

April 28, 2016

The Education and Certification Committee
The Florida Association of Code Enforcement
C/O The Florida Institute of Government at
The University of Central Florida
12443 Research Parkway, #402
Orlando, FL 32826-3282

Dear Committee Members:

I am submitting the following topic for my legal issue paper for the Committee's approval. My paper will discuss the enforcement of our municipal sign codes based on the US Supreme Court's recent decision (Reed v. Town of Gilbert). The City of Gainesville's municipal sign code must be written to be "content neutral." I will explore how this affects the code enforcement officer's struggle in only enforcing placement, size and duration and not consider content. Now, content-neutrality is much stricter and means that we cannot have any sign regulations that require a code enforcement officer to look at the content of the sign to determine if the municipalities' regulations apply.

The Committee's response to my proposal and other correspondence can be emailed to lookjs@cityofgainesville.org or mailed to PO Box 490, Mail Station 10A, Gainesville, FL 32627.

Sincerely,

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FACE Member #4403

Supreme Court decision: Clyde Reed, et al., v Town of Gilbert, Arizona, et al.

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Local Governments have been enacting ordinances to regulate signage in their jurisdictions for many years for general reasons; such as the reduction of sign pollution, the removal of litter on their rights-of-way, the potential for the distraction of motorists, and the overall aesthetics of their community. These governments often regulate sign characteristics such as the size, placement, and the duration of time these signs can be displayed. However, on some occasions, local governments will write their ordinances differently based on the purposed use of the sign, such as real estate signs, construction signs, directional signs, etc. Sign regulation is essential if governments want to maintain a uniform appearance and reduce sign pollution throughout their communities. The writing of sign regulation requires the enforcing authority to take into consideration the public's constitutionally provided freedom of speech which in short is the right to communicate one's opinions and ideas without fear of government retaliation or censorship. In 2005, the Town of Gilbert, Arizona adopted a municipal sign ordinance that regulated the manner in which signs could be displayed in public areas. Later, the Town cited a local church for violation of their sign regulation and in March of 2008, Pastor Clyde Reed on behalf of Good News Community Church filed a lawsuit claiming the town "abridged their freedom of speech in violation of the First and Fourteenth Amendments" (Justice Thomas Opinion 4). This paper will explore the United States Supreme Court Case Reed v. Town of Gilbert, Arizona and the effect it has on the City of Gainesville's sign ordinance as well as local governments nationwide.

In 2005, the Town of Gilbert, Arizona adopted a municipal sign ordinance that regulated the manner in which signs could be displayed in public areas. Under the new regulations, many types of the signs allowed required a permit from the Town although there were several categories of signs that were exempt from the permit requirement. Three of the sign categories were the subject of the Supreme Court case.

First, signs that contained “a message or ideas for noncommercial purposes” could be up to twenty square feet in size and could be placed in any “zoning district” for any length of time. Second, political signs “designed to influence the outcome of an election called by a public body,” could be no larger than thirty two square feet on nonresidential property and sixteen square feet on residential property. Additionally, political signs could only be displayed “up to 60 days before a primary election and up to 15 days following a general election”. Lastly, “temporary directional signs relating to a qualifying event,” which directed “pedestrians, motorists, and other passersby” to events hosted by non-profit organizations, could be no larger than six square feet. A “qualifying event” was any “assembly, gathering, activity, or meeting sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar non-profit organization.” Temporary directional signs relating to a qualifying event could be displayed no earlier than twelve hours before the start of a qualifying event and no later than one hour after the end of the event; these signs could only be displayed on private property or public rights-of-way, but no more than four signs could be placed on a single property at the same time.

(Reed v. Town of Gilbert. Wikipedia np).

The Good News Community Church (Church) in Gilbert, Arizona is a small church that rented space at various locations throughout town to hold services. The Good News Community Church and Pastor Clyde Reed directed their volunteers to place signs in strategic locations within the Town of Gilbert to notify their congregation and passerby where services were being held each week. The Church volunteers would typically place anywhere from 15 to 20 signs on Saturday

morning and remove the signs around midday Sunday. The signs would usually be up for approximately 36 hours.

The Town's compliance officer took notice of these signs and spoke to Pastor Reed. The officer explained the sign code and sent formal notice citing The Good News Community Church and Pastor Reed on two separate occasions. The First citation was for the signs being up too long and violating the 12 hours prior and one hour following an event clause of the Town's regulation. The second citation was for the same infraction but also noted that there was also no "date of event" on the sign as required by ordinance.

In March of 2008, after attempting to come to a compromise with the Town, the Church was told that there would be "no leniency under the Code and promised punishment for any future violations" (Justice Thomas Opinion 4). Reacting to the Town's stance, Pastor Reed and legal counsel with Alliance Defending Freedom filed suit claiming that the town violated their right of freedom of speech provided under the U.S. Constitution. The petitioners filed suit in the United States District Court for the District of Arizona which subsequently denied the motion for a preliminary injunction. The District Court found that the Sign Code was Constitutional since it was content-neutral and the regulation was reasonable in light of the government interests.

The Court of Appeals for the Ninth Circuit affirmed, holding that the Sign Code's provision regulating temporary directional signs did not regulate speech on the basis of content. It reasoned that, even though an enforcement officer would have to read a sign to determine what provisions of the Sign Code applied to it, the " 'kind of cursory examination' " that would be necessary for an officer to classify it as a temporary directional sign was "not akin to an officer synthesizing the expressive content of the sign. (Justice Thomas Opinion 4).

The Town's official explanation was that its regulations were content-neutral. The difference among types of signs was based on impartial factors and not the content of the sign and the distinctions did not favor a particular viewpoint or beliefs. Therefore, the intent of the regulation was unrelated to the content of the sign. Pastor Reed spoke at a press conference and expressed his understanding of the case saying,

I am 82 years old and have been a pastor for over 40 years. I never dreamed my small church signs would be a topic for the Supreme Court. All we wanted to do was use temporary signs to welcome and invite the community to our Sunday morning services. We saw many different kinds of signs, like political and real estate signs, all over Gilbert all year long, so we did not think it would be a problem to place church invitation signs. But much to our surprise, we soon found out that Gilbert's code requires our church signs to be much smaller and up for a far shorter period of time than many other types of signs. In fact, because we could only put signs up 12 hours before our services, it means placing them in the dark of night the evening before our services while other types of signs can be up for months at a time.

(Alliance Defending Freedom np).

In 2013, Alliance Defending Freedom filed an appeal to the United States Supreme Court and was granted a hearing on July 1, 2014. The case was argued on January 12, 2015 and the Court rendered its decision on June 18, 2015. The Supreme Court's decision was unanimous and said that government could not regulate signs differently based on their content.

Basically the case was against the Town of Gilbert due to the fact their ordinance stated that if you want to put a sign up directing you to an event at a non-profit organization it could only be a certain size and up for a certain period of time. The size and allowed duration was far less than and

shorter than other signs allowed in the Town's code. For instance, the allowable size of a political sign was almost three times larger and it was permitted to be erected for several months. For another example, signs containing a non-commercial message were allowed to be about twice as large and be displayed considerably longer than those signs allowed for non-profit organizations. The Supreme Court decision stated that the disparity between the sign types was a violation of the plaintiff's freedom of speech granted within the First and Fourteenth Amendment to the Constitution. The Court's decision was unanimous when it came to their judgement that the sign code infringed upon the church's freedom of speech. However, there were differences of opinion among the Justices when it came to why they believed this to be the case. This variance in opinion will make it even more challenging for local governments to write their sign codes so that they meet the newly established stricter scrutiny. "Three joined the majority only; three joined the majority, but also joined an explanatory concurrence; and three disagreed with the majority's legal reasoning. This three-three-three split, unfortunately, causes even more head-scratching for an already complex topic" (Lovelady np).

Now what does the Supreme Court's decision mean for the City of Gainesville and its sign code? The City's initial reaction was to request that the City Attorney's Office examine the code to ensure that the same issues don't apply to the City of Gainesville as did in the Town of Gilbert. The current City of Gainesville sign code does speak to signs of various contents such as: political signs, contractor signs, commercial message signs and non-commercial message signs.

"In thinking about your sign ordinance, ask this: Does this regulation apply to a particular sign because of the non-commercial content on the sign? If yes, the regulation must meet strict scrutiny under Reed. The government must show that the regulation is designed to

serve a compelling governmental interest and narrowly tailored to achieve that interest”
(Lovelady np).

There are areas that will possibly need to be addressed that may not be able to stand up to the strict scrutiny outlined in the Reed decision. This is a difficult undertaking because of the variety of the Justice’s opinions in terms of the legality of why the Town of Gilbert’s sign ordinance was unconstitutional. For example, The City of Gainesville’s code regulates “political signs” and their size when placed on residential property and non-residential property as well as the duration they are displayed. Political signs are regulated so that within residential districts they can be 6 square feet and 4 feet tall and within nonresidential districts they can be 32 square feet and 8 feet tall. The City similarly regulates contractor signs, signs that contain no commercial message, and special event signs. While the review and potential revision of the City of Gainesville’s sign code is in process, the City’s enforcing official has been asked to hold off on any interpretation based on content. An example of a situation where this has been challenging pertains to the provision within the City’s sign code that grants the enforcing official authorization to confiscate any and all abandoned signs placed on the public right of way. Unless that sign is a city sponsored event which may cause an issue because the front line officer would need to determine the content of the sign to try and determine if it was a city sponsored sign. As far as the frontline officer on the street, they will need to be extremely cautious not to narrowly interpret the ordinance so as to not bring into question the content of the sign when deciding whether or not the sign is in violation of a particular part of the code. In other words you should not have to read the sign to classify the sign.

The opinion made by Supreme Court Justice Thomas while vindicating the church was vague in a lot of aspects and it will take more litigation based on future cases to be able to have a complete understanding of the government’s right to regulate signage in their jurisdictions and the public’s

right of freedom of speech. Until then, we are left with Justice Thomas' opinion and the subsequent concurring opinions and the interpretations of our jurisdictions attorneys as they try and come up with a code that will stand the test of strict scrutiny.

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