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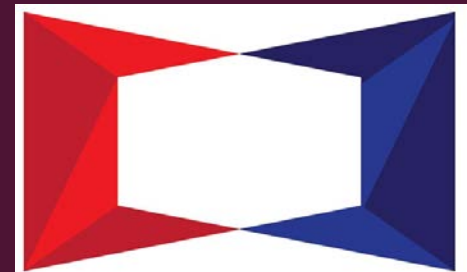
# LIFE AFTER REED

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# FIRST AMENDMENT AND SIGN REGULATIONS

- All signs are speech.
- Regulation of signs is subject to heightened scrutiny.
- Most sign ordinances contain a few provisions of “questionable constitutionality” (Weinstein and Connolly, 2015).

# IMPORTANT FIRST AMENDMENT CONCEPTS APPLICABLE TO SIGNS

- Content neutrality
- Time, place or manner regulations
- Commercial v. non commercial speech
- Off-site v. on-site distinctions
- Bans and exceptions
- Permits and prior restraints
- Vagueness and overbreadth

# CONTENT NEUTRALITY V. VIEWPOINT NEUTRALITY

- Content neutrality looks at subject matter
- Viewpoint neutrality looks at point of view

# TIME, PLACE OR MANNER REGULATIONS

- Maximum size/height
- Maximum number of signs per lot/building/support structure
- Locations
- Lighting
- Animation
- Materials and colors (mind the Linmark Act)

# NAMING SIGNS BASED ON STRUCTURE

- Freestanding signs (pole and monument)
- Temporary v. permanent
- Portable signs
- Snipe signs
- Blade signs
- Building signs (roof, wall, window, marquee/awning, projecting, and suspended)
- A frame signs
- Wind signs

# COMMERCIAL V. NON-COMMERCIAL SPEECH

## Commercial

- Speech that proposes a commercial transaction
- Advertise services and products
  - Intermediate scrutiny

## Non-Commercial

- Speech about political, ideological, religious, and ideas.
- Types
  - Political
  - Personal
  - Public service signs
  - Official signs
  - Directional signs
    - Strict scrutiny

# ON SITE V. OFF SITE SIGNS

## On-site

- Advertise the products or activities on one site

## Off-site

- Identify uses or products offered somewhere other than the location where the sign is displayed.



# BANS AND EXEMPTIONS

- Total bans acceptable for commercial billboards and signs posted on public property
- Cannot have total bans on real estate lawn signs or personal lawn signs
- Exemptions are problematic.
  - Government must justify the exemption.

# REED V. TOWN OF GILBERT, AZ

- City sought to regulate three categories of signs:
  - Temporary directional signs
    - May have a 6 x 6 sign for 12 hours before and 1 hour after an event
  - Political signs
    - Unlimited number of signs up to 32 sq. feet
    - No time limit before election but must be removed 10 days after
  - Ideological signs
    - Unlimited number of signs up to 20 sq. feet for an unlimited time

# REED

- Church challenged the regulations as a violation of the first and fourteenth amendment because the regulation disfavored directional signs as compared to political and ideological signs.
- Trial court held....
- Court of appeals ruled....
- Supreme Court agreed to review the case on a writ of certiorari because of a circuit split.

# REED

## 5, 8, 11

- Do you have to look at the message to determine if the rule applies?
  - If yes, content based.
    - Political and election signs
    - Real estate signs
    - Directional and identification signs
    - Instructional signs
    - Construction signs
    - Nameplate signs
    - Price signs
    - Home occupation signs

## 3, 4, 6, 7, 9

- Is the government trying to regulate or censor content?
  - If no, it is content neutral because:
    - Local governments needs leeway
    - A limited number of content based provisions are intended to censor or restrict speech that is acceptable.

# REED

- Supreme court held that the code provision is unconstitutional (9-0 majority opinion authored by Justice Thomas)
  - Holding: if you have to read the message displaced to determine how a sign is regulated, then the regulation is content based and, therefore, subject to strict scrutiny.
  - Holding: Further, a facially content neutral regulation will be considered content based if it cannot be justified without reference to the content or a regulation as adopted because of the message conveyed.
  - Holding: A finding that a regulation is content based shifts the burden to the local government to demonstrate that:
    - The regulation serves a compelling governmental interest
    - That is narrowly tailored to achieve that interest.

# REED

- Categorical signs are content based.
  - Political/election signs
  - Real estate signs
  - Directional/identification signs
  - Instructional signs
  - Construction signs
  - Nameplate signs
  - Price signs
  - Home occupation signs

# REED

- Event based signs are content based
  - Rental signs
  - Construction signs
  - Gas station signs
  - Theater signs

# REED

- Regulations that continue to be acceptable:
  - Size and location
  - Public v. private property
  - On v. off site



# REED

## Do

- Review code to identify content based regulations
- Add severability and substitution clauses
- Have a strong purpose statement

## Don't

- Enforce content based regulations
- Enact a moratorium on all sign permits

# WHAT SHOULD BE IN YOUR CODE

- Regulatory purpose
- Definitions
- Non content based regulations
- Severability clause