

# ***REED All About It!***

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# Challenges

“Sign Regulations is one of the more vexing tasks that a local government faces on a routine basis.”\*

The challenge when regulating signs is to balance:

- Traffic safety

- Aesthetics/community standards

- Economic development

- Business and stakeholder needs

- Myriad of legal issues

\*PAS Quick Notes No. 18

# Precedent

- *Virginia State Pharmacy Board v. Virginia Citizens Consumer Council* (1976)
- *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm.* (1980)
- *Metromedia v. City of San Diego* (1981)
- *City Council of L.A. v. Taxpayers for Vincent* (1984)
- *City of Ladue v. Gilleo* (1994)

# What's at Stake

Freedom of speech is a civil right

**Title 42 U.S.C. § 1983**

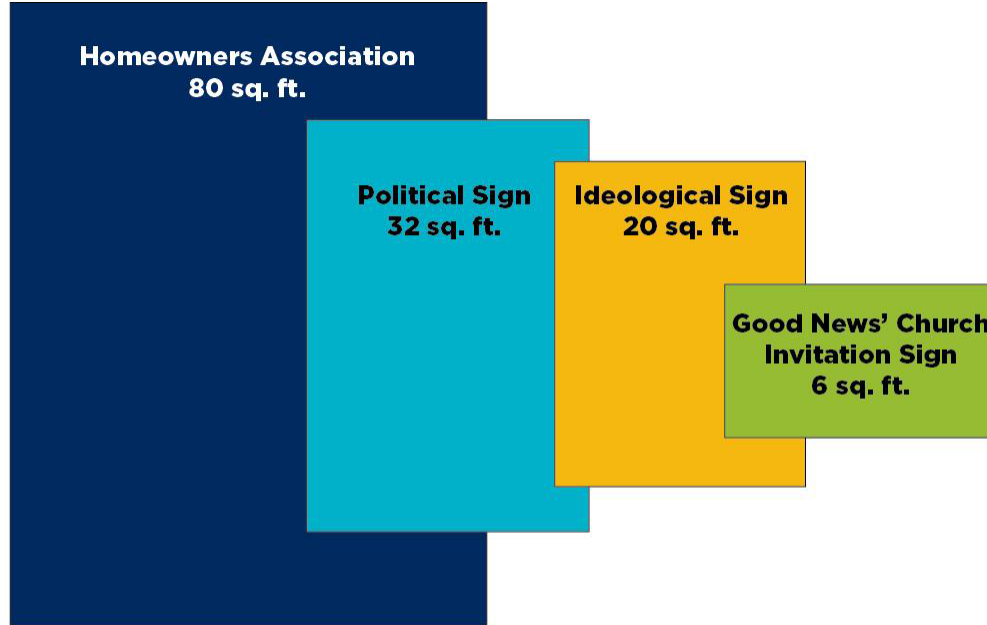
Civil rights actions

**Title 42 U.S.C. § 1988**

Damages and attorney's fees



# Town of Gilbert's Sign Code



Display Time Before	Event	Display Time After
← <b>UNLIMITED</b>	Ideological Sign	<b>UNLIMITED</b> →
← <b>4 1/2 MONTHS</b>	Election	→ <b>15 DAYS</b>
← <b>30 DAYS</b>	HOA Event	→ <b>48 HOURS</b>
<b>16 HOURS</b> ←	Real Estate Sale	→ <b>36 HOURS</b>
<b>12 HOURS</b> ←	Religious Event	→ <b>1 HOUR</b>

# The Road to Reed

- Church tried to work with City –to no avail (“no leniency”)
- District Court denied Plaintiff’s (Church’s) motion for preliminary injunction
- The 9<sup>th</sup> Circuit affirmed –held that the ordinance was content neutral
- District Court then granted summary judgment to the City
- The 9<sup>th</sup> Circuit affirmed again
  - Held that the ordinance was content neutral
  - Because the ordinance was not adopted based on disagreement with the message conveyed on the signs.

# What Did the U.S. Supreme Court Say?

Gilbert's Sign Code:

- Defines categories on the basis of their messages and
- Subjects each category to different restrictions

The restrictions “depend entirely on the sign’s communicative content” – **Content-Based**



# What Did the U.S. Supreme Court Say?

\*Presumptively unconstitutional\*

- Unless the restrictions further a “compelling governmental interest using the least restrictive means possible” –**Strict Scrutiny**

- Why do Temporary Directional Signs pose a greater threat to a compelling governmental interest (aesthetics, traffic safety) than other sign categories?

\*Strict Scrutiny of your sign code is FATAL\*

# What Did the U.S. Supreme Court Say?

You can still regulate signs based on “time, place and manner”

But regulation based on content “does not pass strict scrutiny, or intermediate scrutiny, or even the laugh test.”

# A New Way of Thinking

When updating your sign code post-*Reed*...rather than consider signs as a land use:

First and foremost consider signs as  
“constitutionally protected free speech.”

# 5 *Reed* Regulatory Rules

1. A sign ordinance should contain a substitution clause
2. A sign ordinance should contain a severability clause
3. State purpose/rationale in detail at start of code
4. A sign ordinance should minimize categories
5. A sign ordinance should minimize exemptions

# But First...

As your community reviews its sign code to make sure it's legal, avoid content-based enforcement/permit review

**DON'T** enforce content-based regulations

**DON'T** enact a moratorium on *all* sign permits

# 1. Substitution Clause

“Signs containing *noncommercial speech* are permitted anywhere that advertising or business signs are permitted, subject to the same regulations applicable to such signs.”

This statement prevents inadvertent preferential treatment of commercial speech over non-commercial speech

## 2. Severability Clause

If a section of the sign code is found unlawful that can be removed without invalidating the entire code

Place this clause in the sign section (not another section of the zoning ordinance)

# 3. Purpose Statement/Rationale

Provide as much rationale as possible

Explicitly state the purpose of your sign code, including “to protect the constitutional right of citizens to express themselves”

Conduct research (if possible & budget allows) or cite ***reputable*** studies



# 4. Minimize Categories

Do you have to look at the message to determine if the rule applies? If so, it is content-based:

- political or election signs
- real estate signs
- directional/Identification signs
- instructional signs
- construction signs
- price signs

# 5. Minimize Exemptions

Exemptions to a general prohibition are always problematic

- exempting “grand opening” signs from ban on inflatable signs
- exempting real estate signs from ban on portable and temporary signs

# What *Reed* Has Wrought

- Exemptions
- “Time, Place & Manner” regulations
- Commercial/Non-Commercial distinction
- On-premise/Off-premise distinction
- Digital signs

# Exemptions



# Time, Place and Manner

- Size
- Shape
- Structure
- Appearance
- Number

Wins every time!

# Commercial v. Non-Commercial Speech

- Since *Metromedia* (1981), commercial speech cannot be favored over non-commercial speech
- *All* post-*Reed* decisions that discuss the issue find this is still valid

# Commercial v. Non-Commercial Speech

What if?

- Vote Adam Smith and His “Wealth of Nations” Platform!
- “Wealth of Nations” Is the Way Things Ought to Be
- Adam Smith Speech on “Wealth of Nations” on Sunday 7pm at Lincoln Park
- Adam Smith’s “Wealth of Nations” Sold Here!

\*Same scrutiny for both\*

*Central Hudson* test to “strict scrutiny”

# On v. Off-Premise

Justice Alito's concurring opinion:

“Properly understood, today's decision will not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate aesthetic objectives,” including:

***“Regulation of on-premises v. off-premises signs”***



# On v. Off-Premise

*Lamar v. City of Los Angeles* (CA 2<sup>nd</sup> Dist. Court of Appeals)

*Auspro Enterprises v. TX DOT* (TX Ct of Appeals, 3<sup>rd</sup> Dist)

*GEFT Outdoor v. City of Indianapolis* (U.S. District Court, S.D. Indiana)

*Contest Promotions v. San Francisco* (U.S. District Court, N.D. California)

*Adams Outdoor v. Penn DOT* (U.S. 3<sup>rd</sup> Circuit Court of Appeals)

**Thomas vs Schroer (U.S. 6<sup>th</sup> Circuit Court of Appeals)**

# On v. Off-Premise

What if?

- Size
- Hold time
- Spacing
- On-premise with off-premise messages
- Fixes

# Digital Signs

- 1) “Time and Temp”
- 2) Gas prices
- 3) Favored businesses

Government digital

# *REED* All About It!

- 1) Sign codes must be content-neutral
- 2) How Reed Happened and Was Decided
- 3) Reed Regulatory Rules
- 4) What Reed Has Wrought

Commercial and non-commercial?

On v. off-premise?

Digital signs?