[INSERT LEGISLATIVE BODY NAME]
_____, KENTUCKY
ORDINANCE NUMBER: _____

AN ORDINANCE OF THE CITY OF _____, KENTUCKY AMENDING _____, SIGN REGULATIONS AND/OR ZONING ORDINANCE.

WHEREAS, The City of _____ desires to provide standardized content-neutral regulations that address the intent of the ordinances set out in _____ of the Sign Regulation and/or Zoning Ordinance.

NOW, THEREFORE, be it ordained by the City of _____, Kentucky as follows:

ARTICLE 11: SIGN REGULATIONS

11.1 Intent

This article provides content-neutral sign standards that allow legitimate signage for agricultural, residential, professional office, business, and industrial activities while promoting signs that:

A. Reduce intrusions and protect property values;
B. Minimize undue distractions to the motoring public;
C. Protect the tourist industry by promoting a pleasing community image; and
D. Enhance and strengthen economic stability.

11.2 Scope

These provisions apply to the display, construction, erection, alteration, location, and maintenance of all new and existing signs within _____.

11.3 Exempt Signs

The following signs are exempt from the provisions of this Article and are, therefore, exempt from the requirement to obtain a sign permit:

A. Signs not visible beyond the boundaries of the property upon which they are located.
B. Government signs that are placed by government officers in the performance of their professional/elected duties.
C. Temporary or permanent signs erected by public utility companies or construction companies in the performance of their professional duties.
D. Vehicle signage when painted directly on a vehicle or attached magnetically.
E. Temporary signage of 3 square feet or smaller placed on or after April 15 and removed by the last day of May. Temporary signage of three square feet or smaller placed on or after the first day of October and removed by November 15.
F. Temporary signs for a new business for up to 30 consecutive days from the first day of business. Exempt signage shall only be displayed on the property where the new

business is located.

G. Signage placed by realtors in the performance of their professional duties.
H. Window signage.

11.4 Permit Requirements

A. No sign regulated by this ordinance (except those specifically exempted in Section 11.4.1 below) shall be displayed, erected, relocated, or altered unless all necessary permits have been issued by the [Insert Issuing Legislative Body Name]. Applicants shall submit an application form to the department before any permit may be issued.
B. Property owner shall obtain a Certificate of Appropriateness from the Historical Preservation Commission (HPC) for signage proposed within the Historic District Overlay (HDO). Applications are available in the Planning and Community Development office and online at the HPC website.
C. Signs shall only be erected or constructed in compliance with the approved permit.
D. Applicants shall obtain a building permit for the footer of freestanding and monument signs. Applicants shall also obtain an electrical permit for signs that require electrical service. Final inspections for building permits and electrical permits require a minimum notice of 24 hours to the city's building inspector and/or state electrical inspector.
E. Signs permitted as an accessory to a legal, nonconforming use shall be subject to the regulations of the zone in which the nonconforming use is located.

11.4.1 Signs Exempt from Permit Requirements

The following signs shall not require a permit:

A. Incidental signs
B. Historic markers
C. Change of copy on any sign where the framework or other structural elements are not altered

11.5 Nonconforming Signs

A legal, nonconforming sign may continue in existence as long as it is properly maintained in good condition.

These provisions shall not prevent the repair or restoration to a safe condition of any sign, but a nonconforming sign shall not be:

A. Changed to another nonconforming sign except where only the face or copy is changed;
B. Structurally altered so as to increase the degree of nonconformity of the sign;
C. Expanded or enlarged;
D. Reestablished after its removal; or
E. Moved to a new location on the building or lot.

11.6 Illegal Signs

All illegal signs shall be subject to immediate enforcement action as outlined in Article

_____ of the _____ Zoning Ordinance.

11.7 General Requirements

All signs in all zones shall meet the following requirements:

A. Illuminated signs shall be located in a fashion which prevents all direct rays of light from shining beyond the property lines of the lot on which the sign is located.
B. No light, sign, or other advertising device shall be designed or erected to imitate or resemble any official traffic sign, signal, or device or use any words, phrases, symbols, or characters implying the existence of danger, or the need to stop or maneuver the vehicle.
C. No sign shall be attached to or painted on the surface of any tree, utility pole, or street light.
D. Projecting signs shall have at least 7' of clearance above a road or sidewalk.
E. Neon or other lighted tubing signs shall not be permitted except where such lighting is used behind solid lettering to produce a "halo" effect, or where it is used indirectly. Neon lighting shall not be used to outline buildings, structures, or ornamental features.
F. No sign, except for government signs, shall be located within the sight triangle of any intersection. Refer to Article ____ Design Standards of the Subdivision Regulations of the City of _____.
G. No sign shall be placed in or project into the public or private street right-of-way, except as specifically permitted herein.
H. Freestanding, monument, and projecting face sign area shall be computed as follows:
    a. Double-faced signs shall have only one face counted in calculating the area.
    b. Sign with more than two faces shall have the area calculated by summing the area of all sign faces and dividing by two (2).
    c. The area enclosing the perimeter of each cabinet shall be calculated to determine the area.
    d. The perimeter of the measurable area shall not include embellishments (e.g., pole covers, framing, or decorative roofing) provided there is no written copy on such embellishments.
    e. Maximum height shall be measured from the finished grade at the center of the sign and shall include the sign's base.
I. Every sign, including those for which a permit is not required, shall be maintained in good condition at all times.

11.8 Prohibited Signs in All Zones

The following signs and/or sign features shall be prohibited in all zones:

A. Mobile signs;
B. Roof signs that extend higher than the top of the roof;
C. Rotating or moving signs;
D. Abandoned signs;
E. Streamers, pennants, and tag signs or similar signs or devices except when attached to a permitted temporary sign;
F. Any sign which emits any noise or odor;
G. Freestanding signs which overhang any part of a building;
H. Flashing or blinking signs;
I. Billboards with an electronic message display system;

J. Signs in a public right-of-way; and
K. Handbills.

11.9 Signs Requiring a Conditional Use Permit in All Zones

A. Signs painted directly on a building.
B. Only the Board of Zoning Adjustments shall have the authority to approve sign variances or conditional use permits for signs unless the request is made to the Planning Commission in conjunction with a Development Plan. Applications for these signs shall be submitted and processed as outlined in Article _____ of the City of _____Zoning Ordinance.

11.10 Signs Permitted by Specific Zone

Any sign not specifically permitted shall be prohibited.

11.10.1 Agricultural Zone (A-1)

A. Residence - One wall sign not exceeding one (1) square foot in area.
   a. Every parcel shall be entitled to one sign not exceeding 36 square inches in area to be placed in any of the following locations:
      1. On the front of every building, residence or structure;
      2. On each side of an authorized U.S. Postal Service mailbox; and
      3. On one post which measures no more than 48 inches in height and four (4) inches in width.

B. Farm
   a. Two signs per entrance if incorporated into a fence or wall feature, or one freestanding sign per entrance. Signs shall not exceed 32 square feet in area each.
   b. Incidental signs - which shall not exceed two (2) square feet in area nor require sign permits.

C. Buildings Used for Religious or Educational Activities
   a. One freestanding sign not exceeding 32 square feet in area and eight (8) feet in height.
   b. One bulletin board, not exceeding 12 square feet in area and eight (8) feet in height.
   c. One wall sign per building not exceeding 32 square feet in area.
   d. Incidental signs which shall not exceed two (2) square feet in area and do not require sign permits.

D. All Other Conditional Uses
   a. One freestanding sign for any other permitted or conditional use not noted herein; signage shall not exceed 32 square feet in area and eight (8) feet in height.
   b. One wall sign that shall not exceed 12 square feet in area, and eight (8) feet in height.

11.10.2 Mobile Home (MH) Zone

A. One freestanding sign per park entrance. Sign shall not exceed 32 square feet in area, eight (8) feet in height, and shall have a minimum setback of 20 feet from any street.
B. One nameplate wall sign per mobile home that shall not exceed one (1) square foot in area.

11.10.3 Low-Density Residential Zones (R-1A, R-1B, R-1C, R-1D and R-1E)

A. **Residence** - One nameplate wall sign not exceeding one (1) square foot in area.
    a. One wall sign not exceeding one (1) square foot in area.
        1. Every parcel shall be entitled to one sign not exceeding 36 square inches in area to be placed in any of the following locations:
            i. On the front of every building, residence or structure;
            ii. One each side of an authorized U.S. Postal Service mailbox; and
            iii. On one post which measures no more than 48 inches in height and four (4) inches in width.
B. **Home Occupation** - One wall sign not exceeding six (6) square feet in area.
C. **Subdivision** - One freestanding sign per entrance into the subdivision not to exceed 32 square feet in area and eight (8) feet in height.
D. **Buildings Used for Religious or Educational Activities**
    a. One freestanding sign that shall not exceed 32 square feet in area and eight (8) feet in height;
    b. One wall sign that shall not exceed 12 square feet in area;
    c. One bulletin board that shall not exceed 12 square feet in area and eight (8) feet in height; and
    d. Incidental signs which shall not exceed two (2) square feet in area nor require sign permits.
E. **All other Conditional Uses**:
    a. One freestanding sign that shall not exceed 32 square feet in area and eight (8) feet in height;
    b. One wall sign that shall not exceed 12 square feet in area; and
    c. Incidental signs which shall not exceed two (2) square feet in area nor require sign permits.

11.10.4 High-Density Residential Zones (R-2, R-3, R-4, R-5, and R-6)

A. **Single Family Residence** - All single-family homes within these zones shall comply with the signage regulations for low-density residential zones regulated under paragraph 11.10.3 above.
B. **Multi-Family Residence** - Multi-family residential buildings and conditional uses may have:
    a. One freestanding sign that shall not exceed 32 square feet in area and eight (8) feet in height and shall have a front yard setback of 20 feet;
    b. One wall sign that shall not exceed 12 square feet in area; and
    c. Incidental signs which shall not exceed two (2) square feet in area nor require sign permits.
C. **Buildings Used for Religious or Educational Activities**
    a. One freestanding sign that shall not exceed 32 square feet in area and eight (8) feet in height;
    b. One wall sign per building that shall not to exceed 12 square feet in area;
    c. One bulletin board that shall not exceed 12 square feet in area and eight (8) feet in height; and
    d. Incidental signs - which shall not exceed two (2) square feet in area nor require sign permits.

11.10.5 Standard Signage Permitted in all Professional, Commercial and Industrial Zones (P-1, B-1, B-2, B-3, B-4, I-1, and I-2)

A. One freestanding or monument sign per street frontage with a maximum of two (2) signs per lot.
    a. Freestanding signs shall not exceed 75 square feet in area, 25 feet in height, and shall have a minimum setback of 10 feet. When street frontage permits two (2) signs, the two freestanding signs may be combined into one (1) freestanding sign that shall not exceed 110 square feet in area. For buildings with more than one occupying business this freestanding sign may list all businesses within the building.
    b. Monument signs shall not exceed 60 square feet in area, eight (8) feet in height, and shall have a minimum setback of 10 feet.

B. One wall sign, canopy sign or awning sign per street frontage with a maximum of two (2) signs per building. The maximum allowed area for all signage in this category is 32 square feet or 15 percent of the wall area to which the sign, canopy or awning is attached, whichever is greater. Awnings shall have at least seven (7) feet of clearance when fully extended. When a building contains two or more separate businesses, these requirements shall be applied separately to the wall area of the portion of the building occupied by the individual business.

C. One wall sign per tenant or lessee not exceeding two (2) square feet in area.

D. One attraction board either attached to the wall or attached to the permitted freestanding sign not to exceed 32 square feet in area and eight (8) feet in height.

E. One menu board for every property that includes a drive-thru lane, walk-up window or drive-up curbside. Menu boards shall not exceed 55 square feet in area and shall have a maximum height of eight (8) feet.

F. Temporary signs – Shall include banners, streamers, tethered balloons, and inflatable signs and objects. One temporary sign per street frontage shall be allowed subject to the following conditions:
    a. Shall not exceed 50 square feet per sign where non-rigid materials are used.
    b. Shall not exceed 32 square feet per sign where rigid materials, such as wallboard or plywood, are used.
    c. Shall comply with the applicable regulations for the zone in which they are located.
    d. Shall not remain in place for a period of more than 14 continuous days.
    e. Shall not be displayed for more than a total of eight (8) times in any calendar year.
    f. Shall not be placed within the public right-of-way or the sight triangle at intersections.

G. One marquee per theatre.
    a. A marquee shall not exceed 32 square feet in area, shall not project more than eight (8) feet from the building face to which it is attached, and shall have a minimum clearance of eight (8) feet.

H. Incidental signs – which shall not exceed two (2) square feet in area nor require sign permits.

I. Buildings Used for Religious or Educational Activities

a. In addition to signage permitted above, one bulletin board, not exceeding 32 square feet in area and eight (8) feet in height.
b. Signs with electronic message display systems shall be prohibited in the P-1 (Professional Office), B-1 (Neighborhood Business) and B-2 (Downtown Business) districts. Electronic message display systems may be incorporated into one freestanding or wall sign for each property located within the B-3, B-4, I-1, and I-2 zones.

11.10.6 Additional Signage Permitted in Specific Commercial and Industrial Zones

A. **Downtown Business Zone (B-2) -** In addition to the signage permitted in 11.10.5 above, the following signs shall be permitted:
   a. Permanent sidewalk sign - Where a building is located adjacent to the public right-of-way, one non-illuminated, freestanding sign may be permanently placed on the public sidewalk with the following restrictions:
      1. Sign shall not exceed five and one-half (5.5) square feet in area.
      2. The edge of the sign shall not extend beyond the curb line.
      3. The maximum dimensions of the support frame shall not exceed eight (8) square feet in area (maximum 48 inches wide or 36 inches high).
      4. The bottom of such support shall be seven (7) feet above the sidewalk and the vertical support shall be 24 inches from the curb.
   b. Portable sign - One shall be permitted for each business entrance subject to the following restrictions:
      1. Maximum surface area of the sign shall be six (6) square feet per face, maximum height of the sign shall be three (3) feet, and maximum width of the sign shall be two (2) feet.
      2. A minimum 36 inches wide pedestrian travel-way shall be maintained on the sidewalk. Signs may be designed with a changeable face and shall be removed from the public sidewalk when the business is closed.

B. **Highway Business Zone (B-3) -** In addition to the signage permitted in 11.10.5, the following signs shall be permitted:
   a) Shopping Center Malls larger than 100,000 square feet may have one freestanding sign per street frontage with a maximum of 250 square feet per sign face and a maximum height of 30 feet. All other shopping malls may have one freestanding sign per street frontage with a maximum of 75 square feet per sign face and a maximum height of 25 feet.
   b) One interstate sign for those businesses which lie within a 2,500-foot radius of the center point of an interstate interchange overpass. This interstate sign shall take the place of either the permitted freestanding or wall sign outlined in 11.10.5 above. These businesses may have a combination of any two of these signs: interstate sign, freestanding sign, or wall sign. Interstate signs shall be subject to the following restrictions:
      1. Shall not have an electronic message display system.
      2. Individual signs shall not exceed 250 square feet in area.
      3. Height (from the base to the top of the sign) shall not exceed 90 feet.
      4. The sign's base shall be at least 90 feet from any residential zoned property.
      5. In addition to a sign permit, a building permit shall be obtained prior to installation.

C. **General Business, Light Industrial, and Heavy Industrial Zones (B-4, I-1, and I-2)**
In addition to the signage permitted in 11.10.5, the following signs shall be permitted:

a. Shopping Center Malls larger than 100,000 square feet may have one freestanding sign per street frontage with a maximum of 250 square feet per sign face and a maximum height of 30 feet. All other shopping malls may have one freestanding sign per street frontage with a maximum of 75 square feet per sign face and a maximum height of 25 feet.
b. One interstate sign for those businesses which lie within a 2,500-foot radius of the center point of an interstate interchange overpass. This interstate sign shall take the place of either the permitted freestanding or wall sign outlined in 11.10.5 above. These businesses may have a combination of any two of these signs: interstate sign, freestanding sign, or wall sign. Interstate signs shall be subject to the following restrictions:
    1. Shall not have an electronic message display system.
    2. Individual signs shall not exceed 250 square feet in area.
    3. Height (from the base to the top of the sign) shall not exceed 90 feet.
    4. The sign's base shall be at least 90 feet from any residential zoned property.
    5. In addition to a sign permit, a building permit shall be obtained prior to installation.
c. One billboard shall be permitted subject to the following restrictions:
    1. The sign shall not have an electronic message display system.
    2. The property on which the billboard is located shall abut a federal or state highway.
    3. The sign shall be the principal use; there shall be no other buildings, freestanding signs, etc., on the lot.
    4. Signage face shall not exceed 720 square feet in area.
    5. The sign shall be located no closer than 300 feet to any other structure.
    6. The sign shall be at least 150 feet away from any residential zone or residential use.
    7. There shall be a 40-foot setback requirement from any right-of-way.
    8. Maximum height shall be 35 feet.

11.10.7 Planned Development (PD) Zone

A permitted sign's height, size, location, and design features shall be determined by the sign requirements set forth in the zone in which the proposed or existing use is first permitted.

11.11 Advertising on Interstate Highways

No billboard shall be permitted adjacent to interstate or limited-access highways except in conformance with the setback requirements established by the Federal Bureau of Public Roads, the Kentucky Transportation Cabinet, and the requirements of this Zoning Ordinance with respect to the zoning district involved.

11.12 Maintenance Standards

Every sign, including those signs for which a permit is not required, shall be maintained

in good condition at all times.

11.13 Penalties for Violation

Violation of the provisions of these sign regulations shall constitute a misdemeanor which shall be subject to the fines and penalties as set forth in Article 14 for violation of this Zoning Ordinance.

11.14 Substitution Clause

The owner of any sign which is otherwise allowed by this chapter may substitute noncommercial speech in lieu of any other commercial speech or noncommercial speech. This substitution of copy may be made without any additional approval or permitting. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over noncommercial speech, or favoring of any particular noncommercial speech over any other noncommercial speech. This provision prevails over any more specific provision to the contrary.

11.15 Severability Clause

In the event any word or sentence in this ordinance, or provision or portion of this ordinance, or rules adopted by this ordinance is invalidated by any court of competent jurisdiction, the remaining words and/or sentences, provisions, or portions thereof shall not be affected and shall continue in full force and effect.

11.16 Definitions

The definitions contained in this section shall be applied in the interpretation of all sections within Article 11 of this ordinance, except where the context clearly indicates otherwise. Words used in the present tense shall include the future tense, singular number shall include the plural, and plural include the singular.

1. **Abandoned Sign:** Signage that has been neglected and fallen into disrepair.
2. **Attraction Board:** Copy is changed manually or electronically on a regular basis.
3. **Awning Sign:** Applied directly to the surface of an awning; defined as a shelter supported entirely on a wall and made of non-rigid material supported by a frame.
4. **Banner Sign:** Made of non-rigid material with no enclosing framework.
5. **Billboard:** Signage intended for lease to a variety of businesses, organizations, and/or individuals. In such case, the sign itself shall be the income generator and the primary commercial use of the property.
6. **Bulletin Board:** Allows the manual or electronic change of copy and is used to notify the public of noncommercial events or occurrences such as church services, political rallies, civic meetings, or similar events.
7. **Canopy Sign:** Applied directly to the surface of a canopy; defined as a permanently roofed shelter covering a sidewalk, driveway, or similar area. Canopies may be supported by a building, columns, poles, braces, or a combination of both.
8. **Double-faced Sign:** Two (2) faces either set parallel or up to a 45 degree angle. Any two sign faces set at an angle greater than 45 degrees shall be considered two (2) separate signs.
9. **Electronic Message Display System:** Copy which uses rotating reflective discs, direct illumination, rotating veins, light emitting diodes (LEDs), liquid crystal diodes

(LCDs), or other digital devices and is changed by a central computer.

10. **Farm:** A tract of at least 10 contiguous acres used for the production of agricultural or horticultural crops. Agricultural and horticultural crops shall be defined as, but not limited to, livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetables, flowers, ornamental plants, vineyards, and wineries.
11. **Flashing or Blinking:** Intermittent or sequential illumination for the purpose of attracting attention to the sign.
12. **Freestanding Sign:** Attached to the ground by columns, poles, braces, or other means and not attached to any building.
13. **Government Sign:** Temporary or permanent, erected by government employees or officers in the performance of their professional/elected duties.
14. **Handbill:** Printed or written material, circular, leaflet, pamphlet, or booklet designed for distribution on vehicles or other property, excluding postal distribution, which advertises merchandise, commodities, or services.
15. **Illegal Sign:** Does not meet the requirements of this zoning ordinance and has not been identified as a legal, nonconforming sign.
16. **Illuminated Sign:** Emits or reflects artificial light from any source.
    a. **Directly illuminated:** Lighted by an unshielded light source (including neon tubing) which is visible as a part of the sign and where light travels directly from the source to the viewer's eye.
    b. **Indirectly illuminated**: Light source projects light onto the exterior of the sign surface or onto the building where the sign is located.
    c. **Internally illuminated:** Light source is within the sign, with a transparent or translucent background or cover which silhouettes letters or designs.
17. **Incidental Sign:** Not exceeding two (2) square feet in area.
18. **Interstate Sign:** Sign that is designed to be seen from an interstate highway.
19. **Marquee Sign:** Used in conjunction with a theatre, is attached to the building, and projects from the building.
20. **Menu Board:** Freestanding signs placed at properties where there is a drive-thru lane, walk-up window or drive-up curbside.
21. **Mobile Sign:** Affixed to a frame having wheels or capable of being moved. Mobile signs do not have a permanent foundation and cannot withstand the wind-load stress requirements of the adopted building code as they are designed to stand free from a building. The removal of wheels from such a sign or temporarily securing a sign of this type shall not prevent it from being classified as a mobile sign within this definition. This includes signage placed in a truck bed or on a trailer designed to be pulled behind a vehicle.
22. **Monument Sign:** Attached to a permanent foundation or decorative base and not attached to or dependent for support from any building, pole, post, or similar upright.
23. **Nonconforming Sign:** Legally erected but does not comply with the current regulations for the zone in which it is located.
24. **Non-illuminated Sign:** Does not emit or reflect artificial light from any source.
25. **Portable Sign:** Small sign, easily transported by hand, placed outside during business hours and brought into the business after hours, usually tent style or A-frame.
26. **Projecting Sign:** Attached to a building, extends more than 24 inches.

27. **Roof Sign:** Projects above the cornice of a flat roof or the ridgeline of a gabled or hipped roof. In determining the top edge of the roof, calculation shall not include cupolas, pylons, chimneys, or other projections above the roofline.
28. **Rotating or Moving Sign:** Any portion of which moves by mechanical means or the wind; does not refer to changing copy with an electronic message display system.
29. **Sign:** Any copy, including material used to differentiate the copy from the background, which is applied to a surface as a means of identifying, advertising, announcing, or illustrating products, services, and/or events.
30. **Sign Clearance:** The vertical distance between the lowest point of any sign and the grade at the base of the sign.
31. **Sign Copy:** Any word, figure, number, symbol, or emblem affixed to a sign.
32. **Sign Height:** The vertical distance measured from the highest point of the sign, including the frame and any embellishments, to the bottom of the base of the sign.
33. **Sign Setback:** The horizontal distance between any street right-of-way and a sign. The measurement shall be taken at the closest point between the right-of-way and any part of the sign.
34. **Sign Surface:** That part of the sign on which the message is displayed.
35. **Square Foot:** A unit of area equal to one foot by one foot square.
36. **Street Frontage:** Property line that lies adjacent to street right-of-way.
37. **Temporary Sign:** A banner, pennant, poster, or advertising display constructed of paper, cloth, canvas, plastic sheet, cardboard, wallboard, plywood, or other like materials and that appears to be intended to be displayed for a limited period of time. They are intended to be displayed for not more than 14 continuous days or more than eight (8) times per calendar year.
38. **Vehicle Signage:** Signage painted directly on a vehicle or attached magnetically.
39. **Wall Sign:** Attached directly to a building; includes mansards, canopies, awnings, and signs attached to a roof which do not project above the roofline.
40. **Window Display:** Merchandise or other objects placed inside a building to be viewed from outside the building.
41. **Window Sign:** Attached to or located within three (3) feet of the interior of a window and which can be seen through the window from the exterior of the structure.

Introduced, upon motion by [Insert legislative body member name], seconded by, [Insert legislative body member name], and therefore passed by _____ vote, and was given first reading at a duly convened meeting of the [Insert legislative body name], held on this day of _____ of 2016.

Introduced, upon motion by [Insert legislative body member name], seconded by, [Insert legislative body member name], and therefore passed by _____ vote, and was given second reading at a duly convened meeting of the [Insert legislative body name], held on this day of _____ of 2016.

_____
Mayor
City of _____, Kentucky

Attest:

_____
City Clerk

_____
City Attorney

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Practical Tips for Updating Sign Ordinances Post-*Reed v. Town of Gilbert*

The dust is still settling from the Supreme Court's 2015 ruling in *Reed v. Town of Gilbert, AZ*, 135 S.Ct. 2218 (2015), a case challenging the Town of Gilbert's sign ordinance as a content based and unconstitutional regulation of speech. The Court sided with the challengers, a small church and its pastor, who had faced numerous regulatory obstacles to erecting temporary signs directing members to services, which were held at different locations every week. In striking down the Town's sign ordinance, the Court clarified once and for all what it means for such regulations to be "content based" and reiterated the Court's longstanding rule that content based regulations are subject to strict scrutiny.

What are "content based" regulations? According to Justice Thomas, who penned the majority opinion, a regulation "is content based if [it] applies to particular speech because of the topic discussed or the idea or message expressed." *Reed*, 135 S.Ct. at 2227. Because the ordinance at issue in *Reed* had different size, height and duration requirements for political signs than it did for signs providing directions to an assembly or other event, the Court concluded it was "content based" and therefore subject to "strict scrutiny." Unable to discern any compelling government interest in the differing rules adopted by the Town, the Court found the ordinance invalid.

The Court's ruling in *Reed* means that any sign ordinance with different rules for different categories of signs is "content based," as long as the categories are defined by the content, topic, or subject matter of the sign's message. For example, an ordinance that allows "political" signs to be twelve square feet, but limits "temporary directional signs" to six square feet, is content-based. So is an ordinance that prohibits signs without a permit, but provides an exception to this permit requirement for historical markers, real estate signs, address signs, etc.

Is a "content based" regulation automatically unconstitutional? As the Court held in *Reed*, all "content based" regulations are subject to strict scrutiny. This means that reviewing courts can only uphold the regulation if the government demonstrates that it is the least restrictive means of achieving a compelling government interest, an extremely difficult demonstration to make. *Reed*, 135 S.Ct. at 2231. As the New York Times explained: "Strict scrutiny, like a Civil War stomach wound, is generally fatal." *The New*

York Times, "Court's Free-Speech Expansion Has Far-Reaching Consequences" (Aug. 17, 2015).

What kinds of sign regulations are still permissible? Both the majority and concurring opinions make clear that cities and towns can still legally regulate signs, provided their regulations do not make any distinctions based on content or subject matter. Jurisdictions interested in revising their sign codes to ensure they are "content neutral" under *Reed* should:

(1) Eliminate any separate rules for categories of signs that are defined by the content or subject matter of their message. This means avoiding rules that have different size, height, or duration requirements for "political" signs, "directional" signs, "real estate" signs, etc.
(2) Closely review "exceptions" to regulations to make sure they are not content based. Eliminate such exceptions even if they seem innocuous (e.g., exceptions for historical markers, address signs, etc.).

(3) Adopt content neutral, "time, place, and manner" (TPM) regulations. Justice Alito's concurrence contains a list of such TPM regulations, including rules governing the size and location of signs, the amount of time signs are displayed, and the total number of signs allowed per mile of roadway. According to Justice Alito, such TPM regulation can legally distinguish between lighted and unlighted signs, signs with fixed and changing messages and electronic, signs on public and private property, "on-premises" and "off-premises" signs, and signs on commercial and residential property. *Reed*, 135 S.Ct. at 2233 (Alito, J. concurring).

In addition to following these basic rules of content neutrality, cities and towns should also bear in mind that even facially content neutral sign regulations can still be found content based if (a) they cannot be justified without reference to the content or the regulated speech; or (b) they were adopted because of the government's disagreement with the message conveyed. *Reed*, 135 S.Ct. at 2227. And even content neutral regulations are unconstitutional if they cannot withstand intermediate scrutiny, i.e., they are not "narrowly tailored to achieve a significant government interest or they do not leave open ample alternative channels of communication." *See G.K. Limited Travel v. City of Lake Oswego*, 436 F.3d 1064, 1071; *see also Reed*, 135 S.Ct. at 2239 (Kagan, J., dissenting).

What about billboards? One question remaining after *Reed* is whether cities and towns can still legally differentiate between on-site and off-site advertising in their ordinances. In *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 512 (1981), a plurality of the Court held that such distinctions were valid, and many cities have relied on this opinion to ban billboards (*i.e.*, off-site advertising) while permitting on-site advertising for local

businesses. Because *Reed* involved *non-commercial* speech, some have opined that *Metromedia*'s rule, which applies to *commercial* speech, is still the law of the land. This opinion is supported by a long history of requiring lesser scrutiny for regulations of commercial speech than regulations of non-commercial speech. Likewise, Justice Alito asserted in his concurrence that distinctions between "on-premises" and "off-premises" signs remain valid post-*Reed*. However, as Justice Breyer noted in his dissent, the Court has recently blurred this distinction, raising the question of whether a patently content based distinction between two types of commercial speech is valid without a compelling justification. *Reed*, 135 S.Ct. at 2235 (Breyer, J., dissenting). Nonetheless, because the *Reed* Court did not mention, much less overturn, *Metromedia*, it appears that regulations distinguishing between on-site and off-site commercial speech remain valid—for now.

For more information, contact SMW attorney Winter King.

SIGN ORDINANCES: WHAT CHANGED WITH THE *TOWN OF GILBERT* AND WHAT TO DO NOW?

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INDEX

A. Introduction

In *Reed v. Town of Gilbert, Ariz*., the Supreme Court upended First Amendment jurisprudence, and made city attorneys jobs much more difficult. The court iterated a rigorous test for sign ordinances, which all but precludes the use of content based distinctions. In practice this means that is ill-advised for a city to have different rules regulating different types of signs, even where it seems completely logical to do so. In fact, if a city's code has any exemptions from its requirements, those exemptions could make the code "content based" and thus, unconstitutional.

B. The Case

The Good News Community Church, and its pastor Clyde Reed filed the lawsuit under 42 U.S.C. § 1983 against the Town of Gilbert in March 2007, seeking declaratory and injunctive relief and nominal damages. The Town of Gilbert then amended its sign code, and Good News Community Church amended its lawsuit. Good News also filed a second motion for preliminary injunction, which the district court denied and the Ninth Circuit affirmed. After all this, the district court entered summary judgment in favor of the Town of Gilbert, the decision was affirmed by the Ninth Circuit and appealed to the United States Supreme Court where the lower courts' decisions were reversed. *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2226 (2015)

1. *Reed v. Town of Gilbert* - Factual Background

The Good News Community Church's services were held at various temporary locations in and near the Town of Gilbert. The Church posted signs early each Saturday bearing the Church name and the time and location of the next service and did not remove the signs until

around midday Sunday. The Church was cited for exceeding the time limits for displaying temporary directional signs and for failing to include an event date on the signs. *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2224-25 (2015).

The Gilbert Sign Code prohibited the display of outdoor signs anywhere within the town limits without a permit, but it then exempts 23 categories of signs from that requirement. These exemptions include everything from bazaar signs to flying banners. Three categories of exempt signs are particularly relevant here. The "Ideological Signs," "Political Signs," and "Temporary Directional Signs Relating to a Qualifying Event." *Id.*

Ideological Signs: This category included any "sign communicating a message or ideas for noncommercial purposes that is not a Construction Sign, Directional Sign, Temporary Directional Sign Relating to a Qualifying Event, Political Sign, Garage Sale Sign, or a sign owned or required by a governmental agency." *Id.*

Political Signs: This included any "temporary sign designed to influence the outcome of an election called by a public body." These signs were treated less favorably than ideological signs. *Id.*

Finally, Temporary Directional Signs Relating to a Qualifying Event: This included any This includes any "Temporary Sign intended to direct pedestrians, motorists, and other passersby to a 'qualifying event.'" These signs were treated even less favorably than political signs. *Id.*

The Church and its pastor, Clyde Reed brought suit against the Town of Gilbert, claiming that the town's sign code abridged their freedom of speech. The town's sign code, imposed differing restrictions on the size, duration, and location of different types of temporary signs, including "political signs," "ideological signs," and "directional signs relating to a qualifying

event," such as a religious, charitable, or community event. This differentiation argued the Church was unconstitutional. *Id.* at 2225-26.

2. The Majority Opinion

The Supreme Court of the United States held that the distinctions among signs was a content-based regulation of speech that did not survive strict scrutiny. *Id*. at 2218. The sign ordinance was content based on its face, Justice Thomas concluded, because it defined "political signs," "ideological signs," and "directional signs" based on the message conveyed by the sign, and then subjected each of these categories of signs to different restrictions. *Id.*

The Ninth Circuit, and other circuits, allowed for content based regulation as long as the regulation was not adopted based on "disagree[ment] with the message conveyed," and the justifications for regulating content were "unrelated to the content of the sign."

The Majority Opinion however, said that this analysis "skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face." *Reed*, 135 S. Ct. at 2228. If the law is content based on its face then it is "subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech." *Id*. (internal quotations omitted).

Now, whenever one type of speech is disfavored, even if the regulation does not discriminate among viewpoints within the subject matter, that regulation will be subjected to strict scrutiny. To illustrate how broad this ruling is, the Majority Opinion gave the following example: "a law banning the use of sound trucks for political speech—and only political speech—would be a content-based regulation, even if it imposed no limits on the political viewpoints that could be expressed." *Id*.

The Town of Gilbert could not meet its burden to prove that its Sign Code is narrowly tailored to further a compelling government interest, and thus failed strict scrutiny. *Id.* at 2232. Three concurring opinions were penned in an attempt to limit the Majority Opinion, one written by Justice Alito (joined by Justice Kennedy and Sotomayor), one written by Kagan (joined by Justice Ginsburg and Justice Breyer), and one written by Breyer alone.

3. The Concurring Opinions

Alito's Opinion

Justice Alito concurred in the *Reed v. Town of Gilbert*'s judgment, but wrote separately in an attempt to limit the scope of the ruling. Alito, rightfully, feared that the Court's decision would be read to broadly prohibit any sign regulations. In response to this fear he wrote a list of regulation criteria which he deemed to be content neutral, and within a city's ability to regulate. The criterion were:

- Rules regulating the size of signs;
- Rules regulating the locations in which signs may be placed;
    - May distinguish between free-standing signs and those attached to buildings.
- Rules distinguishing between lighted and unlighted signs.
- Rules distinguishing between signs with fixed messages and electronic signs with messages that change.
- Rules that distinguish between the placement of signs on private and public property.
- Rules distinguishing between the placement of signs on commercial and residential property.
- Rules distinguishing between on-premises and off-premises signs.
- Rules restricting the total number of signs allowed per mile of roadway.
- Rules imposing time restrictions on signs advertising a one-time event.
    - Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed.

Attempting to reconcile the broad Majority Opinion with his extensive list of possible regulations, Alito concluded: "Properly understood, today's decision will not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate esthetic objectives." *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2233-34 (2015) (Alito, J., *Concurring*).

While Alito's list is important in guidance, it is necessary to remember that it is not binding precedent, and a court could easily find one of these regulations to be unconstitutional under the majority opinion in *Reed*. In fact, the on-premises off- premises distinction has already been called into question by *Thomas v. Schroer*, No. 2:13-CV-02987-JPM, 2015 WL 5231911, at *5 (W.D. Tenn. Sept. 8, 2015). There the district court stated "[t]he concurrence's unsupported conclusions ring hollow in light of the majority opinion's clear instruction that 'a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter.'" *Id*. (holding that Tennessee's on-premise off-premise distinction was content based, for the purposes of a temporary restraining order).

Kagan's Opinion

Seeing the scope of the ruling, Justice Kagan wrote to note the possible catastrophe that might follow in the wake of the Majority Opinion. Kagan began by correctly noting: "Countless cities and towns across America have adopted ordinances regulating the posting of signs, while exempting certain categories of signs based on their subject matter[,]" Reed v. Town of Gilbert, Ariz., 135 S. Ct. 2218, 2236 (2015) (Kagan, J., *Concurring*), and "[g]iven the Court's analysis, many sign ordinances of that kind are now in jeopardy." *Id.*

With these warnings in mind, Kagan argued for a more flexible approach than the one articulated by the majority. She argued that the Supreme Court "may do well to relax our guard so that 'entirely reasonable' laws imperiled by strict scrutiny can survive." *Id*.

> Without a relaxed standard Kagan gave a prophetic warning to the rest of the court: As the years go by, courts will discover that thousands of towns have such ordinances, many of them "entirely reasonable." And as the challenges to them mount, courts will have to invalidate one after the other. (This Court may soon find itself a veritable Supreme Board of Sign Review.)

Id. at 2239.

Breyer's Opinion

Justice Breyer wrote to echo the sentiments expressed by Justice Kagan. Re*ed v. Town of Gilbert, Ariz.,* 135 S. Ct. 2218, 2234 (2015) (Breyer, J., *concurring*). Breyer believes that the "First Amendment requires greater judicial sensitivity both to the Amendment's expressive objectives and to the public's legitimate need for regulation than a simple recitation of categories, such as 'content discrimination' and 'strict scrutiny,' would permit." *Id*.

To this end, Breyer argued for a different approach to content-based regulations. Instead of all content-based regulations being categorically subjected to strict scrutiny he wanted a more nuanced approach. Breyer thought that the "better approach is to generally treat content discrimination as a strong reason weighing against the constitutionality of a rule where a traditional public forum, or where viewpoint discrimination, is threatened . . ." This rule could operate as "rule of thumb" in the other situations, finding it helpful but "not a determinative legal tool, in an appropriate case, to determine the strength of a justification." *Id.* at 2235.

Breyer's method as he put it would protect "regulation of signage along the roadside, for purposes of safety and beautification . . ." *Id.* Although, in light of his opinion only being a concurrence, even these common sense, every signs are placed in jeopardy.

C. What the Lower Courts have done so far

Courts have applied *Reed* to a variety of First Amendment cases, and any time that speech is at issue cities should think of *Reed*. Some of the laws struck down under *Reed* are:

Anti-panhandling laws - The Seventh Circuit struck down a municipal ordinance which regulated panhandling in its "downtown historic district . . ." *Norton v. City of Springfield, Ill.*, 806 F.3d 411 (7th Cir. 2015). The ordinance in question applied only to panhandling through an "oral request for an immediate donation of money." *Id.* The ordinance expressly did not regulate: signs requesting donation, and oral pleas to send money later. *Id.* The distinction between requests for money immediately and money later was facial speech discrimination under *Reed*, and as such the ordinance was required to meet strict scrutiny. *Id.*

It is important to note that this case turned solely on the outcome in *Reed v. Town of Gilbert*. Prior to striking down the ordinance the Seventh Circuit had already held that the ordinance was content neutral. *Norton v. City of Springfield, Ill.*, 768 F.3d 713 (7th Cir. 2014) on *reh'g*, 806 F.3d 411 (7th Cir. 2015). However, the Seventh Circuit waited until after *Reed* to rule on the rehearing. *Norton*, 806 F.3d at 411. Then, in light of *Reed*, the Seventh Circuit found the ordinance a form of content based discrimination and unconstitutional.

Election Sign laws - One court has ruled that restrictions against temporary signs, including elections signs, are content based discrimination where those signs are treated differently than other types of temporary signs. *Marin v. Town of Se.*, No. 14-CV-2094 KMK, 2015 WL 5732061, at *15 (S.D.N.Y. Sept. 30, 2015).

Certain Robocalling laws - The Fourth Circuit relying on *Reed* declared a South Carolina law prohibiting "robocalls" unconstitutional in *Cahaly v. Larosa*, 796 F.3d 399, 402

(4th Cir. 2015). The statute placed different restrictions on robocalls depending on whether they were (1) unsolicited and (2) made for consumer, political, or other purposes. *Id.*

Laws preventing sharing photos of election ballots - In *Rideout v. Gardner*, a federal district court struck down a New Hampshire statute which made it unlawful for voters to take and disclose digital or photographic copies of their completed ballots in an effort to let others know how they have voted. No. 14-CV-489-PB, 2015 WL 4743731, at *1 (D.N.H. Aug. 11, 2015).

Advice column regulation, where "family psychologist" offered advice - In *Rosemond v. Markham*, Kentucky sought to regulate an advice column which offered advice on parenting techniques, from a "family psychologist." No. CV 13-42-GFVT, 2015 WL 5769091, at *1 (E.D. Ky. Sept. 30, 2015). Kentucky sought to regulate the column as a valid exercise of its power to regulate the practice of psychology. *Id.* The Court held "[s]uch government regulation is content-based, and only constitutional if it survives strict scrutiny." *Id.* at *7. Relying on *Reed*, the Court ruled that the author of the column must be allowed to continue writing his column, although this might have been different if "[the author] represented himself to be a Kentucky-licensed psychologist or had he actually entered into a client-patient relationship in Kentucky . . ." *Id.* at *11.

Licensing of solicitor's by ordinance - In *Working Am., Inc. v. City of Bloomington*, No. CV 14-1758 ADM/SER, 2015 WL 6756089, at *1 (D. Minn. Nov. 4, 2015), Working America, an advocacy organization focusing on labor issues, challenged Bloomington's ordinance that requires certain door-to-door solicitors to obtain a "solicitor's license" prior to soliciting. The Bloomington ordinance only regulated certain types of solicitors, in particular those seeking to

raise funds, whereas it exempt many others, this ensured that it would be treated as content based under Reed, and accordingly held unconstitutional. *Id.*

Municipal Official instructing citizen to not contact him, or other officials - One court allowed a claim to survive summary judgment, where a municipal official told a citizen through email: "Please never contact me, the Board of Supervisors or the Township employees directly. Do not call me at work, email me at work or speak to me in public or private." *Mirabella v. Villard*, No. CIV.A. 14-7368, 2015 WL 4886439, at *7 (E.D. Pa. Aug. 17, 2015). The official claimed this email was sent out of concern for impending litigation. *Id.* Regardless, this was a form of content based restriction on speech "It distinguishes speech based on who is speaking—here, the Mirabellas—adopted because of a disagreement with the message conveyed." *Id.*

D. How cities should review their ordinances to avoid a *Reed* problem?

1. First, cities should thoroughly review their ordinances and identify any regulations that relate to speech (signage, panhandling, solicitation, etc.).
2. Then the city should review these ordinances to determine if any regulations are content-based. These would include any regulations that are based on the content or subject of the message, the person and/or group delivering the message, or an event(s) taking place.
3. Once identified, any content-based ordinance should not be enforced until the ordinance is redrafted, or the city determines it to be a valid content-based regulation in light of *Reed*.

E. Redrafting your sign code

As you redraft signage codes, include strong, well-articulated purpose statement to pass constitutional muster. Although *Reed* rejected the notion that only a content neutral purpose is sufficient to withstand a First Amendment challenge, governmental intent remains an important factor in sign code drafting and litigation.

Minimize categories and exceptions. The more categories, and exceptions, found in the code are more opportunities for content based distinctions. Be especially weary of exemptions from permitting, or any other standards, an exemption generally grants whatever is being exempt a more favorable status than all others. (So exempting charities from permitting requirements, is disfavoring all other forms of speech i.e. political).

Include a substitution clause should be added to the sign ordinance that allows any sign permitted under the ordinance to contain either a commercial or a non-commercial message. This is to ensure that non-commercial messages are not ever treated worse than commercial messages, thereby invoking *Reed* concerns. The severability clause contained within the adopting ordinance language should also be added as a part of the actual sign ordinance text.

a. Ex. "Signs containing noncommercial speech are permitted anywhere that advertising or business signs are permitted, subject to the same regulations applicable to such signs."

Focus on regulating non-content aspects of signs, such as:

b. Number of signs
c. Area
d. Height
e. Placement
f. Lighting
g. Movement
h. Duration (permanent or temporary)

F. Conclusion - What strategies work once litigation Happens?

The only workable strategy is avoidance. So far no court has upheld a non-commercial content-based regulation since *Reed*, no defendant has been able to show that their regulation "furthers a compelling interest and is narrowly tailored to achieve that interest . . ." *Reed*, 135 S. Ct. at 2231.

Webinar:

SIGN REGULATION IN THE WAKE OF *REED V. TOWN OF GILBERT*

Margaret W. Rosequist – Meyers Nave
Randal R. Morrison – Sabine & Morrison

LEAGUE® OF CALIFORNIA CITIES

February 24, 2016

OVERVIEW

- Sign codes must comply with First Amendment requirements.
- A key concept under the First Amendment is content neutrality.
- Whether a sign regulation is content-neutral versus content-based is often determinative of the outcome of a case.

Reed imposes a tough standard for establishing content-neutrality.

KEY TAKEAWAY FROM THE *REED* DECISION

Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015)

Rigid test for evaluating content-neutrality

"Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed."

THE PARTIES

Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015)

- Plaintiffs
  - Small, cash-strapped church, Good News Community Church
  - Pastor, Clyde Reed
  - Church does not have a permanent home
  - Services held at local elementary schools or other locations near the Town of Gilbert

THE PARTIES

Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015)

- Defendant
  - Town of Gilbert
  - Suburb of Phoenix
  - Population over 200,000

THE TOWN'S SIGN CODE

Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015)

- Supreme Court considered the Town's comprehensive sign code:
  - Prohibited the display of a sign without a permit
    - But exempted 23 categories of signs

THE EXEMPTIONS AT ISSUE

Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015)

- At issue before the Supreme Court were three categories of noncommercial signs:
  - Ideological
  - Political
  - Temporary directional

THE GOOD NEWS CHURCH SIGNS

Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015)

Church uses temporary directional signs to inform public about its services.

Church members typically post signs early in the day on Saturday and remove them midday on Sunday.

THE *REED* RULING

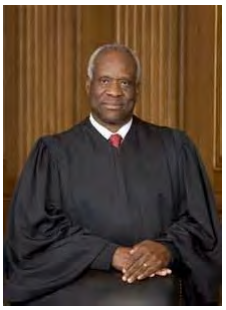
The Supreme Court unanimously found that the Town's sign ordinance violated the First Amendment.

The differing standards for different categories of noncommercial speech were content-based distinctions that did not pass constitutional muster.

JUSTICE THOMAS' OPINION

Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015)

- Thomas' majority opinion applies a rigid strict-scrutiny analysis to sign ordinances.



Town's sign ordinance which makes distinctions between political, ideological and temporary directional signs, is content-based on its face.

THE TESTS

- With content-based distinction in regulations of a public forum, **strict scrutiny** is applied.
  - Requires that regulations be narrowly tailored to meet a compelling government interest.
  - Content-based distinctions presumptively invalid.
- Compare to **less rigorous** time, place and manner test for a public forum:
  - Restrictions must be narrowly tailored to serve the government's legitimate content-neutral interests and leave open ample alternative means of communication.
- **Most lenient** test for nonpublic/limited public forum:
  - Restrictions need only be reasonable and viewpoint neutral.

CLASSIFICATION OF THE FORUM

Traditional public forum = where people have traditionally been able to express their ideas, e.g. park, public street, sidewalk. *See Cornelius v. NAACP*, 473 U.S. 788 (1985).

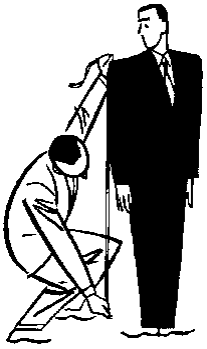
Nonpublic forum = government property traditionally not open to the free exchange of ideas, e.g. courthouse lobby, prison, military base. *See International Society for Krishna Consciousness v. Lee*, 505 U.S. 672 (1992).

Designated public forum = treated like a public forum.

Limited public forum = treated like a nonpublic forum. *See Hopper v. City of Pasco*, 241 F.3d 1067 (9th Cir. 2001).

TOWN'S REGULATIONS FAIL STRICT SCRUTINY

- In *Reed,* having found the regulations to be content-based, the Court found they failed strict scrutiny review.
- The distinctions between the three types of noncommercial signs were not narrowly tailored to meet the government's compelling interests.
- By way of contrast, a prohibition on campaign materials near polling places is a rare example of a content-based regulation that meets with strict scrutiny. *See Burson v. Freeman*, 504 U.S. 191 (1992).



THOMAS' LIST FOR CONTENT NEUTRALITY

Reed v. Town of Gilbert, 136 S.Ct. 2218 (2015)

- Restrictions on size, building materials, lighting, moving parts, and portability.

- <u>On public property</u>: Cities may go a long way toward entirely forbidding the posting of signs on public property if it is in an evenhanded and content-neutral way.

REGULATION OF SIGNS ON PRIVATE PROPERTY

City of Ladue v. Gilleo, 512 U.S. 43 (1994)

City prohibited yard signs, including political signs (exempted 10 signs).

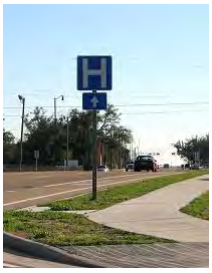
Court found the prohibition unconstitutional as it closed down an entire medium of speech in one's own front yard.

Court noted that content-neutral, time, place and manner regulations of yard signs may be valid.

THOMAS' LIST FOR STRICT SCRUTINY

Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015)

- Signs needed to protect the safety of pedestrians, drivers, and passengers, although content-based, may pass strict scrutiny:
  - Warning signs
  - Signs marking hazards
  - Signs directing traffic
  - Street numbers associated with private homes



ALITO'S LIST

Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015)

Justice Alito penned a concurrence to provide a (non-comprehensive) list of the rules that would not be considered content-based, including:

- Rules regulating size;
- Rules regulating locations (e.g. freestanding v. attached to buildings);
- Rules distinguishing between lighted and unlighted; and
- Rules distinguishing between fixed messages and electronic messages that change.

ALITO'S LIST CONTINUED

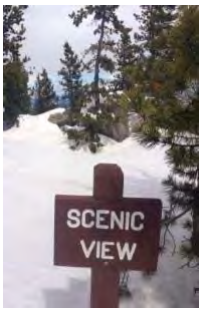
Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015)

- Rules that distinguish between:
  - Placement of signs on private and public property;
  - Placement of signs on commercial and residential property;
  - Placement of signs on-premises and off-premises signs;
  - Rules restricting the total number of signs allowed per mile of roadway; and
  - Rules imposing time restrictions on signs advertising a one-time event.

ALITO'S LIST CONTINUED

Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015)

- Government signs
  - Consistent with the principles that allow government speech.
  - E.g. government may put up all manner of signs to promote safety, directional signs and signs pointing out historical sites and scenic spots.



EVENT AND SPEAKER BASED EXEMPTIONS

G.K. Ltd. Travel v. City of Lake Oswego, 436 F.3d 1064 (9th Cir. 2006)

- Court upheld an exemption from the sign permit process for temporary signs in residential zones that go up within a specified time period and are triggered by the occurrence of an enumerated event such as an election or the sale or lease or rental of property, as a content-neutral event-based exemption.
- Court also found that the exemptions for certain speakers, namely public agencies, hospitals and railroad companies, to be constitutional speaker based exemptions.

COMMERCIAL SPEECH

Metromedia v. City of San Diego, 453 U.S. 490 (1981)

- During oral argument counsel for *Reed* specifically noted that under the Court's jurisprudence, commercial speech can be treated differently (i.e. less favorably) than noncommercial speech.

Indeed, *Metromedia* provides that commercial speech cannot be favored over noncommercial speech.

Many cities address this by including substitution clauses in their sign codes, e.g. noncommercial message of any type may be substituted for any duly allowed commercial message.

COMMERCIAL SPEECH

Central Hudson v. Public Service, 447 U.S. 557 (1980)

- The *Central Hudson* Court explained that while commercial speech was afforded lesser protection than other forms of expression, courts will consider a four-part test for determining the validity of restrictions on commercial speech.

Sorrell v. IMS Health, Inc., 131 S.Ct. 2653 (2011)

- The Ninth Circuit (and sister Circuits) have found that *Sorrell* modifies *Central Hudson* by requiring "heightened judicial scrutiny" for content-based or speaker-based commercial speech regulations. *See Retail Digital Network v. Applesmith*, 810 F.3d 638 (9th Cir. 2016).

COMMERCIAL SPEECH

- *Central Hudson* Test As Modified By *Sorrell*:
  - ✓ Non-misleading commercial speech that concerns lawful activity is afforded protection. A restriction on otherwise protected commercial speech must;
  - ✓ Seek to implement a substantial government interest;
  - ✓ Directly advance the government interest. Intermediate scrutiny standard for content-neutral regulations and heightened scrutiny (short of strict scrutiny) for content-based or speaker-based regulations; and
  - ✓ Reach no further than necessary to accomplish the given objective. Intermediate scrutiny for content-neutral regulations and heightened scrutiny (short of least-restrictive-means standard) for content-based and speaker-based regulations.

COMMERCIAL SPEECH

- The *Reed* opinion is as significant for its silence as it is for its actual holding.

Thomas' opinion does not mention or refer to commercial speech.

The key commercial speech cases of *Metromedia* and *Central Hudson* have not been explicitly overruled by *Reed*.

COMMERCIAL SPEECH

- The district courts in the Ninth Circuit have explained that *Reed* is inapposite in commercial speech cases and does not disturb the commercial speech framework set forth by *Metromedia* and *Central Hudson*.

  See Contest Promotions v. City and County of San Francisco, 2015 WL 4571564 (N.D. Cal. 2015); *see also California Outdoor Equity Partners v. City of Corona,* 2015 WL 4163346 (C.D. Cal. 2015); *Citizens for Free Speech v. County of Alameda,* 2015 WL 4365439 (N.D. Cal. 2015); *CTIA v. City of Berkeley,* 2015 WL 5569072 (N.D. Cal. 2015).

COMMERCIAL SPEECH

- These post-*Reed* decisions have explained that the distinction between onsite/offsite signage is concerned with the location of the sign relative to the product and does not distinguish based on subject matter.

- They have also found that a general exemption for noncommercial speech from an offsite ban does not render the regulation unconstitutional.

COMMERCIAL SPEECH

- Examining the concurrences in *Reed*, it appears likely that at least six Justices would also uphold the onsite/offsite and commercial/noncommercial distinctions.

COMMERCIAL SPEECH (CALIFORNIA)

Lamar Outdoor Advertising v. City of Los Angeles

- In California, billboard regulation hit a snag when a trial court held that Los Angeles' ban on offsite signs with an exemption for noncommercial signs was content-based and unconstitutional under the California constitution.

COMMERCIAL SPEECH (CALIFORNIA)

Lamar v. City of Los Angeles

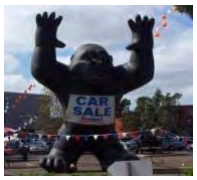
- Trial court's ruling in *Lamar* is not binding. It is on appeal to the 2nd Appellate District. The League filed an *amicus* brief in support of Los Angeles. Oral argument February 24, 2016.
- 4th Appellate District recently upheld onsite/offsite distinction with an exemption for noncommercial speech under California Constitution.

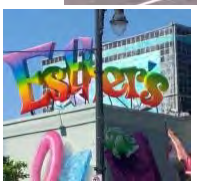
THE FUTURE OF BILLBOARD REGULATION

Left to stand, the trial court's ruling in *Lamar* will be at odds with the recently published decision by the 4th Appellate District in *City of Corona v. AMG Outdoor Advertising* and could impede the ability of cities to effectively regulate billboards.

DEFINING THE TERM "SIGN"

- What falls within the definition of a sign?
- Cities should review the definition portion of sign codes for content-based distinctions.
- Many sign codes provide different rules for different defined types of signs. This will be problematic if the definitions themselves are content-based, e.g. "community identification signs," "business signs" or "vehicle sale signs."





DISCRETION

Desert Outdoor Advertising v. City of Moreno Valley, 103 F.3d 814 (9th Cir. 1996)*; Lamar Corporation v. City of Twin Falls*, 133 Idaho 36 (1999)

- Standards for granting (or denying) a sign permit must have narrow, objective, and definite standards to guide the permitting authority.
- Allowing discretion presents risks but is not inherently unconstitutional.

APPLICATION

Complete Ban

E.g., ordinance prohibiting posting signs on sidewalks, crosswalks, street lamp posts, hydrants, trees, railroad trestles, electric light or power or telephone wires or poles. *See Members of LA City Council v. Taxpayers for Vincent*, 466 U.S. 789 (1984).

- ✓ Content-neutral prohibition in public right-of-way
- ✓ Consider narrow tailoring
- ✓ Limit exceptions

APPLICATION

Political Signs

- ✖ Exemptions for political signs.
- ✓ Exemption for noncommercial signs.
  - ✓ Consider the property at issue.
    - ✓ Prohibition in public rights -of-way.
    - ✖ Prohibition on residential property.

APPLICATION

Real Estate Signs

✖ Content-based exemption for real estate signs.

✓ Event based exception can be considered.

✓ Exception for a limited number of signs of a certain size or number.

✓ Consider the forum.

APPLICATION

Film locational/directional signs

✖ Exemption for film signs.

✖ Speaker based exemption.

✓ Event based exemption.

✓ Link exemption to film permit.

APPLICATION

Traffic/Directional Signs

- ✓ Exemption for government signs.
- ✓ Content based exemption where supported by compelling government interest.
- ✖ Exception for all directional signs.

APPLICATION

Murals (signs painted onto the surface of a building or flat surface attached to the side of a building)

- ✓ Evaluate whether to exclude from sign regulations -- policy decision.
- ✓ Allow noncommercial murals (with caution).
- ✖ Allow only murals promoting a city's culture or heritage.

APPLICATION

Sign Structures

- ✓Height, size, material limitations.
- ✓Do not provide exemptions based on content.

TIPS FOR REVISING SIGN CODES POST *REED*

- ✓Regulate size, durational limits and materials.
- ✓Consider distinguishing between commercial and residential property.
- ✓Consider distinguishing between private property and public property.
- ✓Consider (with caution) event based distinctions.
- ✓Consider (with caution) speaker based distinctions (e.g. government speech).

TIPS FOR REVISING SIGN CODES POST *REED*

- ✓ Consider prohibiting signs in the public right-of-way.
- ✓ Provide only a limited number of exemptions to an overall ban.
- ✓ Remove all content based distinctions except:
  - Warning signs, signs directing traffic or address signs that are supported by a compelling government interest.

TIPS FOR REVISING SIGN CODES POST *REED*

- ✓ Remove rules favoring one type of noncommercial speech over other types.
- ✓ Remove rules favoring commercial speech over noncommercial speech.
- ✓ Consider a message substitution clause.
- ✓ Evaluate for content neutrality.
- ✓ Consider the forum.
- ✓ Consider the level of scrutiny.
- ✓ Draft detailed findings.

SIGN REGULATIONS

This presentation is intended for teaching purposes and does not constitute legal advice.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

REED ET AL. *v*. TOWN OF GILBERT, ARIZONA, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13–502. Argued January 12, 2015—Decided June 18, 2015

Gilbert, Arizona (Town), has a comprehensive code (Sign Code or Code) that prohibits the display of outdoor signs without a permit, but exempts 23 categories of signs, including three relevant here. "Ideological Signs," defined as signs "communicating a message or ideas" that do not fit in any other Sign Code category, may be up to 20 square feet and have no placement or time restrictions. "Political Signs," defined as signs "designed to influence the outcome of an election," may be up to 32 square feet and may only be displayed during an election season. "Temporary Directional Signs," defined as signs directing the public to a church or other "qualifying event," have even greater restrictions: No more than four of the signs, limited to six square feet, may be on a single property at any time, and signs may be displayed no more than 12 hours before the "qualifying event" and 1 hour after.

Petitioners, Good News Community Church (Church) and its pastor, Clyde Reed, whose Sunday church services are held at various temporary locations in and near the Town, posted signs early each Saturday bearing the Church name and the time and location of the next service and did not remove the signs until around midday Sunday. The Church was cited for exceeding the time limits for displaying temporary directional signs and for failing to include an event date on the signs. Unable to reach an accommodation with the Town, petitioners filed suit, claiming that the Code abridged their freedom of speech. The District Court denied their motion for a preliminary injunction, and the Ninth Circuit affirmed, ultimately concluding that the Code's sign categories were content neutral, and that the Code satisfied the intermediate scrutiny accorded to content-neutral regulations of speech.

Held: The Sign Code's provisions are content-based regulations of

Syllabus

speech that do not survive strict scrutiny. Pp. 6–17.

(a) Because content-based laws target speech based on its communicative content, they are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *E.g., R. A. V.* v. *St. Paul*, 505 U. S. 377, 395. Speech regulation is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *E.g., Sorrell* v. *IMS Health, Inc.*, 564 U. S. ___, ___–___. And courts are required to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. *Id.,* at ___. Whether laws define regulated speech by particular subject matter or by its function or purpose, they are subject to strict scrutiny. The same is true for laws that, though facially content neutral, cannot be " 'justified without reference to the content of the regulated speech,' " or were adopted by the government "because of disagreement with the message" conveyed. *Ward* v. *Rock Against Racism*, 491 U. S. 781, 791. Pp. 6–7.

(b) The Sign Code is content based on its face. It defines the categories of temporary, political, and ideological signs on the basis of their messages and then subjects each category to different restrictions. The restrictions applied thus depend entirely on the sign's communicative content. Because the Code, on its face, is a content-based regulation of speech, there is no need to consider the government's justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny. Pp. 7.

(c) None of the Ninth Circuit's theories for its contrary holding is persuasive. Its conclusion that the Town's regulation was not based on a disagreement with the message conveyed skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of "animus toward the ideas contained" in the regulated speech. *Cincinnati* v. *Discovery Network, Inc.,* 507 U. S. 410, 429. Thus, an innocuous justification cannot transform a facially content-based law into one that is content neutral. A court must evaluate each question—whether a law is content based on its face and whether the purpose and justification for the law are content based—before concluding that a law is content neutral. *Ward* does not require otherwise, for its framework applies only to a content-neutral statute.

The Ninth Circuit's conclusion that the Sign Code does not single out any idea or viewpoint for discrimination conflates two distinct but related limitations that the First Amendment places on government regulation of speech. Government discrimination among viewpoints

is a "more blatant" and "egregious form of content discrimination," *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829, but "[t]he First Amendment's hostility to content-based regulation [also] extends . . . to prohibition of public discussion of an entire topic," *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 537. The Sign Code, a paradigmatic example of content-based discrimination, singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter.

The Ninth Circuit also erred in concluding that the Sign Code was not content based because it made only speaker-based and event-based distinctions. The Code's categories are not speaker-based—the restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. And even if the sign categories were speaker based, that would not automatically render the law content neutral. Rather, "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference." *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 658. This same analysis applies to event-based distinctions. Pp. 8–14.

(d) The Sign Code's content-based restrictions do not survive strict scrutiny because the Town has not demonstrated that the Code's differentiation between temporary directional signs and other types of signs furthers a compelling governmental interest and is narrowly tailored to that end. See *Arizona Free Enterprise Club's Freedom Club PAC* v. *Bennett*, 564 U. S. ___, ___. Assuming that the Town has a compelling interest in preserving its aesthetic appeal and traffic safety, the Code's distinctions are highly underinclusive. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town when other types of signs create the same problem. See *Discovery Network*, *supra,* at 425. Nor has it shown that temporary directional signs pose a greater threat to public safety than ideological or political signs. Pp. 14–15.

(e) This decision will not prevent governments from enacting effective sign laws. The Town has ample content-neutral options available to resolve problems with safety and aesthetics, including regulating size, building materials, lighting, moving parts, and portability. And the Town may be able to forbid postings on public property, so long as it does so in an evenhanded, content-neutral manner. See *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789, 817. An ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—*e.g.,* warning signs marking hazards on private property or signs directing traffic—might also survive strict scrutiny. Pp. 16–17.

Syllabus

707 F. 3d 1057, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, ALITO, and SOTOMAYOR, JJ., joined. ALITO, J., filed a concurring opinion, in which KENNEDY and SOTOMAYOR, JJ., joined. BREYER, J., filed an opinion concurring in the judgment. KAGAN, J., filed an opinion concurring in the judgment, in which GINSBURG and BREYER, JJ., joined

SUPREME COURT OF THE UNITED STATES

No. 13–502

CLYDE REED, ET AL., PETITIONERS *v.* TOWN OF GILBERT, ARIZONA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

JUSTICE THOMAS delivered the opinion of the Court.

The town of Gilbert, Arizona (or Town), has adopted a comprehensive code governing the manner in which people may display outdoor signs. Gilbert, Ariz., Land Development Code (Sign Code or Code), ch. 1, §4.402 (2005).[1] The Sign Code identifies various categories of signs based on the type of information they convey, then subjects each category to different restrictions. One of the categories is "Temporary Directional Signs Relating to a Qualifying Event," loosely defined as signs directing the public to a meeting of a nonprofit group. §4.402(P). The Code imposes more stringent restrictions on these signs than it does on signs conveying other messages. We hold that these provisions are content-based regulations of speech that cannot survive strict scrutiny.

[1] The Town's Sign Code is available online at http://www.gilbertaz.gov/departments/development-service/planning-development/land-development-code (as visited June 16, 2015, and available in Clerk of Court's case file).

I

A

The Sign Code prohibits the display of outdoor signs anywhere within the Town without a permit, but it then exempts 23 categories of signs from that requirement. These exemptions include everything from bazaar signs to flying banners. Three categories of exempt signs are particularly relevant here.

The first is "Ideological Sign[s]." This category includes any "sign communicating a message or ideas for noncommercial purposes that is not a Construction Sign, Directional Sign, Temporary Directional Sign Relating to a Qualifying Event, Political Sign, Garage Sale Sign, or a sign owned or required by a governmental agency." Sign Code, Glossary of General Terms (Glossary), p. 23 (emphasis deleted). Of the three categories discussed here, the Code treats ideological signs most favorably, allowing them to be up to 20 square feet in area and to be placed in all "zoning districts" without time limits. §4.402(J).

The second category is "Political Sign[s]." This includes any "temporary sign designed to influence the outcome of an election called by a public body." Glossary 23.[2] The Code treats these signs less favorably than ideological signs. The Code allows the placement of political signs up to 16 square feet on residential property and up to 32 square feet on nonresidential property, undeveloped municipal property, and "rights-of-way." §4.402(I).[3] These signs may be displayed up to 60 days before a primary election and up to 15 days following a general election. *Ibid.*

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[2] A "Temporary Sign" is a "sign not permanently attached to the ground, a wall or a building, and not designed or intended for permanent display." Glossary 25.

[3] The Code defines "Right-of-Way" as a "strip of publicly owned land occupied by or planned for a street, utilities, landscaping, sidewalks, trails, and similar facilities." *Id.,* at 18.

The third category is "Temporary Directional Signs Relating to a Qualifying Event." This includes any "Temporary Sign intended to direct pedestrians, motorists, and other passersby to a 'qualifying event.'" Glossary 25 (emphasis deleted). A "qualifying event" is defined as any "assembly, gathering, activity, or meeting sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar non-profit organization." *Ibid.* The Code treats temporary directional signs even less favorably than political signs.[4] Temporary directional signs may be no larger than six square feet. §4.402(P). They may be placed on private property or on a public right-of-way, but no more than four signs may be placed on a single property at any time. *Ibid.* And, they may be displayed no more than 12 hours before the "qualifying event" and no more than 1 hour afterward. *Ibid.*

B

Petitioners Good News Community Church (Church) and its pastor, Clyde Reed, wish to advertise the time and location of their Sunday church services. The Church is a small, cash-strapped entity that owns no building, so it holds its services at elementary schools or other locations in or near the Town. In order to inform the public about its services, which are held in a variety of different loca-

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[4]The Sign Code has been amended twice during the pendency of this case. When litigation began in 2007, the Code defined the signs at issue as "Religious Assembly Temporary Direction Signs." App. 75. The Code entirely prohibited placement of those signs in the public right-of-way, and it forbade posting them in any location for more than two hours before the religious assembly or more than one hour afterward. *Id.,* at 75–76. In 2008, the Town redefined the category as "Temporary Directional Signs Related to a Qualifying Event," and it expanded the time limit to 12 hours before and 1 hour after the "qualifying event." *Ibid.* In 2011, the Town amended the Code to authorize placement of temporary directional signs in the public right-of-way. *Id.,* at 89.

tions, the Church began placing 15 to 20 temporary signs around the Town, frequently in the public right-of-way abutting the street. The signs typically displayed the Church's name, along with the time and location of the upcoming service. Church members would post the signs early in the day on Saturday and then remove them around midday on Sunday. The display of these signs requires little money and manpower, and thus has proved to be an economical and effective way for the Church to let the community know where its services are being held each week.

This practice caught the attention of the Town's Sign Code compliance manager, who twice cited the Church for violating the Code. The first citation noted that the Church exceeded the time limits for displaying its temporary directional signs. The second citation referred to the same problem, along with the Church's failure to include the date of the event on the signs. Town officials even confiscated one of the Church's signs, which Reed had to retrieve from the municipal offices.

Reed contacted the Sign Code Compliance Department in an attempt to reach an accommodation. His efforts proved unsuccessful. The Town's Code compliance manager informed the Church that there would be "no leniency under the Code" and promised to punish any future violations.

Shortly thereafter, petitioners filed a complaint in the United States District Court for the District of Arizona, arguing that the Sign Code abridged their freedom of speech in violation of the First and Fourteenth Amendments. The District Court denied the petitioners' motion for a preliminary injunction. 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. 587 F. 3d 966, 979 (2009). It reasoned that, even though an enforcement

officer would have to read the 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." *Id.*, at 978. It then remanded for the District Court to determine in the first instance whether the Sign Code's distinctions among temporary directional signs, political signs, and ideological signs nevertheless constituted a content-based regulation of speech.

On remand, the District Court granted summary judgment in favor of the Town. The Court of Appeals again affirmed, holding that the Code's sign categories were content neutral. The court concluded that "the distinctions between Temporary Directional Signs, Ideological Signs, and Political Signs . . . are based on objective factors relevant to Gilbert's creation of the specific exemption from the permit requirement and do not otherwise consider the substance of the sign." 707 F. 3d 1057, 1069 (CA9 2013). Relying on this Court's decision in *Hill* v. *Colorado*, 530 U. S. 703 (2000), the Court of Appeals concluded that the Sign Code is content neutral. 707 F. 3d, at 1071–1072. As the court explained, "Gilbert did not adopt its regulation of speech because it disagreed with the message conveyed" and its "interests in regulat[ing] temporary signs are unrelated to the content of the sign." *Ibid.* Accordingly, the court believed that the Code was "content-neutral as that term [has been] defined by the Supreme Court." *Id.,* at 1071. In light of that determination, it applied a lower level of scrutiny to the Sign Code and concluded that the law did not violate the First Amendment. *Id.*, at 1073–1076.

We granted certiorari, 573 U. S. ___ (2014), and now reverse.

II

A

The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech." U. S. Const., Amdt. 1. Under that Clause, a government, including a municipal government vested with state authority, "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dept. of Chicago* v. *Mosley*, 408 U. S. 92, 95 (1972). Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *R. A. V.* v. *St. Paul*, 505 U. S. 377, 395 (1992); *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 115, 118 (1991).

Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *E.g., Sorrell* v. *IMS Health, Inc.*, 564 U. S. ___, ___–___ (2011) (slip op., at 8–9); *Carey* v. *Brown*, 447 U. S. 455, 462 (1980); *Mosley*, *supra,* at 95. This commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. *Sorrell*, *supra,* at ___ (slip op., at 8). Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

Our precedents have also recognized a separate and additional category of laws that, though facially content neutral, will be considered content-based regulations of speech: laws that cannot be "'justified without reference to

the content of the regulated speech,'" or that were adopted by the government "because of disagreement with the message [the speech] conveys," *Ward* v. *Rock Against Racism*, 491 U. S. 781, 791 (1989). Those laws, like those that are content based on their face, must also satisfy strict scrutiny.

B

The Town's Sign Code is content based on its face. It defines "Temporary Directional Signs" on the basis of whether a sign conveys the message of directing the public to church or some other "qualifying event." Glossary 25. It defines "Political Signs" on the basis of whether a sign's message is "designed to influence the outcome of an election." *Id.,* at 24. And it defines "Ideological Signs" on the basis of whether a sign "communicat[es] a message or ideas" that do not fit within the Code's other categories. *Id.,* at 23. It then subjects each of these categories to different restrictions.

The restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign. If a sign informs its reader of the time and place a book club will discuss John Locke's Two Treatises of Government, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke's followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke's theory of government. More to the point, the Church's signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas. On its face, the Sign Code is a content-based regulation of speech. We thus have no need to consider the government's justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny.

C

In reaching the contrary conclusion, the Court of Appeals offered several theories to explain why the Town's Sign Code should be deemed content neutral. None is persuasive.

1

The Court of Appeals first determined that the Sign Code was content neutral because the Town "did not adopt its regulation of speech [based on] disagree[ment] with the message conveyed," and its justifications for regulating temporary directional signs were "unrelated to the content of the sign." 707 F. 3d, at 1071–1072. In its brief to this Court, the United States similarly contends that a sign regulation is content neutral—even if it expressly draws distinctions based on the sign's communicative content—if those distinctions can be "'justified without reference to the content of the regulated speech.'" Brief for United States as *Amicus Curiae* 20, 24 (quoting *Ward, supra*, at 791; emphasis deleted).

But this analysis skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of "animus toward the ideas contained" in the regulated speech. *Cincinnati* v. *Discovery Network, Inc.,* 507 U. S. 410, 429 (1993). We have thus made clear that "'[i]llicit legislative intent is not the *sine qua non* of a violation of the First Amendment,'" and a party opposing the government "need adduce 'no evidence of an improper censorial motive.'" *Simon & Schuster, supra,* at 117. Although "a content-based purpose may be sufficient in certain circumstances to show that a regulation is content based, it is not necessary." *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 642 (1994). In other words, an

innocuous justification cannot transform a facially content-based law into one that is content neutral.

That is why we have repeatedly considered whether a law is content neutral on its face *before* turning to the law's justification or purpose. See, *e.g., Sorrell*, *supra,* at ___–___ (slip op., at 8–9) (statute was content based "on its face," and there was also evidence of an impermissible legislative motive); *United States* v. *Eichman*, 496 U. S. 310, 315 (1990) ("Although the [statute] contains no explicit content-based limitation on the scope of prohibited conduct, it is nevertheless clear that the Government's asserted *interest* is related to the suppression of free expression" (internal quotation marks omitted)); *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789, 804 (1984) ("The text of the ordinance is neutral," and "there is not even a hint of bias or censorship in the City's enactment or enforcement of this ordinance"); *Clark* v. *Community for Creative Non-Violence*, 468 U. S. 288, 293 (1984) (requiring that a facially content-neutral ban on camping must be "justified without reference to the content of the regulated speech"); *United States* v. *O'Brien*, 391 U. S. 367, 375, 377 (1968) (noting that the statute "on its face deals with conduct having no connection with speech," but examining whether the "the governmental interest is unrelated to the suppression of free expression"). Because strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny.

The Court of Appeals and the United States misunderstand our decision in *Ward* as suggesting that a government's purpose is relevant even when a law is content based on its face. That is incorrect. *Ward* had nothing to say about facially content-based restrictions because it involved a facially content-*neutral* ban on the use, in a

city-owned music venue, of sound amplification systems not provided by the city. 491 U. S., at 787, and n. 2. In that context, we looked to governmental motive, including whether the government had regulated speech "because of disagreement" with its message, and whether the regulation was "'justified without reference to the content of the speech.'" *Id.,* at 791. But *Ward*'s framework "applies only if a statute is content neutral." *Hill*, 530 U. S., at 766 (KENNEDY, J., dissenting). Its rules thus operate "to protect speech," not "to restrict it." *Id.,* at 765.

The First Amendment requires no less. Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech. That is why the First Amendment expressly targets the operation of the laws—*i.e.,* the "abridg[ement] of speech"—rather than merely the motives of those who enacted them. U. S. Const., Amdt. 1. "'The vice of content-based legislation . . . is not that it is always used for invidious, thought-control purposes, but that it lends itself to use for those purposes.'" *Hill, supra,* at 743 (SCALIA, J., dissenting).

For instance, in *NAACP* v. *Button*, 371 U. S. 415 (1963), the Court encountered a State's attempt to use a statute prohibiting "'improper solicitation'" by attorneys to outlaw litigation-related speech of the National Association for the Advancement of Colored People. *Id.,* at 438. Although *Button* predated our more recent formulations of strict scrutiny, the Court rightly rejected the State's claim that its interest in the "regulation of professional conduct" rendered the statute consistent with the First Amendment, observing that "it is no answer . . . to say . . . that the purpose of these regulations was merely to insure high professional standards and not to curtail free expression." *Id.,* at 438–439. Likewise, one could easily imagine a Sign Code compliance manager who disliked the Church's

substantive teachings deploying the Sign Code to make it more difficult for the Church to inform the public of the location of its services. Accordingly, we have repeatedly "rejected the argument that 'discriminatory . . . treatment is suspect under the First Amendment only when the legislature intends to suppress certain ideas.'" *Discovery Network,* 507 U. S., at 429. We do so again today.

2

The Court of Appeals next reasoned that the Sign Code was content neutral because it "does not mention any idea or viewpoint, let alone single one out for differential treatment." 587 F. 3d, at 977. It reasoned that, for the purpose of the Code provisions, "[i]t makes no difference which candidate is supported, who sponsors the event, or what ideological perspective is asserted." 707 F. 3d, at 1069.

The Town seizes on this reasoning, insisting that "content based" is a term of art that "should be applied flexibly" with the goal of protecting "viewpoints and ideas from government censorship or favoritism." Brief for Respondents 22. In the Town's view, a sign regulation that "does not censor or favor particular viewpoints or ideas" cannot be content based. *Ibid.* The Sign Code allegedly passes this test because its treatment of temporary directional signs does not raise any concerns that the government is "endorsing or suppressing 'ideas or viewpoints,'" *id.*, at 27, and the provisions for political signs and ideological signs "are neutral as to particular ideas or viewpoints" within those categories. *Id.*, at 37.

This analysis conflates two distinct but related limitations that the First Amendment places on government regulation of speech. Government discrimination among viewpoints—or the regulation of speech based on "the specific motivating ideology or the opinion or perspective of the speaker"—is a "more blatant" and "egregious form of

content discrimination." *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829 (1995). But it is well established that "[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 537 (1980).

Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter. *Ibid.* For example, a law banning the use of sound trucks for political speech—and only political speech—would be a content-based regulation, even if it imposed no limits on the political viewpoints that could be expressed. See *Discovery Network, supra,* at 428. The Town's Sign Code likewise singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter. Ideological messages are given more favorable treatment than messages concerning a political candidate, which are themselves given more favorable treatment than messages announcing an assembly of like-minded individuals. That is a paradigmatic example of content-based discrimination.

3

Finally, the Court of Appeals characterized the Sign Code's distinctions as turning on "'the content-neutral elements of who is speaking through the sign and whether and when an event is occurring.'" 707 F. 3d, at 1069. That analysis is mistaken on both factual and legal grounds.

To start, the Sign Code's distinctions are not speaker based. The restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. If a local business, for example, sought to put up

signs advertising the Church's meetings, those signs would be subject to the same limitations as such signs placed by the Church. And if Reed had decided to display signs in support of a particular candidate, he could have made those signs far larger—and kept them up for far longer—than signs inviting people to attend his church services. If the Code's distinctions were truly speaker based, both types of signs would receive the same treatment.

In any case, the fact that a distinction is speaker based does not, as the Court of Appeals seemed to believe, automatically render the distinction content neutral. Because "[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content," *Citizens United* v. *Federal Election Comm'n*, 558 U. S. 310, 340 (2010), we have insisted that "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference," *Turner,* 512 U. S., at 658. Thus, a law limiting the content of newspapers, but only newspapers, could not evade strict scrutiny simply because it could be characterized as speaker based. Likewise, a content-based law that restricted the political speech of all corporations would not become content neutral just because it singled out corporations as a class of speakers. See *Citizens United, supra*, at 340–341. Characterizing a distinction as speaker based is only the beginning—not the end—of the inquiry.

Nor do the Sign Code's distinctions hinge on "whether and when an event is occurring." The Code does not permit citizens to post signs on any topic whatsoever within a set period leading up to an election, for example. Instead, come election time, it requires Town officials to determine whether a sign is "designed to influence the outcome of an election" (and thus "political") or merely "communicating a message or ideas for noncommercial purposes" (and thus "ideological"). Glossary 24. That obvious content-based

inquiry does not evade strict scrutiny review simply because an event (*i.e.,* an election) is involved.

And, just as with speaker-based laws, the fact that a distinction is event based does not render it content neutral. The Court of Appeals cited no precedent from this Court supporting its novel theory of an exception from the content-neutrality requirement for event-based laws. As we have explained, a speech regulation is content based if the law applies to particular speech because of the topic discussed or the idea or message expressed. *Supra,* at 6. A regulation that targets a sign because it conveys an idea about a specific event is no less content based than a regulation that targets a sign because it conveys some other idea. Here, the Code singles out signs bearing a particular message: the time and location of a specific event. This type of ordinance may seem like a perfectly rational way to regulate signs, but a clear and firm rule governing content neutrality is an essential means of protecting the freedom of speech, even if laws that might seem "entirely reasonable" will sometimes be "struck down because of their content-based nature." *City of Ladue* v. *Gilleo*, 512 U. S. 43, 60 (1994) (O'Connor, J., concurring).

III

Because the Town's Sign Code imposes content-based restrictions on speech, those provisions can stand only if they survive strict scrutiny, "'which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest,'" *Arizona Free Enterprise Club's Freedom Club PAC* v. *Bennett*, 564 U. S. ___, ___ (2011) (slip op., at 8) (quoting *Citizens United*, 558 U. S.*,* at 340). Thus, it is the Town's burden to demonstrate that the Code's differentiation between temporary directional signs and other types of signs, such as political signs and ideological signs, furthers a compelling governmental interest and is narrowly tai-

lored to that end. See *ibid.*

The Town cannot do so. It has offered only two governmental interests in support of the distinctions the Sign Code draws: preserving the Town's aesthetic appeal and traffic safety. Assuming for the sake of argument that those are compelling governmental interests, the Code's distinctions fail as hopelessly underinclusive.

Starting with the preservation of aesthetics, temporary directional signs are "no greater an eyesore," *Discovery Network*, 507 U. S., at 425, than ideological or political ones. Yet the Code allows unlimited proliferation of larger ideological signs while strictly limiting the number, size, and duration of smaller directional ones. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town while at the same time allowing unlimited numbers of other types of signs that create the same problem.

The Town similarly has not shown that limiting temporary directional signs is necessary to eliminate threats to traffic safety, but that limiting other types of signs is not. The Town has offered no reason to believe that directional signs pose a greater threat to safety than do ideological or political signs. If anything, a sharply worded ideological sign seems more likely to distract a driver than a sign directing the public to a nearby church meeting.

In light of this underinclusiveness, the Town has not met its burden to prove that its Sign Code is narrowly tailored to further a compelling government interest. Because a "'law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction on truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited,'" *Republican Party of Minn.* v. *White*, 536 U. S. 765, 780 (2002), the Sign Code fails strict scrutiny.

IV

Our decision today will not prevent governments from enacting effective sign laws. The Town asserts that an "'absolutist'" content-neutrality rule would render "virtually all distinctions in sign laws . . . subject to strict scrutiny," Brief for Respondents 34–35, but that is not the case. Not "all distinctions" are subject to strict scrutiny, only *content-based* ones are. Laws that are *content neutral* are instead subject to lesser scrutiny. See *Clark*, 468 U. S., at 295.

The Town has ample content-neutral options available to resolve problems with safety and aesthetics. For example, its current Code regulates many aspects of signs that have nothing to do with a sign's message: size, building materials, lighting, moving parts, and portability. See, *e.g.,* §4.402(R). And on public property, the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner. See *Taxpayers for Vincent*, 466 U. S., at 817 (upholding content-neutral ban against posting signs on public property). Indeed, some lower courts have long held that similar content-based sign laws receive strict scrutiny, but there is no evidence that towns in those jurisdictions have suffered catastrophic effects. See, *e.g., Solantic, LLC* v. *Neptune Beach*, 410 F. 3d 1250, 1264–1269 (CA11 2005) (sign categories similar to the town of Gilbert's were content based and subject to strict scrutiny); *Matthews* v. *Needham*, 764 F. 2d 58, 59–60 (CA1 1985) (law banning political signs but not commercial signs was content based and subject to strict scrutiny).

We acknowledge that a city might reasonably view the general regulation of signs as necessary because signs "take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation." *City of Ladue*, 512 U. S., at 48. At the same time, the presence of certain

signs may be essential, both for vehicles and pedestrians, to guide traffic or to identify hazards and ensure safety. A sign ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses—well might survive strict scrutiny. The signs at issue in this case, including political and ideological signs and signs for events, are far removed from those purposes. As discussed above, they are facially content based and are neither justified by traditional safety concerns nor narrowly tailored.

* * *

We reverse the judgment of the Court of Appeals and remand the case for proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 13–502

CLYDE REED, ET AL., PETITIONERS *v.* TOWN OF GILBERT, ARIZONA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

JUSTICE ALITO, with whom JUSTICE KENNEDY and JUSTICE SOTOMAYOR join, concurring.

I join the opinion of the Court but add a few words of further explanation.

As the Court holds, what we have termed "content-based" laws must satisfy strict scrutiny. Content-based laws merit this protection because they present, albeit sometimes in a subtler form, the same dangers as laws that regulate speech based on viewpoint. Limiting speech based on its "topic" or "subject" favors those who do not want to disturb the status quo. Such regulations may interfere with democratic self-government and the search for truth. See *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 537 (1980).

As the Court shows, the regulations at issue in this case are replete with content-based distinctions, and as a result they must satisfy strict scrutiny. This does not mean, however, that municipalities are powerless to enact and enforce reasonable sign regulations. I will not attempt to provide anything like a comprehensive list, but here are some rules that would not be content based:

Rules regulating the size of signs. These rules may distinguish among signs based on any content-neutral criteria, including any relevant criteria listed below.

Rules regulating the locations in which signs may be

placed. These rules may distinguish between free-standing signs and those attached to buildings.

Rules distinguishing between lighted and unlighted signs.

Rules distinguishing between signs with fixed messages and electronic signs with messages that change.

Rules that distinguish between the placement of signs on private and public property.

Rules distinguishing between the placement of signs on commercial and residential property.

Rules distinguishing between on-premises and off-premises signs.

Rules restricting the total number of signs allowed per mile of roadway.

Rules imposing time restrictions on signs advertising a one-time event. Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed.*

In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech. See *Pleasant Grove City* v. *Summum*, 555 U. S. 460, 467–469 (2009). They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.

Properly understood, today's decision will not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate esthetic objectives.

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*Of course, content-neutral restrictions on speech are not necessarily consistent with the First Amendment. Time, place, and manner restrictions "must be narrowly tailored to serve the government's legitimate, content-neutral interests." *Ward* v. *Rock Against Racism*, 491 U. S. 781, 798 (1989). But they need not meet the high standard imposed on viewpoint- and content-based restrictions.

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[June 18, 2015]

JUSTICE BREYER, concurring in the judgment.

I join JUSTICE KAGAN's separate opinion. Like JUSTICE KAGAN I believe that categories alone cannot satisfactorily resolve the legal problem before us. The First Amendment requires greater judicial sensitivity both to the Amendment's expressive objectives and to the public's legitimate need for regulation than a simple recitation of categories, such as "content discrimination" and "strict scrutiny," would permit. In my view, the category "content discrimination" is better considered in many contexts, including here, as a rule of thumb, rather than as an automatic "strict scrutiny" trigger, leading to almost certain legal condemnation.

To use content discrimination to trigger strict scrutiny sometimes makes perfect sense. There are cases in which the Court has found content discrimination an unconstitutional method for suppressing a viewpoint. *E.g., Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 828–829 (1995); see also *Boos* v. *Barry*, 485 U. S. 312, 318–319 (1988) (plurality opinion) (applying strict scrutiny where the line between subject matter and viewpoint was not obvious). And there are cases where the Court has found content discrimination to reveal that rules governing a traditional public forum are, in fact, not a neutral way of fairly managing the forum in the interest of all

speakers. *Police Dept. of Chicago* v. *Mosley*, 408 U. S. 92, 96 (1972) ("Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say"). In these types of cases, strict scrutiny is often appropriate, and content discrimination has thus served a useful purpose.

But content discrimination, while helping courts to identify unconstitutional suppression of expression, cannot and should not *always* trigger strict scrutiny. To say that it is not an automatic "strict scrutiny" trigger is not to argue against that concept's use. I readily concede, for example, that content discrimination, as a conceptual tool, can sometimes reveal weaknesses in the government's rationale for a rule that limits speech. If, for example, a city looks to litter prevention as the rationale for a prohibition against placing newsracks dispensing free advertisements on public property, why does it exempt other newsracks causing similar litter? Cf. *Cincinnati* v. *Discovery Network, Inc.*, 507 U. S. 410 (1993). I also concede that, whenever government disfavors one kind of speech, it places that speech at a disadvantage, potentially interfering with the free marketplace of ideas and with an individual's ability to express thoughts and ideas that can help that individual determine the kind of society in which he wishes to live, help shape that society, and help define his place within it.

Nonetheless, in these latter instances to use the presence of content discrimination automatically to trigger strict scrutiny and thereby call into play a strong presumption against constitutionality goes too far. That is because virtually all government activities involve speech, many of which involve the regulation of speech. Regulatory programs almost always require content discrimination. And to hold that such content discrimination triggers strict scrutiny is to write a recipe for judicial management

of ordinary government regulatory activity.

Consider a few examples of speech regulated by government that inevitably involve content discrimination, but where a strong presumption against constitutionality has no place. Consider governmental regulation of securities, *e.g.,* 15 U. S. C. §78*l* (requirements for content that must be included in a registration statement); of energy conservation labeling-practices, *e.g.,* 42 U. S. C. §6294 (requirements for content that must be included on labels of certain consumer electronics); of prescription drugs, *e.g.,* 21 U. S. C. §353(b)(4)(A) (requiring a prescription drug label to bear the symbol "Rx only"); of doctor-patient confidentiality, *e.g.,* 38 U. S. C. §7332 (requiring confidentiality of certain medical records, but allowing a physician to disclose that the patient has HIV to the patient's spouse or sexual partner); of income tax statements, *e.g.,* 26 U. S. C. §6039F (requiring taxpayers to furnish information about foreign gifts received if the aggregate amount exceeds $10,000); of commercial airplane briefings, *e.g.,* 14 CFR §136.7 (2015) (requiring pilots to ensure that each passenger has been briefed on flight procedures, such as seatbelt fastening); of signs at petting zoos, *e.g.,* N. Y. Gen. Bus. Law Ann. §399–ff(3) (West Cum. Supp. 2015) (requiring petting zoos to post a sign at every exit "'strongly recommend[ing] that persons wash their hands upon exiting the petting zoo area'"); and so on.

Nor can the majority avoid the application of strict scrutiny to all sorts of justifiable governmental regulations by relying on this Court's many subcategories and exceptions to the rule. The Court has said, for example, that we should apply less strict standards to "commercial speech." *Central Hudson Gas & Elec. Corp.* v. *Public Service Comm'n of N. Y.*, 447 U. S. 557, 562–563 (1980). But I have great concern that many justifiable instances of "content-based" regulation are noncommercial. And, worse than that, the Court has applied the heightened

"strict scrutiny" standard even in cases where the less stringent "commercial speech" standard was appropriate. See *Sorrell* v. *IMS Health Inc.*, 564 U. S. ___, ___ (2011) (BREYER, J., dissenting) (slip op., at ___). The Court has also said that "government speech" escapes First Amendment strictures. See *Rust* v. *Sullivan*, 500 U. S. 173, 193–194 (1991). But regulated speech is typically private speech, not government speech. Further, the Court has said that, "[w]hen the basis for the content discrimination consists entirely of the very reason the entire class of speech at issue is proscribable, no significant danger of idea or viewpoint discrimination exists." *R. A. V.* v. *St. Paul*, 505 U. S. 377, 388 (1992). But this exception accounts for only a few of the instances in which content discrimination is readily justifiable.

I recognize that the Court could escape the problem by watering down the force of the presumption against constitutionality that "strict scrutiny" normally carries with it. But, in my view, doing so will weaken the First Amendment's protection in instances where "strict scrutiny" should apply in full force.

The better approach is to generally treat content discrimination as a strong reason weighing against the constitutionality of a rule where a traditional public forum, or where viewpoint discrimination, is threatened, but elsewhere treat it as a rule of thumb, finding it a helpful, but not determinative legal tool, in an appropriate case, to determine the strength of a justification. I would use content discrimination as a supplement to a more basic analysis, which, tracking most of our First Amendment cases, asks whether the regulation at issue works harm to First Amendment interests that is disproportionate in light of the relevant regulatory objectives. Answering this question requires examining the seriousness of the harm to speech, the importance of the countervailing objectives, the extent to which the law will achieve those objectives,

and whether there are other, less restrictive ways of doing so. See, *e.g., United States* v. *Alvarez*, 567 U. S. ___, ___–___ (2012) (BREYER, J., concurring in judgment) (slip op., at 1–3); *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 400–403 (2000) (BREYER, J., concurring). Admittedly, this approach does not have the simplicity of a mechanical use of categories. But it does permit the government to regulate speech in numerous instances where the voters have authorized the government to regulate and where courts should hesitate to substitute judicial judgment for that of administrators.

Here, regulation of signage along the roadside, for purposes of safety and beautification is at issue. There is no traditional public forum nor do I find any general effort to censor a particular viewpoint. Consequently, the specific regulation at issue does not warrant "strict scrutiny." Nonetheless, for the reasons that JUSTICE KAGAN sets forth, I believe that the Town of Gilbert's regulatory rules violate the First Amendment. I consequently concur in the Court's judgment only.

SUPREME COURT OF THE UNITED STATES

No. 13–502

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

JUSTICE KAGAN, with whom JUSTICE GINSBURG and JUSTICE BREYER join, concurring in the judgment.

Countless cities and towns across America have adopted ordinances regulating the posting of signs, while exempting certain categories of signs based on their subject matter. For example, some municipalities generally prohibit illuminated signs in residential neighborhoods, but lift that ban for signs that identify the address of a home or the name of its owner or occupant. See, *e.g.*, City of Truth or Consequences, N. M., Code of Ordinances, ch. 16, Art. XIII, §§11–13–2.3, 11–13–2.9(H)(4) (2014). In other municipalities, safety signs such as "Blind Pedestrian Crossing" and "Hidden Driveway" can be posted without a permit, even as other permanent signs require one. See, *e.g.*, Code of Athens-Clarke County, Ga., Pt. III, §7–4–7(1) (1993). Elsewhere, historic site markers—for example, "George Washington Slept Here"—are also exempt from general regulations. See, *e.g.*, Dover, Del., Code of Ordinances, Pt. II, App. B, Art. 5, §4.5(F) (2012). And similarly, the federal Highway Beautification Act limits signs along interstate highways unless, for instance, they direct travelers to "scenic and historical attractions" or advertise free coffee. See 23 U. S. C. §§131(b), (c)(1), (c)(5).

Given the Court's analysis, many sign ordinances of that kind are now in jeopardy. See *ante*, at 14 (acknowledging

that "entirely reasonable" sign laws "will sometimes be struck down" under its approach (internal quotation marks omitted)). Says the majority: When laws "single[] out specific subject matter," they are "facially content based"; and when they are facially content based, they are automatically subject to strict scrutiny. *Ante*, at 12, 16–17. And although the majority holds out hope that some sign laws with subject-matter exemptions "might survive" that stringent review, *ante*, at 17, the likelihood is that most will be struck down. After all, it is the "rare case[] in which a speech restriction withstands strict scrutiny." *Williams-Yulee* v. *Florida Bar*, 575 U. S. ___, ___ (2015) (slip op., at 9). To clear that high bar, the government must show that a content-based distinction "is necessary to serve a compelling state interest and is narrowly drawn to achieve that end." *Arkansas Writers' Project, Inc.* v. *Ragland*, 481 U. S. 221, 231 (1987). So on the majority's view, courts would have to determine that a town has a compelling interest in informing passersby where George Washington slept. And likewise, courts would have to find that a town has no other way to prevent hidden-driveway mishaps than by specially treating hidden-driveway signs. (Well-placed speed bumps? Lower speed limits? Or how about just a ban on hidden driveways?) The consequence—unless courts water down strict scrutiny to something unrecognizable—is that our communities will find themselves in an unenviable bind: They will have to either repeal the exemptions that allow for helpful signs on streets and sidewalks, or else lift their sign restrictions altogether and resign themselves to the resulting clutter.*

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*Even in trying (commendably) to limit today's decision, JUSTICE ALITO's concurrence highlights its far-reaching effects. According to JUSTICE ALITO, the majority does not subject to strict scrutiny regulations of "signs advertising a one-time event." *Ante*, at 2 (ALITO, J., concurring). But of course it does. On the majority's view, a law with an exception for such signs "singles out specific subject matter for

Although the majority insists that applying strict scrutiny to all such ordinances is "essential" to protecting First Amendment freedoms, *ante*, at 14, I find it challenging to understand why that is so. This Court's decisions articulate two important and related reasons for subjecting content-based speech regulations to the most exacting standard of review. The first is "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." *McCullen* v. *Coakley*, 573 U. S. ___, ___–___ (2014) (slip op., at 8–9) (internal quotation marks omitted). The second is to ensure that the government has not regulated speech "based on hostility—or favoritism—towards the underlying message expressed." *R. A. V.* v. *St. Paul*, 505 U. S. 377, 386 (1992). Yet the subject-matter exemptions included in many sign ordinances do not implicate those concerns. Allowing residents, say, to install a light bulb over "name and address" signs but no others does not distort the marketplace of ideas. Nor does that different treatment give rise to an inference of impermissible government motive.

We apply strict scrutiny to facially content-based regulations of speech, in keeping with the rationales just described, when there is any "realistic possibility that official suppression of ideas is afoot." *Davenport* v. *Washington Ed. Assn.*, 551 U. S. 177, 189 (2007) (quoting *R. A. V.*, 505 U. S., at 390). That is always the case when the regulation facially differentiates on the basis of viewpoint. See *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829 (1995). It is also the case (except in nonpublic or limited public forums) when a law restricts "discussion of an entire topic" in public debate. *Consolidated*

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differential treatment" and "defin[es] regulated speech by particular subject matter." *Ante*, at 6, 12 (majority opinion). Indeed, the precise reason the majority applies strict scrutiny here is that "the Code singles out signs bearing a particular message: the time and location of a specific event." *Ante*, at 14.

Edison Co. of N. Y. v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 537, 539–540 (1980) (invalidating a limitation on speech about nuclear power). We have stated that "[i]f the marketplace of ideas is to remain free and open, governments must not be allowed to choose 'which issues are worth discussing or debating.'" *Id.*, at 537–538 (quoting *Police Dept. of Chicago* v. *Mosley*, 408 U. S. 92, 96 (1972)). And we have recognized that such subject-matter restrictions, even though viewpoint-neutral on their face, may "suggest[] an attempt to give one side of a debatable public question an advantage in expressing its views to the people." *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 785 (1978); accord, *ante*, at 1 (ALITO, J., concurring) (limiting all speech on one topic "favors those who do not want to disturb the status quo"). Subject-matter regulation, in other words, may have the intent or effect of favoring some ideas over others. When that is realistically possible—when the restriction "raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace"—we insist that the law pass the most demanding constitutional test. *R. A. V.*, 505 U. S., at 387 (quoting *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 116 (1991)).

But when that is not realistically possible, we may do well to relax our guard so that "entirely reasonable" laws imperiled by strict scrutiny can survive. *Ante*, at 14. This point is by no means new. Our concern with content-based regulation arises from the fear that the government will skew the public's debate of ideas—so when "that risk is inconsequential, . . . strict scrutiny is unwarranted." *Davenport*, 551 U. S., at 188; see *R. A. V.*, 505 U. S., at 388 (approving certain content-based distinctions when there is "no significant danger of idea or viewpoint discrimination"). To do its intended work, of course, the category of content-based regulation triggering strict scrutiny must

sweep more broadly than the actual harm; that category exists to create a buffer zone guaranteeing that the government cannot favor or disfavor certain viewpoints. But that buffer zone need not extend forever. We can administer our content-regulation doctrine with a dose of common sense, so as to leave standing laws that in no way implicate its intended function.

And indeed we have done just that: Our cases have been far less rigid than the majority admits in applying strict scrutiny to facially content-based laws—including in cases just like this one. See *Davenport*, 551 U. S., at 188 (noting that "we have identified numerous situations in which [the] risk" attached to content-based laws is "attenuated"). In *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789 (1984), the Court declined to apply strict scrutiny to a municipal ordinance that exempted address numbers and markers commemorating "historical, cultural, or artistic event[s]" from a generally applicable limit on sidewalk signs. *Id.*, at 792, n. 1 (listing exemptions); see *id.*, at 804–810 (upholding ordinance under intermediate scrutiny). After all, we explained, the law's enactment and enforcement revealed "not even a hint of bias or censorship." *Id.*, at 804; see also *Renton* v. *Playtime Theatres, Inc.*, 475 U. S. 41, 48 (1986) (applying intermediate scrutiny to a zoning law that facially distinguished among movie theaters based on content because it was "designed to prevent crime, protect the city's retail trade, [and] maintain property values . . . , not to suppress the expression of unpopular views"). And another decision involving a similar law provides an alternative model. In *City of Ladue* v. *Gilleo*, 512 U. S. 43 (1994), the Court assumed *arguendo* that a sign ordinance's exceptions for address signs, safety signs, and for-sale signs in residential areas did not trigger strict scrutiny. See *id.*, at 46–47, and n. 6 (listing exemptions); *id.*, at 53 (noting this assumption). We did not need to, and so did not, decide the

level-of-scrutiny question because the law's breadth made it unconstitutional under any standard.

The majority could easily have taken *Ladue*'s tack here. The Town of Gilbert's defense of its sign ordinance—most notably, the law's distinctions between directional signs and others—does not pass strict scrutiny, or intermediate scrutiny, or even the laugh test. See *ante*, at 14–15 (discussing those distinctions). The Town, for example, provides no reason at all for prohibiting more than four directional signs on a property while placing no limits on the number of other types of signs. See Gilbert, Ariz., Land Development Code, ch. I, §§4.402(J), (P)(2) (2014). Similarly, the Town offers no coherent justification for restricting the size of directional signs to 6 square feet while allowing other signs to reach 20 square feet. See §§4.402(J), (P)(1). The best the Town could come up with at oral argument was that directional signs "need to be smaller because they need to guide travelers along a route." Tr. of Oral Arg. 40. Why exactly a smaller sign better helps travelers get to where they are going is left a mystery. The absence of any sensible basis for these and other distinctions dooms the Town's ordinance under even the intermediate scrutiny that the Court typically applies to "time, place, or manner" speech regulations. Accordingly, there is no need to decide in this case whether strict scrutiny applies to every sign ordinance in every town across this country containing a subject-matter exemption.

I suspect this Court and others will regret the majority's insistence today on answering that question in the affirmative. As the years go by, courts will discover that thousands of towns have such ordinances, many of them "entirely reasonable." *Ante*, at 14. And as the challenges to them mount, courts will have to invalidate one after the other. (This Court may soon find itself a veritable Supreme Board of Sign Review.) And courts will strike down those democratically enacted local laws even though no

one—certainly not the majority—has ever explained why the vindication of First Amendment values requires that result. Because I see no reason why such an easy case calls for us to cast a constitutional pall on reasonable regulations quite unlike the law before us, I concur only in the judgment.