Supreme Court: Austin Sign Ordinance Does Not Violate the First Amendment

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Introduction by Kail Romanoff, VLCT Staff Attorney I

In 2015, the Supreme Court held that sign ordinances that distinguish between certain categories of signs, even when they don't distinguish between varying viewpoints within those categories, are content based regulation of speech and thus subject to strict (fatal) scrutiny. Reed v. Town of Gilbert(opens in a new tab). *You can find the article we wrote about Reed on page six of the October 2015 edition of the* VLCT News (PDF, 2.14 MB). *That decision, however, left open the question of whether a sign ordinance that distinguishes between on-premises and off-premises (e.g. billboards) signs is a permissible content neutral or impermissible content-based regulation. In* Austin v. Reagan National Advertising, *the Court ruled 5-4 that a sign ordinance that distinguishes between on-premises and off-premises signs is permissible content neutral regulation absent a content-based justification or purpose for the distinguishment. As Justice Sotomayor said, an "off-premises distinction requires an examination of speech only in service of drawing neutral, location-based lines."*

The takeaway from this case is that regulating signs solely on the basis of whether the sign is on or off premises is permitted under the U.S. Constitution.

Lisa Soronen, Executive Director of the State & Local Legal Center, provides this summary of the case.

In City of Austin, Texas v. Reagan National Advertising(opens in a new tab), the U.S. Supreme Court held 6-3 that strict (fatal) scrutiny doesn't apply to Austin allowing on-premises but not off-premises signs to be digitized. Austin's sign code prohibits any new off-premises signs but has grandfathered such existing signs. On-premises signs, but not off-premises signs, may be digitized. Reagan National Advertising argued that this distinction violates the First Amendment's Free Speech Clause. Per Reed v. Town of Gilbert (2015), a regulation of speech is content based, meaning strict scrutiny applies, if the regulation "applies to particular speech because of the topic discussed or the idea or message expressed." According to the Fifth Circuit because the City's

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on-/off premises distinction required a reader to determine "who is the speaker and what is the speaker saying," the distinction was content based. According to the Court the lower court's interpretation of Reed was "too extreme." In Reed, the Town of Gilbert's sign code "applied distinct size, placement, and time restrictions to 23 different categories of signs." For example, ideological signs were treated better than political signs and temporary directional signs were most restricted. The Court reasoned these categories were content based because Gilbert "single[d] out specific subject matter for differential treatment, even if it [did] not target viewpoints within that subject matter." Justice Sotomayor, writing for the Court, opined: "Unlike the sign code at issue in Reed . . . the City's provisions at issue here do not single out any topic or subject matter for differential treatment. A sign's substantive message itself is irrelevant to the application of the provisions; there are no content-discriminatory classifications for political messages, ideological messages, or directional messages concerning specific events, including those sponsored by religious and non-profit organizations. Rather, the City's provisions distinguish based on location: A given sign is treated differently based solely on whether it is located on the same premises as the thing being discussed or not. The message on the sign matters only to the extent that it informs the sign's relative location."

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