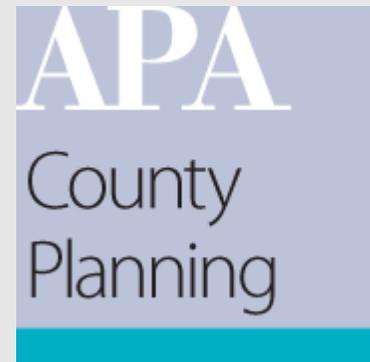


Reed Analysis: Tips & Traps

November 16, 2017

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Professor Alan Weinstein
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James Carpentier, AICP (moderator)



American Planning Association

Making Great Communities Happen

Writing Sign Regulations after *Reed v. Town of Gilbert*

American Planning Association

Reed Analysis: Tips and Traps

November 16, 2017

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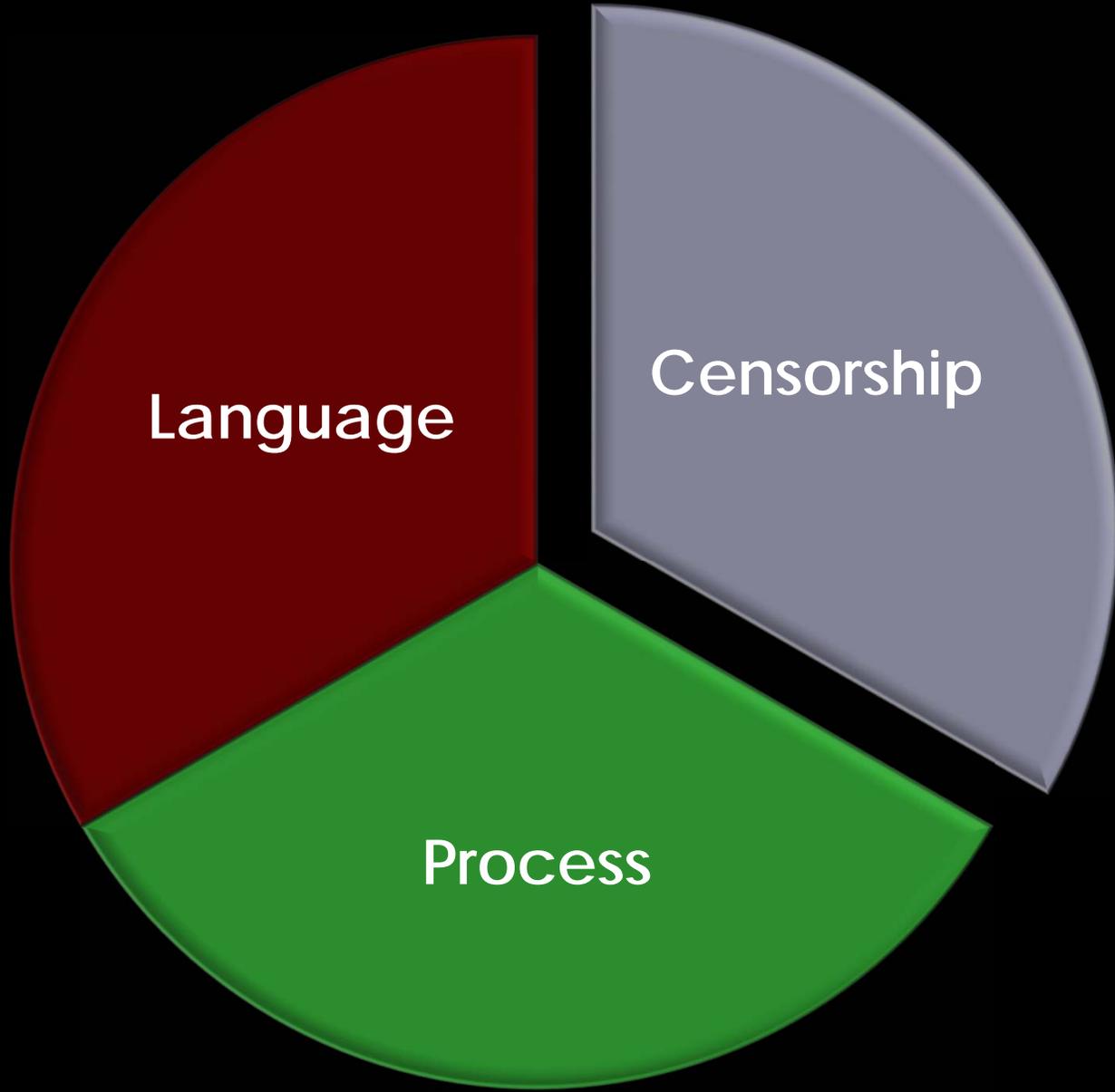
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Use v. Sign Regulations

	Use Regulation	Sign Regulation
Constitutional issues	Due process, equal protection, takings (property rights)	First Amendment (free speech) ... <i>and the others</i>
Government interest	Legitimate	Substantial / Compelling
Nexus	Rational basis	Intermediate "with bite" / strict
Scope	Reasonable (legislator's choice)	Directly advance / no further than necessary Narrowly tailored
Scrutiny	Deferential	Intermediate / Strict

First Amendment Framework



How to Get into Trouble

First Amendment



Bans



Exemptions



Categories

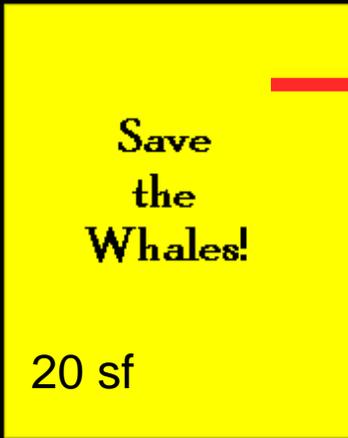
Reed v. Town of Gilbert (US 2015)

"Temporary Directional Signs Relating to a Qualifying Event"



Source: <http://www.nytimes.com/2015/06/19/us/justices-side-with-arizona-church-in-dispute-over-sign-limits.html>

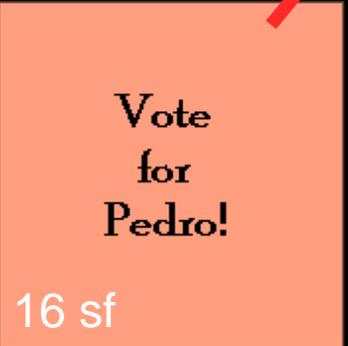
Ideological



Where?	How long?
Anywhere	As long as you want

Where?	How long?
Residential (16 sf) NR / public / ROW (32)	60 before primary 15 after general

Political



Temporary
Directional
Sign
Relating to a
Qualifying
Event



6 sf

Where?	How long?
Private or public land 4 at a time	12 hours before 1 hour after

Content

Content-Based

- What does sign say?
- Message determines if it stays up or down, or applicable regulations

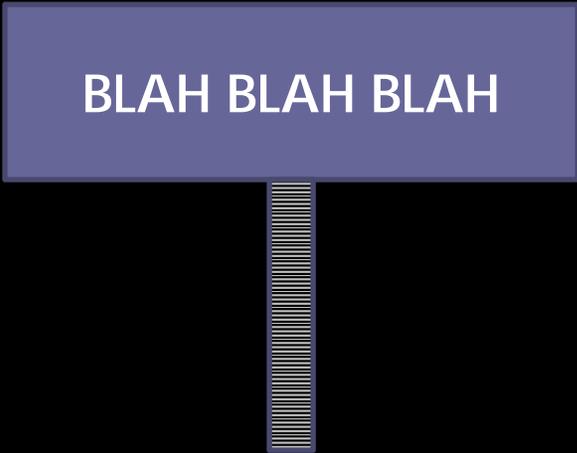


Vote for Fred

“Election Sign”

Content-Neutral

- Time
- Place
- Manner



BLAH BLAH BLAH

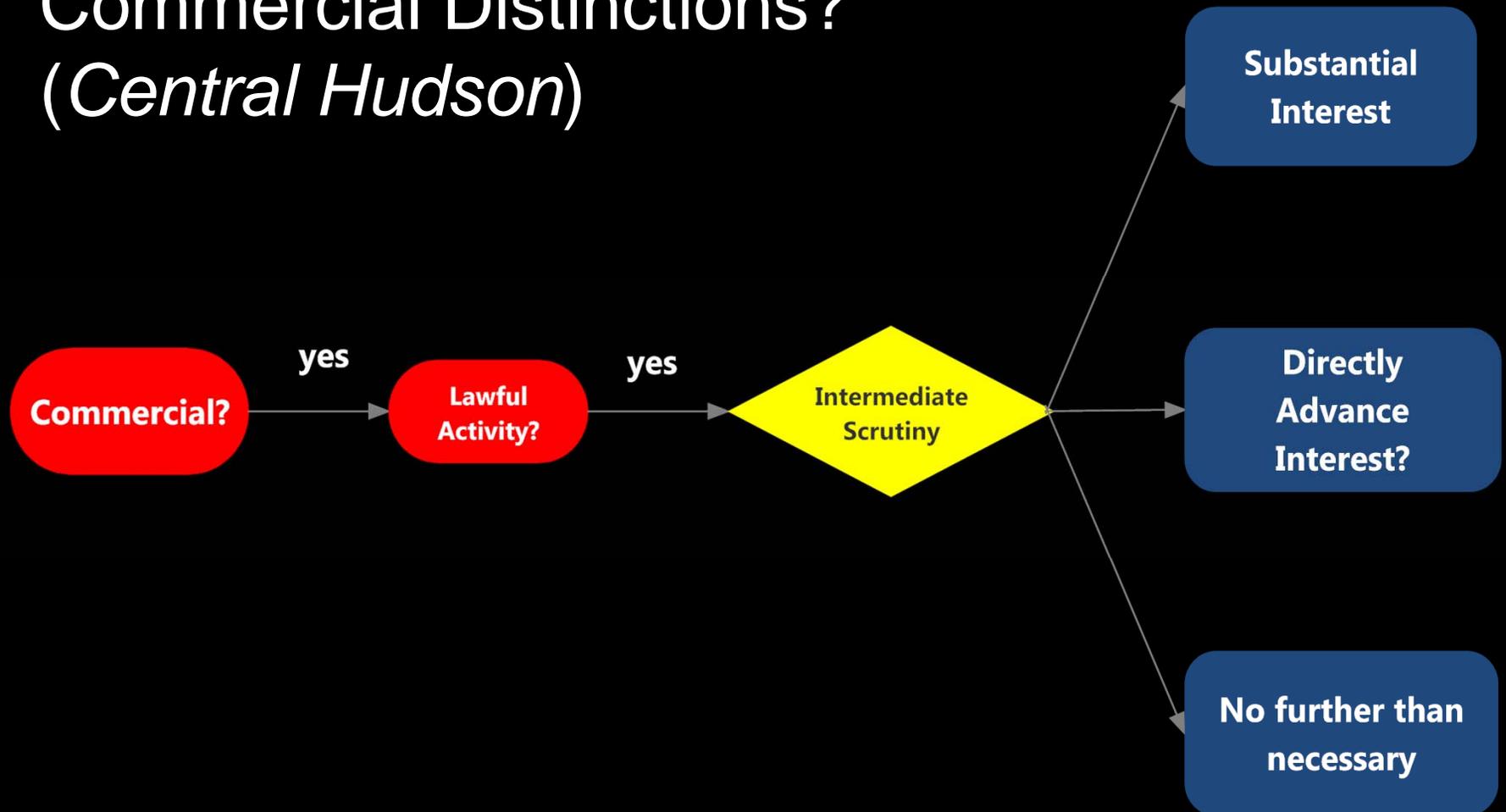
“Pole Sign”

What is "Content-Based"?

- Distinguishes on basis of
 - Idea Expressed / Viewpoint ("Vote for Sam")
 - Topic or Message ("Political Signs")
- Facially neutral but
 - cannot be justified without reference to content

Obvious	Subtle
Subject matter	Function or Purpose

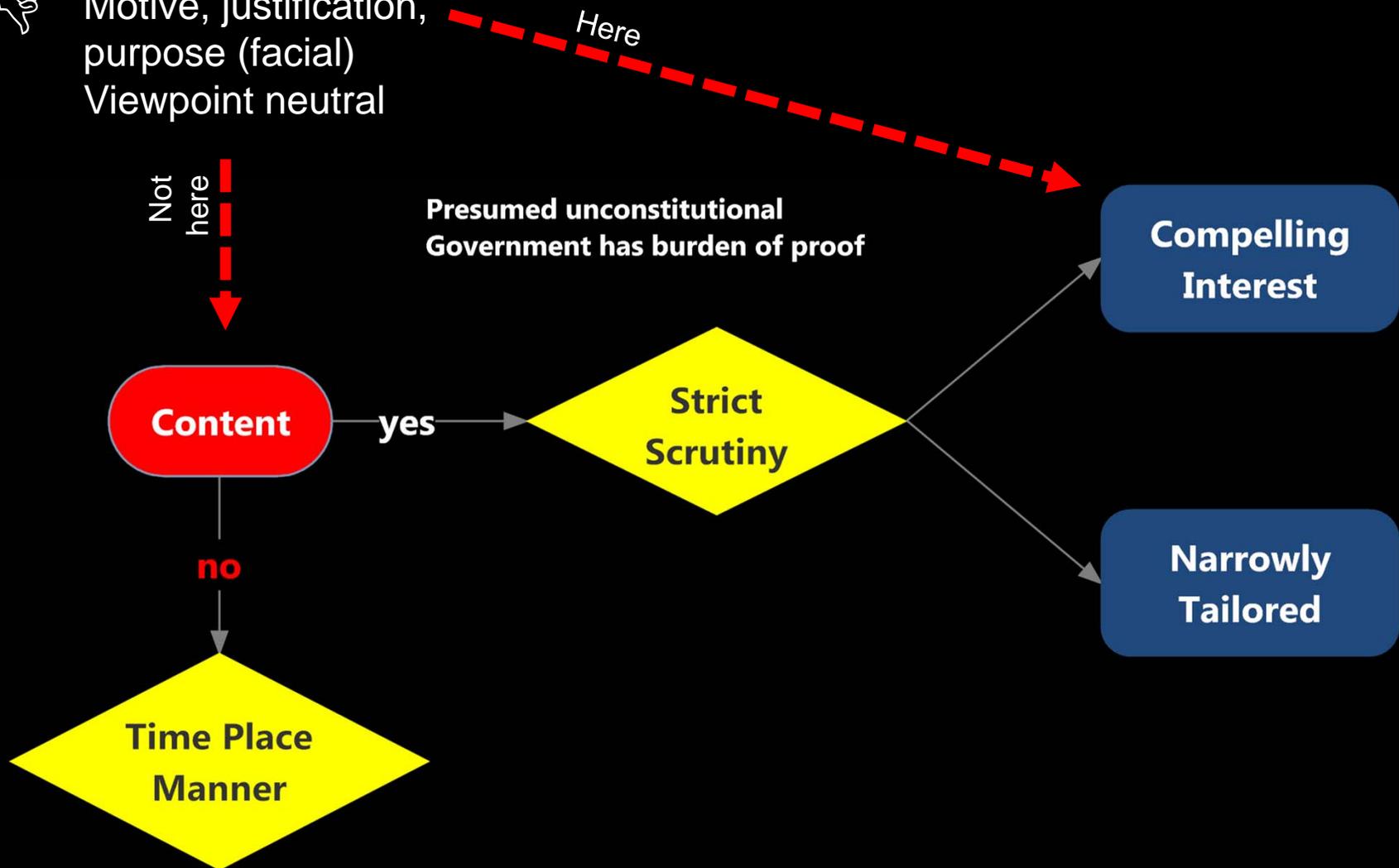
Commercial Distinctions? (*Central Hudson*)



Test for Content Based Regulations

👉 Does message have regulatory impact?

👉 Motive, justification, purpose (facial)
Viewpoint neutral



Underinclusive

Compelling? – **Yes**

- Aesthetics
- Traffic safety

Narrow - **No**

- Visual impacts do not justify distinctions
- Traffic impacts do not justify distinctions



What can we regulate?

Majority

- Size
- Materials
- Lighting
- Moving parts
- Portability
- Public property (ban)

Unanswered questions –

- Commercial speech
- On- v Off-Premises

Concurring

- Locations
- Freestanding v. Attached
- Lighting
- Fixed v. changeable electronic signs
- Public property (distinction)
- Commercial v. residential
- On-premises v. Off-premises
- Total number of signs allowed per frontage or area
- Time restrictions on advertising a one-time event
- Governmental signs

What can we regulate?

- warning signs marking hazards on private property
- signs directing traffic
- street numbers associated with private houses



Reed Take-Aways

- *Reed* is about content
- *Reed* is not about temporary signs
- Post-*Reed* sign regulation is a practical issue because –
 - Signs are often “temporary” because of their message BUT
 - The message does not impact the regulations’ underlying purposes

10 things to remember about *Reed*:

1. This case is not about **temporary** signs. It's about **content**.
2. **Topic** or **message** = content
3. There are 2 ways you get into trouble: (1) **exemptions** (2) **categories**
4. Identify **temporary** signs by **structure** type and **uniform event** triggers.
5. Identify all signs (permanent or temporary) by **structure** or **design** (structure, design, location)
6. Distinctions between **on-** and **off-site** signs are **probably** sufficient
7. So far, **intermediate** scrutiny for distinctions between **commercial** signs is intact.
8. It **doesn't help** sign industry.
9. Use **allocation** based systems that allow the property owner to allocate messages.
10. Remember other First Amendment caselaw requirements (overbreadth, vagueness, secondary effects [i.e., adult uses])

How Are the Courts Applying *Reed* in Sign Cases?

APA County Division Webinar November 16, 2017

Professor Alan Weinstein
Cleveland-Marshall College of Law and
Maxine Goodman Levin College of Urban Affairs
Cleveland State University
a.weinstein@csuohio.edu

CM | **LAW**



Issues in the post-*Reed* Cases

- **Commercial/Non-Commercial Distinction**
- **On-site/Off-site Distinction**
- **Exemptions from permits or regulation**
- **Time, Place & Manner Regulations**

Commercial/Non-Commercial Distinction

- All post-*Reed* decisions that discuss the issue find the distinction is still valid
- Regulation of commercial speech triggers intermediate scrutiny under *Central Hudson* ...
not strict scrutiny ...
 - **even though such regulations “on their face” require consideration of content**

Commercial/Non-Commercial Distinction

- “. . . the majority of courts that have considered the question have held that the holding in **Reed is limited to noncommercial sign regulations** and does not alter or otherwise affect precedent relating to municipal regulations of commercial signs.”

Geft Outdoors, LLC v. Consolidated City of Indianapolis, et al., 187 F.Supp.3d 1002 (S.D. Ind. 2016)

Commercial/Non-Commercial Distinction

- “*Reed* is of no help to plaintiff either . . . , it does not purport to eliminate the distinction between commercial and noncommercial speech. It does not involve commercial speech, and does not even mention *Central Hudson*.”

Lamar Cent. Outdoor, LLC v. City of Los Angeles, 245 Cal.App.4th 610
(Ct. App. 2d Dist. 2016)

On-site/Off-site Distinction

- Almost all post-*Reed* decisions have ruled the distinction is still valid ... *but* ...
- ***Thomas v. Schroer*, 248 F.Supp.2d 868 (W.D. Tenn. 2017); 127 F.Supp.3d 864 (W.D. Tenn. 2015) (PI); 116 F.Supp.3d 869 (W.D. Tenn. 2015) (TRO)**

On-site/Off-site Distinction

- *Thomas v. Schroer*, 127 F.Supp.3d 864, 873 (W.D. Tenn. 2015)

“[t]he only way to determine whether a sign is an on-premise sign, is to consider the content of the sign and determine whether that content is sufficiently related to the ‘activities conducted on the property on which they are located.’ ”

On-site/Off-site Distinction

- *Thomas v. Schroer*, 127 F.Supp.3d 864, 873 (W.D. Tenn. 2015)

“Justice Alito's concurrence in *Reed* is inapposite to the instant analysis. Not only is the concurrence not binding precedent, but the concurrence fails to provide any analytical background as to why an on-premise exemption would be content neutral.”

On-site/Off-site Distinction

“... Justice Alito described the off-premises/on-premises distinction as content neutral. ***This Court agrees it is possible for a restriction that distinguishes between off- and on-premises signs to be content neutral. *** But if the off-premises/on-premises distinction hinges on the content of the message, it is not a content-neutral restriction.*** A contrary finding would read Justice Alito's concurrence as disagreeing with the majority in *Reed*. The Court declines such a reading.

***Thomas v. Schroer*, 248 F. Supp. 3d 868, 879 (W.D. Tenn. 2017)**

On-site/Off-site Distinction

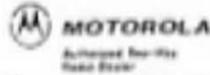
Justice Alito's exemplary list of “some rules that would not be content based” ought to be read in harmony with the majority's holding. *Id.* Read in harmony with the majority, ***Justice Alito's concurrence enumerates an “on-premises/off-premises” distinction that is not defined by the sign's content, but by the sign's physical location or other content-neutral factor.***

Thomas v. Schroer, 248 F. Supp. 3d 868, 879 (W.D. Tenn. 2017)

Exemptions

- ***Central Radio Co., Inc. v. City of Norfolk, VA*, 776 F.3d 229 (4th Cir. 2015), cert. granted, judgment vacated, 135 S.Ct. 2893 (2015), reversed, 811 F.3d 625 (4th Cir. 2016)**
- Sign code exempted certain displays, including:
 - any “flag or emblem” of any government or “religious organization”
 - “works of art” that do not identify/relate to a product or service
- Sign code regulated size of signs in I-1 district
 - temporary (60 sf); other (1sf per 1 linear ft of frontage)

CENTRAL RADIO Co., INC.



**50 YEARS ON THIS STREET
78 YEARS IN NORFOLK
100 WORKERS
THREATENED BY
EMINENT DOMAIN!**



375 s.f.



Exemptions

- Citation  Central Radio seeks injunction
- District Ct. denies injunction because exemptions were reasonably related to city's interests in traffic safety/aesthetics
- 4th Cir. affirms ... *Reed* ... Central Radio files cert. petition, S.Ct. vacates/remands
- On remand, 4th Cir. finds exemptions made code content-based under *Reed*
 - government flag exempt ... but not non-government
 - “works of art exempt” ... unless refer to product/service

Exemptions

Content Based = Strict Scrutiny

- **Compelling government interest?**

“Although interests in aesthetics and traffic safety may be substantial government goals, neither we nor the Supreme Court have ever held that they constitute compelling government interests.”

- **Narrowly-tailored?**

No evidence that restrictions on non-government flags or works of art that refer to product/service was necessary to eliminate threats to safety or to achieve aesthetic goals

Exemptions

Content Based = Strict Scrutiny

- *Marin v. Town of Southeast*, 136 F.Supp.3d 548 (S.D.N.Y. 2015)
- Regulation that ***exempted*** certain signs, but not political signs, from restrictions placed on temporary signage, was a content-based restriction that ***did not*** withstand strict scrutiny

Time, Place & Manner Regulations

- ***Peterson v. Vill. of Downers Grove*, 2015 WL 8780560 (N.D. Ill. Dec. 14, 2015) ...upheld content-neutral ban on *all* painted wall signs**
- ***Vosse v. The City of New York*, 144 F.Supp.3d 627 (S.D.N.Y. 2015), *aff'd*, 666 Fed.Appx. 11 (2d Cir. 2016), *cert. den.*, 137 S.Ct. 1231 (2017) ... upheld content-neutral ban on signs extending more than 40 feet above curb level as a reasonable time, place, and manner restriction on speech**

Time, Place & Manner Regulations – Content Neutrality

- ***Shaw v. City of Bedford, IN., 2017 WL 2880117***
(S.D. Indiana. 2017)
 - “**flags**” displayed at an individual residence restricted to 15 s.f. *each* and *combined* area of 60 s.f.
 - “**temporary signs**” displayed at an individual residence restricted to 6 s.f. *each* and *combined* area of 36 s.f.
 - “**permanent signs**” are *prohibited* in residential areas *except* at entrances to residential developments ... the combined s.f. of the permitted signs depends on the acreage of the development

Time, Place & Manner Regulations – Content Neutrality

- ***Shaw v. City of Bedford, IN.*, 2017 WL 2880117 (S.D. Indiana. 2017)**

The court upheld the regulations under intermediate scrutiny and cited *Reed* as recognizing that **content-neutral** regulations may be used by municipalities “to resolve problems with safety and aesthetics” associated with signs. 135 S.Ct. 2218, 2232 (2015)

Time, Place & Manner Regulations – Content Neutrality

- ***Palmer v. City of Missoula, MT.*, 2017 WL 1277460 (D. Mont. 2017)**
- banned “banners, flags, pennants, streamers, spinners or other types of wind signs”
- “wind sign” defined as “an attention-getting device with or without copy ... fastened in such a manner as to wave in the wind.”

Basic Do's and Don'ts After *Reed*

DO

- **review** code to identify content-based regulations; e.g. “categorical” regs.
- add a **severability** clause and a **substitution** clause if you do not have one
- have a strong **purpose clause** and link that to regulations

DON'T

- **enforce** content-based regulations
- enact a **moratorium** on *all* sign permits ... narrower focus and shorter time is always better

Do's and Don'ts After *Reed*

DON'T

- A **nameplate** sign displays the address of the property and/or the name of the occupant of the property on which it is displayed.
- A **real estate** sign is a temporary sign promoting the rental, sale or lease of property.

DO

- In addition to any other permitted sign, each residential property may display a permanent 1 s.f. sign that is visible from the public right of way.
- In addition to any other permitted sign, each residential property offered for sale or rental may display a temporary 6 s.f. sign that is visible from the public right of way.

Define signs based on their structure

- freestanding signs
 - pole
 - monument
- temporary vs. permanent signs
- portable signs
- “snipe” signs
- “blade” signs
- building signs
 - roof
 - wall
 - window
 - marquee/awning
 - projecting and suspended
- “A-frame” signs
- “wind-signs”

A TALE OF TWO (OR MORE) CITIES



Post-Reed Approaches to Sign Regulations

CONTENT-NEUTRAL CASE STUDIES

- **The Reed case did not perfectly define “content-neutral” sign regulations.**
- **Still gray areas regarding certain basic distinctions:**
 - On-premise versus off-premise signs
 - Commercial speech versus noncommercial speech signs.
- **Communities are taking individual approaches based on their own risk assessment, typically based on recent regional court cases.**



Noncommercial Speech



Commercial Speech



Content-Neutral Case Study

Drawing from experience in ...

- California – adopted and draft
 - Arizona – adopted
 - Texas – draft
-
- Focus on general approach used in all cities – emphasis on being **as content neutral as possible**

Content-Neutral Case Study

Include a Severability Clause

- Cross-reference to the Severability Clause for your Zoning Code; or include in Sign Chapter, if needed

It is hereby declared to be the intention of the City Council that the Sections, paragraphs, sentences, clauses and phrases of this Code are severable and, if any phrase, clause, sentence, paragraph, or Section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and Sections of this Code.

Content-Neutral Case Study

Include a Substitution Clause

- Substitution Clause

This Division is not intended to, and does not restrict speech on the basis of its content, viewpoint, or message. No part of this Division shall be construed to favor commercial speech over non-commercial speech. A non-commercial message may be substituted for any commercial message on a sign, or the content of any non-commercial message displayed on a sign may be changed to a different non-commercial message, without the need for approval or a permit, provided the size of the sign is not altered. To the extent any provision of this Division is ambiguous, the term shall be interpreted not to regulate on the basis of the content of the message.

Content-Neutral Case Study

Limit the number of exemptions

- Building identification signs
- Signs posted on community bulletin board
- Historic plaques
- Signs not readable from public right-of-way
- Governmental signs
 - Address
 - Traffic control and warning signs
- Consciously excluded flags



Content-Neutral Case Study

Permanent Signs

- “Time, place, and manner regulations are OK”
 - For how long – must be consistently applied
 - Where – setback from ROW, on a building, etc.
 - How – colors, lighting, height, width, materials, etc.
- And, no mention of the **content**

Content-Neutral Case Study

Permanent Signs

- Awning sign
- Canopy sign
- Changeable copy sign
- Window sign
- Monument sign
- Pylon sign
- Pole sign



Content-Neutral Case Study

Permanent Signs

- Awning sign
- Canopy sign
- Changeable copy sign
- Window sign
- Monument sign
- Pylon sign
- Pole sign

Building Mounted Signs

Freestanding Signs

Content-Neutral Case Study

Permanent Signs – Use Tables for Ease of Use

- Land use/Zone
- Allowed sign type
- Number of signs
- Max. height
- Max. area

Table 10-50.100.060.A: Standards for Permanent Signs by Use

Land Use	Allowed Sign Types	Number of Signs ¹	Max. Ht. (in ft.)	Max. Area (sq. ft.)
Single-family Residential or Duplex (includes Home Occupations and Bed and Breakfasts)				
	Building Mounted	1 ²	6	6
	Freestanding	1 ²	3	6
Single-family Subdivision, Multi-family Developments, Manufactured Home Parks				
	Building Mounted	1	4	2
	Freestanding	1 ³	6	24
	Landscape Wall	1 ³	4	24
Master Planned Communities				
	Building Mounted ⁴	N/A	N/A	N/A
	Freestanding	1 ³ per major vehicular entrance	8	36
	Landscape Wall	1 ³ per major vehicular entrance	8	36
Institutional Use in all Zones				
	Building Mounted ⁴	1	6	24
	Freestanding	1 ³	4	32
	Landscape Wall	1 ³	4	32
Non-Residential Use in Commercial or Industrial Zone – Live/Work, Single Tenant Building, and Detached Buildings within a Multi-Tenant Development or Shopping Center⁵				
	Building Mounted – Single Frontage ⁴	Limited by max. sign area	25	1 sq. ft. to 1 linear ft. of primary building frontage - 100 sq. ft. max.
	Building Mounted – Multiple Frontages ⁴⁶	Limited by max. sign area	25	1 sq. ft. to 1 linear foot of primary building frontage – 100 sq. ft. max. 1 sq. ft. to 0.5 linear foot of auxiliary building frontage – 80 sq. ft. max.
	Freestanding Type A	Limited by frontage line length	8	32
	Freestanding Type B	Limited by frontage line length	6	24
Non-Residential Use in Commercial or Industrial Zone – Multi-Tenant Buildings, Development Sites, and Shopping Centers⁵				
	Building Mounted – Single Frontage ⁴	Limited by max. sign area	25	1 sq. ft. to 1 linear ft. of primary building frontage - 100 sq. ft. max.

Content-Neutral Case Study

Permanent Signs – Use Tables for Ease of Use

- Then, add standards specific to each sign type
- Max overall area limits established in the previous table



Figure C. Canopy Sign

Table 10-50.100.060.D: Standards for Canopy Signs

Standard	Other Requirements
Sign Area – (Copy, including logo)	1 sq. ft. of sign area per lineal foot of canopy width. Included in the total allowable sign area for building mounted signs.
Mounting Height	Max. 25 feet on ground floor canopies. Min. of 8 feet from the bottom of the canopy to the nearest grade or sidewalk.
Sign Placement	Only above the doors and windows of the ground floor of a building. A canopy shall not project beyond the edges of the face of the building wall or architectural element on which it is located. Shall not extend horizontally a distance greater than 60% of the width of the canopy on which it is displayed ¹ .
Setback from Back of Curb	Min. 18 inches
Illumination	Internal illumination only for the letters or logos mounted on a canopy. May also be non-illuminated.
Permitting	Sign Permit is required.

End Notes

¹If a canopy is placed on multiple store fronts, each business is permitted signage no greater than 60 percent of the store width or tenant space.

Content-Neutral Case Study

Temporary Signs

- “Time, place, and manner regulations are OK”
 - For how long – must be consistently applied
 - Where – setback from ROW, on a building, etc.
 - How – colors, lighting, height, width, materials, etc.
- **But, regulating temporary signs is much harder!**

Content-Neutral Case Study

Temporary Signs – These are no longer OK

- Political signs
- Real estate signs
- Temporary construction signs
- Temporary advertising signs
- Grand opening signs
- Recreational Event Directory Signs
- Temporary Directional Signs for a Qualifying Event



Content-Neutral Case Study

Temporary Signs – These do comply

- Sidewalk sign (A-frame or Upright sign)
- Feather or vertical banner sign
- Wall banner sign
- Window sign
- Yard sign



Content-Neutral Case Study

Temporary Signs – Organizational principles

- Only wall banners require a Temporary Sign Permit
- Only wall banners have a time limit – typically 30 days
- All other temporary signs/“portable signs”
 - No permit
 - No time limit
 - Not in public right-of-way or public property
 - Not in sight-visibility triangle

Content-Neutral Case Study

Temporary Signs

- Applicable to All Zones
 - Placement rules – not a hazard to pedestrians
 - X-ref to individual sign standards for area/height
 - Prohibited elements – balloons, lighting, etc.
 - Design and construction
- Residential Zones
- Commercial/Industrial Zones

Table 23-8F-1020.A: Standards for All Portable Signs and Wall Banners on Private Property

Applicable to All Zones	Standard
Placement	Must not create a hazard for pedestrian or vehicular traffic. Must not be placed in the clear view zone at street intersections or driveways (Refer to Section 23-8C-1010(A)(1)). Must not be placed on a sidewalk or pedestrian pathway except as provided in Table 23-8F-1020(B).
Height and width	Refer to Table 23-8F-1020.B for height and width standards.
Prohibited elements	Any form of illumination, including flashing, blinking, or rotating lights. Animation. Reflective materials. Attachments, including any balloons, pennants, ribbons, loudspeakers, etc.
Design and construction	Professionally crafted. Of sufficient weight and durability to withstand wind gusts, storms, etc.
All Non-Residential Sign Districts and Transect Zones	
Period of Use	No limitation, except for wall banners. Refer to Table 23-8F-1020.B.
Area of all portable signs at any one time	Max. 32 sf per business; excludes the area of temporary window signs and wall banners.
Number of Signs	Unlimited except that the total sign area of all portable signs must not exceed 32 sf per business. Exception: Multi-tenant buildings or uses – Max. 2 portable signs per 150 linear feet of property frontage not to exceed 32 sf combined.
Permitting	Sign Permit is not required, except for wall banner signs >48 sf in area.
All Residential Sign Districts and Transect Zones	
Period of Use	No limitation.
Area of all portable signs at any one time	Max 16 sf per lot.
Number of Signs	Unlimited except that the total sign area of all



Content-Neutral Case Study

Temporary Signs – Use Tables for Ease of Use

- Standards for Residential and Commercial Zones
 - Period of use
 - Max area
 - Number of signs

Thinking about Area and Number of Signs:

Set max. area of all temporary signs (except wall banners and window signs) – e.g.

Max. 32 sf in commercial zones

Max. 16 sf residential zones

Content-Neutral Case Study

Temporary Signs – Use Tables for Ease of Use

- Standards specific to each sign type
 - Height
 - Width
 - Area
 - Placement
 - Other standards ...

Portable Sign Type ¹	Standard			Other Requirements
	Height (Max.)	Width (Max.)	Area (Max.)	
Sidewalk Sign	4' from grade	30"	6 sf	Only permitted in non-residential zones. Only displayed during business hours.
	Location Standards			On private property (See Table 23-8F-1020.A) or within public right-of-way (Table 23-8C-1010(B)(4)). Max. 1 sign on a sidewalk with min. width of 10 ft. and directly in front of the business associated with a sign ² No closer than 20' from a driveway or pedestrian crosswalk In coordination with other right-of-way elements as determined by the Development Services Director.
	Insurance and Indemnification Requirements			Sign owner must provide the Development Services Director with proof of insurance and indemnification of the City from liability arising from placement, use or maintenance of the sign.
Yard Sign	6' from grade	2'	4 sf	Installed securely in the ground. Permitted in all Sign Districts.
Number of Signs	See Table 23-8F-1020.A.			
Wall Banner - all zones, except:	-	-	48 sf	May only be mounted on a building wall or on T-posts or stakes installed ≤ 6" from a wall on which the wall banner would be hung.
Low-Density Residential Sign District			12 sf	Max. 1 wall banner per 150 linear feet of property frontage or part thereof permitted at any one time. Mounting height - max. 25 feet to the top of the wall banner.



Content-Neutral Case Studies

Temporary Signs – some oddball issues

- Include other temporary sign types in the area limitation:
 - Fuel pump topper signs
 - Wraps around trash receptacles
 - Balloon bobbers
- Political signs – special state rules:
 - Arizona § 16-1019: ... “a city may not remove a political sign in the ROW ...” and “Sign Free Zone”



ALTERNATIVE APPROACH

- Not all cities have struck out all content from their sign regulations.
- Some communities have chosen to “wait and see”
- Others have evaluated the applicable court cases and maintained the base distinctions of:
 - On-premise versus off-premise; and
 - Commercial speech versus noncommercial speech



MORGANTOWN, WEST VIRGINIA

- 30,000+ Residents
- West Virginia University
- Lots of student housing/rentals (60%+ rental units)
- Signs are a major issue, regardless of the Reed case.



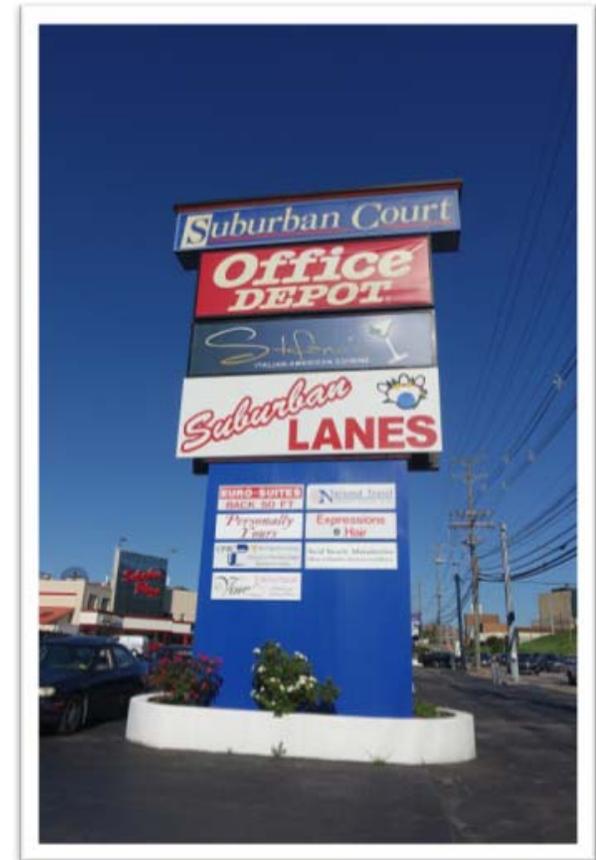
MORGANTOWN, WEST VIRGINIA

- Current sign code adopted in 2006.
- Ten years later...
 - 87 sign variance petitions
 - 95% received some level of relief
- Wall sign allowance in suburban commercial = 0.6 sq. ft. per lineal foot of wall
- On-site real estate signs, political signs, yard sale signs, are completely exempt



MORGANTOWN, WEST VIRGINIA

- **Current regulations are in draft form!**
- Draft regulations avoid all content-based regulation EXCEPT:
 - On-premise versus off-premise distinction
 - Commercial versus noncommercial speech distinction
- Off-premise signs (billboards) continue to be restricted to a limited area of the city per a separate ordinance.
- Other than the requirement for an on-premise message, permanent sign regulations are content-neutral.
- Substitution clause applies



MORGANTOWN, WEST VIRGINIA

- **Fixed a number of non-content issues with regulations.**
 - Expanded on how signs are measured (**not just the smallest rectangle**).
 - Allow for a small wall sign on residential dwellings (**home occupation signs are currently prohibited**).
 - Regulates the maximum amount of building signs. Tenants/owners have flexibility on what signs to use (e.g., wall, projecting, suspended, awning, etc.). Allowed on all facades – not just principal façade.
 - Freestanding sign size was increased, still based on lot frontage.
 - Freestanding sign height is based on street width and zoning district.



MORGANTOWN, WEST VIRGINIA

- Commercial versus noncommercial speech comes into play in several instances.
- **Noncommercial wall signs (murals)**
 - Consider allowing with authorization of the local arts commission.
- **Noncommercial flags**
 - Would allow for a wide variety of governmental and Free Speech flags.



MORGANTOWN, WEST VIRGINIA

- **Noncommercial temporary signs**
 - Accommodates political signs, ideological signs, or any noncommercial speech
 - Allowed with minimal restrictions.
 - Not in right-of-way and must comply with clear vision triangle requirement
 - Can only be a yard sign or banner sign
 - Yard signs may not exceed five feet in height
 - No restriction on number or size
 - Maintenance requirements will be key since there are no time limits



MORGANTOWN, WEST VIRGINIA

- **Commercial temporary signs**
 - Restrictions on size, time, place, and location
 - Limited to:
 - Yard Signs
 - A-Frame or T-Frame Sidewalk Signs
 - Balloon Signs or Air-Activate Graphics
 - Banner Signs
 - Feather Signs
 - Additional signage allowed on construction sites



THINGS TO CONSIDER



Content-Neutral Case Studies

Consider these points

1. Real estate signs are really tricky
 - How to regulate these?
 - One solution – Yard Signs/Post Sign
 - Challenge with permitting ...
2. Absolutely no signs allowed in the ROW
 - No off-premise signs
 - No temporary signs in the ROW
 - Implications to signs for open-houses, garage sales, etc.



Content-Neutral Case Studies

Consider these points

1. Work closely with the city attorney's office
2. Understand the political culture – level of risk
3. The realities of enforcement
4. Read and understand the Court's decisions
5. Work with all stakeholders/public engagement
6. Educate staff, business owners, and residents
7. Default to simple is best
8. Test new standards against real projects
9. If it is not enforceable, do not include it

Questions?

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