

MUNICIPAL LAW AND ZONING

SUPREME COURT STRIKES DOWN ORDINANCE REGULATING DIRECTIONAL SIGNS

by *Nicholas Curcio*

In the case of *Reed v. Town of Gilbert*, the United States Supreme Court recently issued a significant decision regarding municipal sign regulation. The Town of Gilbert regulated signage differently based on the content of the message with different requirements applicable to three categories of non-commercial signs: political, ideological, and temporary directional signs. The town cited a local church for its temporary directional signs and the church challenged the ordinance on the grounds that it treated those signs less favorably than signs in the other two categories, requiring that they be smaller in size and posted no more than 12 hours before the advertised event. The Court unanimously held in favor of the church, finding that the ordinance violated the First Amendment's Free Speech Clause.

Prior to this decision, many believed that it was permissible for an ordinance to categorize signs based on content, so long as the ordinance regulated each category in a reasonable fashion and did not suggest hostility toward particular types of speech. Six of the nine justices in *Gilbert* firmly rejected that position, holding that content-based regulations are presumptively unconstitutional. Specifically, the six-justice majority explained that even perfectly reasonable content-based regulations are subject to "strict scrutiny," and are therefore unlawful unless they are narrowly tailored to a compelling government interest. The remaining three justices would have applied a more flexible approach, but would have still found the town's ordinance to be unconstitutional because its distinctions were not sufficiently justified.

The *Gilbert* decision is receiving significant attention in the media and may result in a wave of challenges to municipal sign ordinances. Any ordinance that includes specific allowances for political signs, directional signs, real estate signs, or garage sale signs is now constitutionally suspect. However, with careful drafting, there are still ways to regulate signs in a manner that enhances the aesthetics of the community and promotes traffic safety. The *Gilbert* decision allows content-neutral regulation of size, setback, construction materials, illumination, animation, color-scheme, etc. It also appears to allow distinctions between commercial and non-commercial speech, so long as commercial speech is treated less favorably. Finally, some content-based distinctions may still be permissible if the municipality can prove that it would not be possible to achieve a compelling government interest without singling out certain signs based on their message.

In sum, municipalities should carefully review their sign ordinances before enforcing any content-based regulations. Enforcing unlawful ordinances could result in liability for the municipality.

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