

SUPREME COURT DECISION REGARDING LIMITS ON MUNICIPAL SIGN REGULATIONS***Limits of Sign Regulation***

Yesterday, the U.S. Supreme Court ruled in *Reed v. Town of Gilbert*, that its municipal sign ordinance that creates different restrictions for political, ideological and directional signs violates the First Amendment. In the *Reed* case, the Court considered the special regulation of the Town of Gilbert, Arizona of “temporary directional signs relating to a qualifying event”, (essentially signs directing public to meeting of a nonprofit group) in that case, the church services of the Good New Community Church. That Church holds its Sunday services at various, changing locations in and around the Town of Gilbert. The dispute arose when the Church’s pastor posted signs on Saturday mornings bearing the name of the Church and the time and location of the services the next day. The Church then removed the signs later in the day on Sunday. The Church was cited for violating the Town’s sign ordinance for temporary “event” signs by exceeding the time limits for displaying a temporary directional sign and not including an event date on the signs. The Town’s ordinance created more stringent restrictions on these temporary signs than it did on signs in other categories.

While the Town of Gilbert argued that there was no viewpoint discrimination involved in the temporary “event” category and that all temporary events were treated equally, the Supreme Court disagreed. The Court reasoned that:

“[i]nnocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech... a speech regulation targeted at a specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter. A regulation that targets a sign because it conveys an idea about a specific event is no less

For more information about matters discussed in this issue, please feel free to contact Klein, Thorpe and Jenkins Ltd.



Klein, Thorpe & Jenkins, Ltd.

Chicago

20 N. Wacker Drive, Suite 1660
Chicago, IL 60606
T 312.984.6400 F 312.984.6444

Orland Park

15010 S. Ravinia Avenue, Suite 10
Orland Park, IL 60462
T 708.349.3888 F 708.349.1506

www.ktjlaw.com

content based than a regulation that targets a sign because it conveys some other idea. Here, the Code singles out signs bearing a particular message: the time and location of a specific event.”¹

The Court found such restriction of speech, was based on the sign “content”, concluding that a temporary directional sign relating to a qualifying event category, is a category of signs conveying a message. The Town of Gilbert could not show any justification, much less a compelling reason, for its limits on temporary event signs while similar size, number and location restrictions were not imposed on, for example, other “categories” of signs like ideological or political signs (the Church’s signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas). The Court found that the Town’s argument that its interests in preserving the Town’s aesthetic appeal and traffic safety was inadequate support for the sign regulation, with the Court emphasizing that temporary directional signs are no greater an eyesore than ideological or political signs, and that temporary directional signs posed no greater threat to safety than ideological or political signage. For these reasons, the Court declared the ordinance unconstitutional.

Sign Regulation Authority Still Held by Municipalities

The Court was careful to note that its decision does not prevent governmental regulation of signage, stating:

“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. And 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. [citation omitted] ... the presence of certain signs may be essential, both for vehicles and pedestrians, to guide traffic or to identify hazards and ensure safety. A sign ordinance narrowly tailored to the challenges of pro-



Klein, Thorpe & Jenkins, Ltd.

Chicago

20 N. Wacker Drive, Suite 1660
Chicago, IL 60606
T 312.984.6400 F 312.984.6444

Orland Park

15010 S. Ravinia Avenue, Suite 10
Orland Park, IL 60462
T 708.349.3888 F 708.349.1506

protecting the safety of pedestrians, drivers, and passengers—such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses—well might survive strict scrutiny.”²

Several of the Justices also offered the following examples of sign regulation that will continue to be lawful, which would not be considered “content based”:

- “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 freestanding signs and those attached to buildings.
- 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.
- 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.
- In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech. See *Pleasant Grove City v. Summum*, 555 U. S. 460, 467–469 (2009).



Klein, Thorpe & Jenkins, Ltd.

Chicago

20 N. Wacker Drive, Suite 1660
Chicago, IL 60606
T 312.984.6400 F 312.984.6444

Orland Park

15010 S. Ravinia Avenue, Suite 10
Orland Park, IL 60462
T 708.349.3888 F 708.349.1506

- They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.”³

Given the broad sweep of the Court’s ruling in this matter, a review by a municipality of its current sign regulations may be warranted, to assure compliance with the principles enunciated by the Supreme Court in *Town of Gilbert*.

A full copy of the Court’s opinion is available at:

http://www.supremecourt.gov/opinions/14pdf/13-502_9olb.pdf

¹ Reed v Town of Gilbert, 576 U.S. ____, (2015)

² Reed v Town of Gilbert, 576 U.S. ____, (2015)

³ Reed v Town of Gilbert, 576 U.S. ____, (2015)



Klein, Thorpe & Jenkins, Ltd.

Chicago

20 N. Wacker Drive, Suite 1660
Chicago, IL 60606
T 312.984.6400 F 312.984.6444

Orland Park

15010 S. Ravinia Avenue, Suite 10
Orland Park, IL 60462
T 708.349.3888 F 708.349.1506

www.ktjlaw.com