



# Reed v. Town of Gilbert, Regulation of Signs ...

... AND A BASKET OF COLLATERAL FIRST AMENDMENT ISSUES

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# A Game Changer – In Signs and More

- ▶ Pastor Clyde Reed and his weekly temporary signs
- ▶ Signs were placed in the public right of way to advertise church services at an elementary school (changing schools)
- ▶ Event sign could go up 12 hours before event and needed to be removed within one hour after event
- ▶ Was cited for delinquent removal





# Some Initial Confessions ...

- ▶ I am a “recovering” planner – from 35 years ago (and more)
- ▶ I worked with officials to try to improve signage forty (40) or more years ago when a traveling salesman came through Pocatello offering signs like this:
- ▶ I suppose it is fair to say that I am still scarred by those events
- ▶ As a graphically impaired person I still see many signs as a blight on the landscape.



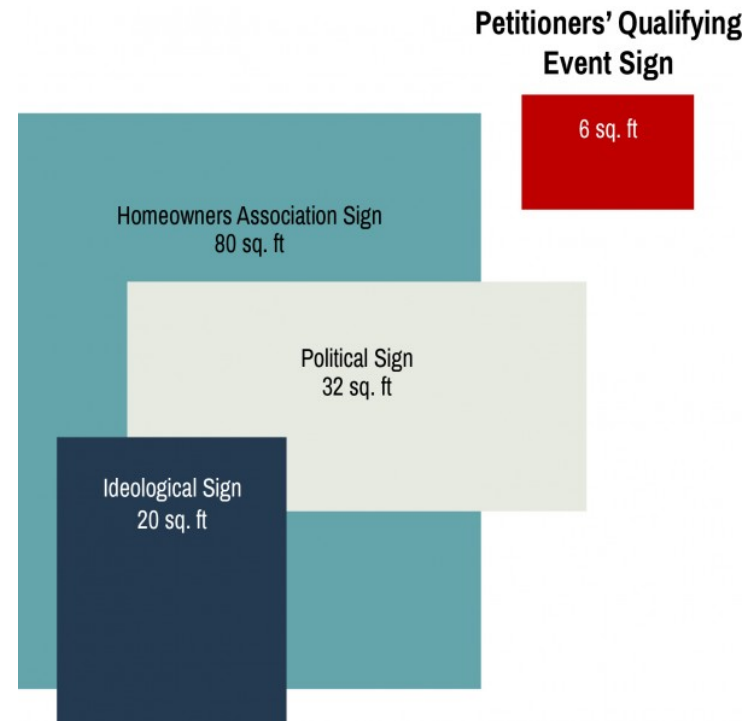
# Back to the Current Story

- ▶ Gilbert is a city of approximately 240,000 residents in the Phoenix metro area
- ▶ Had a detailed sign code that classified signs by purpose or function
- ▶ Size and frequency permission based upon those classifications



# Allowable Non-commercial Temporary Signs In Gilbert

- ▶ Differences in size allowed
- ▶ Differences in duration of display
- ▶ Based upon purpose of signage





# Judicial Proceedings

- ▶ City of Gilbert cited the church for violations when signs were not removed within the 1-hour requirement
- ▶ Church sought injunction against application of Gilbert ordinance in federal district court – denied
- ▶ Appeal to 9<sup>th</sup> Circuit – injunction also denied
- ▶ Appeal to U.S. Supreme Court – support by religious freedom advocacy groups

# Arguments to Supreme Court

## ► **Gilbert:**

- Apply intermediate scrutiny – city wasn't controlling message
- Regulation was content-neutral because it treated all temporary directional signs the same – no difference based on message
- Regulation was event-based; therefore not based on content

## ► **Reed:**

- Treats different subject matter (event, event, political, etc.) differently
- "Benign motive" was irrelevant
- Regulations were based on a sign's contents
- Should apply strict scrutiny – no compelling governmental interest in this case

# Reed Prevails – Opinion by Justice Thomas

- ▶ Majority (Thomas, Roberts, Scalia, Alito, Kennedy, & Sotomayor)– Sign regulation is content based on its face – whether directing public to church meeting or other event
- ▶ Ordinance allows unlimited ideological signs, but limits directional signs
- ▶ Ordinance designates specific subject matter for differential treatment
- ▶ Innocent motives won't save the ordinance
- ▶ 576 U.S. \_\_\_, 135 S. Ct. 2218, 192 L. Ed. 2d 236, 2015



# Concurrence by Alito (Kennedy & Sotomayor)

- ▶ Ordinance provisions allowable after Reed:
  - ▶ Rules regulating size so long as not based on content
  - ▶ Sign location rules so long as not based on content
  - ▶ Public/private land placement
  - ▶ Commercial/residential distinction
  - ▶ On-premises/off-premises distinction
  - ▶ Sign allowance by zone – but how treat nonconforming?

# Sign Ordinances Need to Be Reviewed

- ▶ But they probably did anyway – sign ordinances are notoriously ill-constructed
- ▶ Commercial signs can still be treated differently – generally subject to intermediate scrutiny
- ▶ Can regulate illumination, size and form – but not by content
- ▶ Can regulate by corridor or special area plan
- ▶ Legislative findings are critical
- ▶ Trial courts have applied Reed in “interesting” ways – some inconsistency
- ▶ Do you allow signs in public right of way?

# Reed Bleeding Into Other Realms ...

- ▶ Regulating aggressive panhandling – distinguishing based on message
- ▶ “Fill the Boot” in right of way?
- ▶ Address signs – define them as not signs?
- ▶ Financial disclosures?
- ▶ State law requirements (AZ preempts certain local regulation of political signs – cities must follow state law imperatives)
- ▶ If must allow political signs, then also required to allow other signs without regard to content?
- ▶ For sale signs on real property – allow extra sign but not control message?





If You Need to Read the Sign to  
Evaluate ...

▶ Your regulation will  
likely fail