroughfares. Therefore, the sign regulations must clearly communicate the aesthetic standards of your community.

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Signs of the Good News Presbyterian Church placed temporary event signs throughout the town of Gilbert advertising its upcoming services. Because of the content of the message, the town regulated these temporary event signs differently than other non-commercial signs, such as political signs. A more appropriate regulation would have been to limit temporary signs based on content-neutral factors such as sign area, height, number per lot, setback from property line, and proper maintenance.