



NEW HAMPSHIRE MUNICIPAL ASSOCIATION

Signs, Signs, Everywhere are Signs:  
*Sign Ordinances and the First Amendment*

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*&*

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New Hampshire Municipal Association*

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# First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.



*Reed v. Town of Gilbert,*  
*US Supreme Court*  
135 S. Ct. 2218 (June 18, 2015)

The Good News Community Church and its pastor, Clyde Reed, employed temporary signs placed in the public right-of-way to announce its Sunday services. The Church did not have a permanent location, and employed the temporary signs as an economical way to alert the community about the location, date and time of its events.



## Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

**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).<sup>1</sup> 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.

<sup>1</sup>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).



# The Supreme Court Revisits *Content Neutrality* as Applied to Sign Ordinances

# The Case in Numbers

- Non-political, non-ideological, non-commercial  
“Qualifying Event” signs can’t exceed 6 sq. ft.
- Maximum time up: 12 hours before, until 1 hour after the event
- Political temporary signs may be up to 32 sq. ft. (in non-residential zones)
- Maximum time up: 60 days before and 15 days after elections



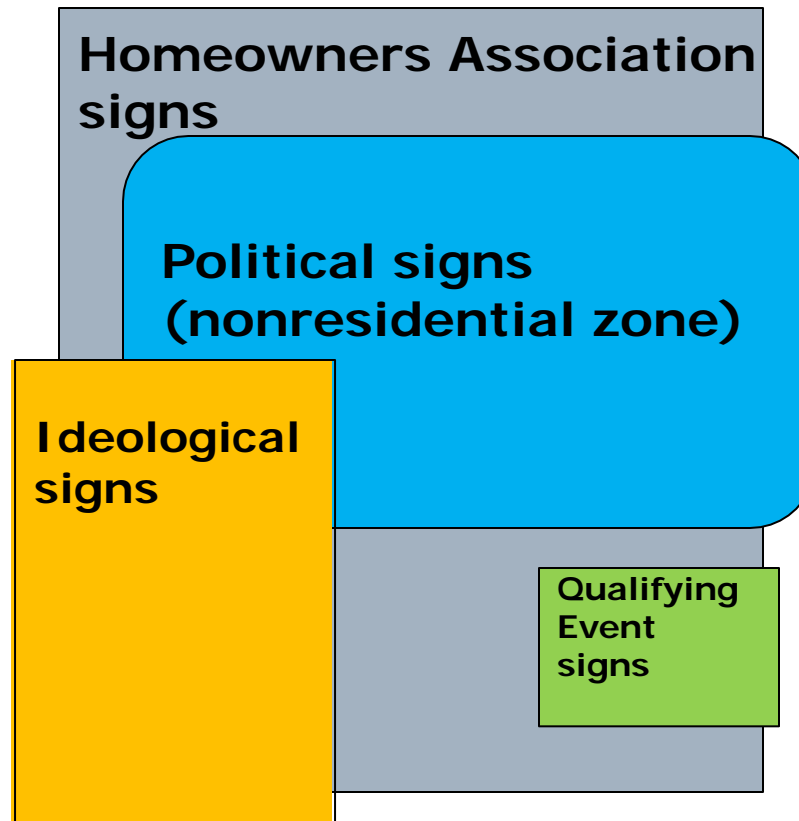
# Town also has an “Ideological” Sign Rule



- They can be larger (i.e. 20 sq. ft.) than “qualifying event” signs but not as big as political signs.
- They can be displayed for an unlimited period of time.
- However, they can’t be displayed in the right-of-way.

# Maximum Non-commercial Temporary Sign Sizes in Gilbert

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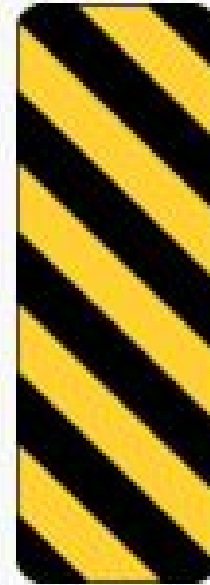


# Quiz Time

# This Black and Yellow Marked Sign is?:



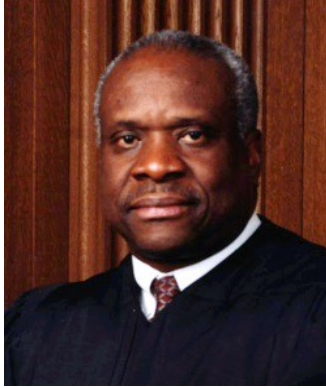
- A. A warning sign at work zones.
- B. An object marker in the roadway.
- C. A barricade at construction sites.
- D. A guide sign at interstate highways.



# Ruling by Ninth Circuit Court of Appeals

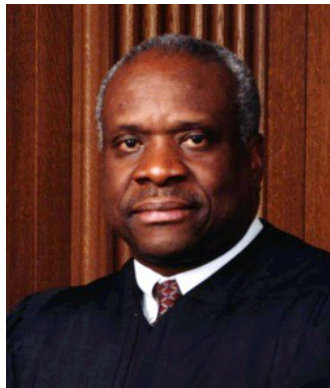


# Majority Opinion



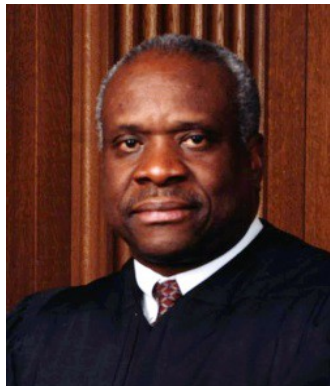
A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of "animus toward the ideas contained" in the regulated speech.

# Majority Opinion

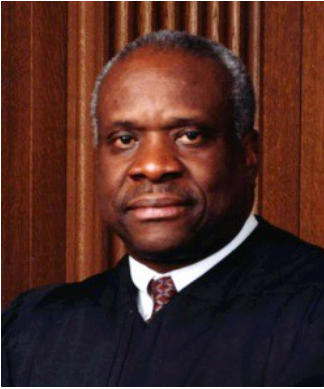


“The Town’s Sign Code is content based on its face. It defines “Temporary Directional Signs” on the basis of whether a sign conveys the message of directing the public to church or some other “qualifying event.”

# Majority Opinion



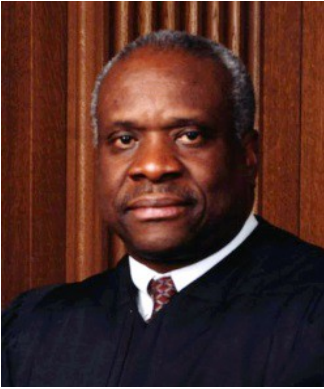
“It [the Town of Gilbert Sign Code] defines “Political Signs” on the basis of whether a sign’s message is “designed to influence the outcome of an election.” *Id.*, at 24. And it defines “Ideological Signs” on the basis of whether a sign “communicat[es] a message or ideas” that do not fit within the Code’s other categories. *Id.*, at 23. It then subjects each of these categories to different restrictions.”



# Majority Opinion

“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.”



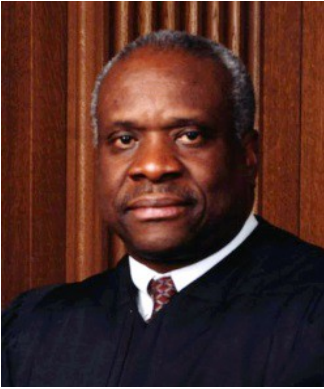


# Majority Opinion

“Yet the [Gilbert]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.”







# Majority Opinion

*Outcome:*

**Event-based** regulations  
are not content neutral.



# Quiz Time

# This Diamond-shaped Orange Sign is Placed in?:

- A. Work Zones.
- B. School Zones.
- C. Uncontrolled Intersections.
- D. Railroad Intersections.





Is your Sign Code content neutral?



Conduct thorough Code Review



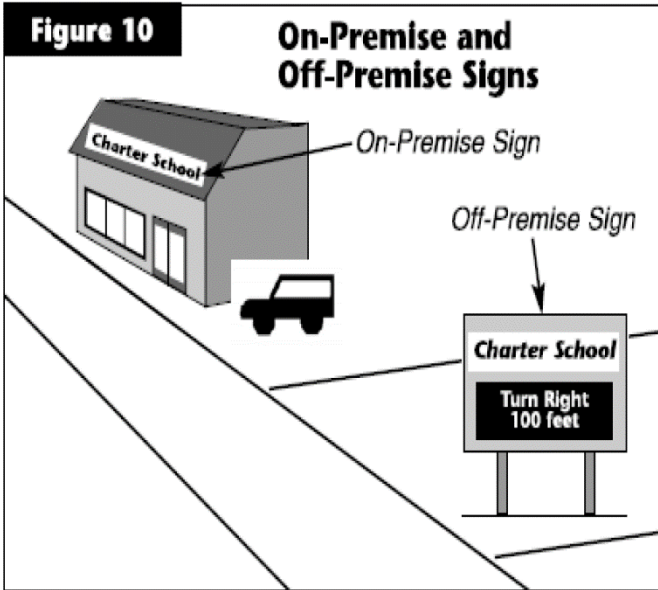
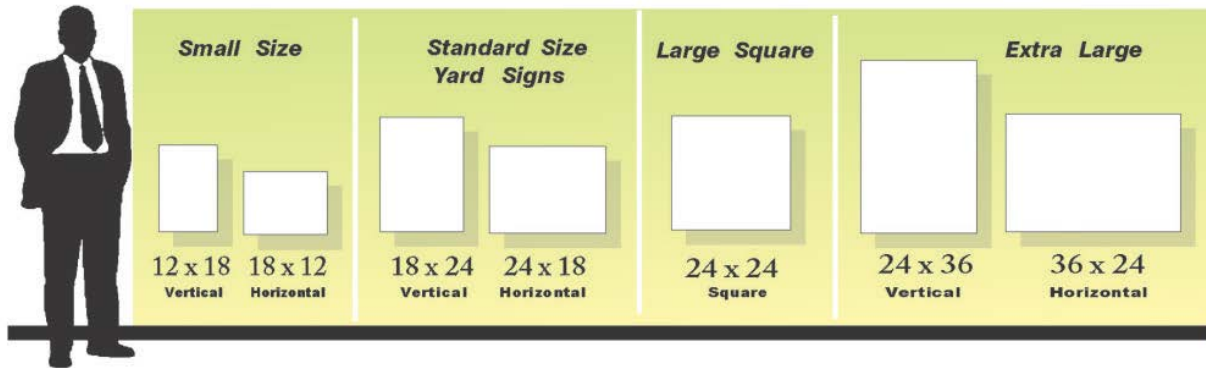
Enforcement Flexibility

# WARNING, HAZARD AND NUMBER SIGNS



[dreamstime.com](http://dreamstime.com)

# Justice Alito Suggestions

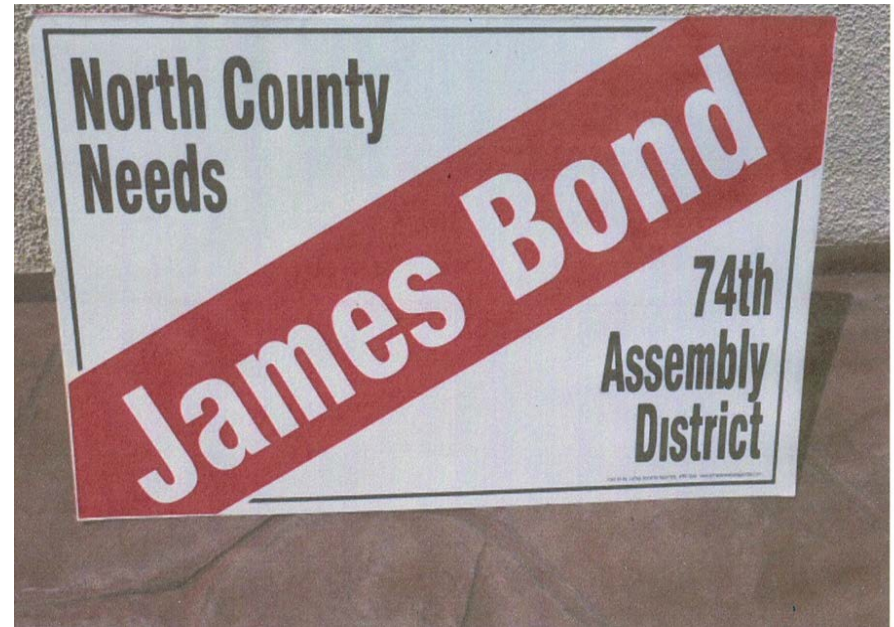




# The Aftermath of *Reed*

## Regulation by Sign Category and Function

- ❑ Old way: Extra opportunities to post political signs before elections
- ❑ New way: Specified periods when physical sign limits are lifted for non-commercial signs



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

# The Aftermath of *Reed*

## Regulation by Sign Category and Function:

Old way: exception for sales, development, and financing signs.

New way: exception for signs on property for sale, or property where construction is ongoing.





# Revising Sign Code *Post-Reed*



- ❑ Pure TPM
- ❑ Message substitution favoring noncommercial messages of any type
- ❑ Universal message substitution –any legal sign (location, structure) can display any legal message
  - Long term consequences ... ?
  - Still ban billboards as “general advertising for hire”

# Concrete Solutions



- Every resident is allocated a particular amount of square feet of signage that they can use for any non-commercial signage on their property.
  - For example: ten square feet per resident, in a residentially-zoned area
- For particular periods (which can relate to the dates of elections), all size and number restrictions on non-commercial signs are suspended.

# Concrete Solution: Exempt Signs Based on Activity on Site, Not Sign Content



- Before Reed: an exemption allowing “for sale” or “rent” signs.
- After Reed: an exemption allowing an extra sign on property that is currently for sale or rent.

Before Reed: an exemption for “drive-in” directional sign.

After Reed: an exemption allowing an extra sign (<10 sq. ft., <48 inches in height, and <six feet from a curb cut), for a lot that includes a drive-through window.

# Concrete Solution: Issuing Temporary Sign Permits Tied to the Date of *Issuance*



- Citizens can apply, by postcard or perhaps on-line, for seven-day sign permits, and receive a receipt and a sticker to put on the sign that bears a date seven days after issuance, and the city or county's name.
- The sticker must be put on the sign, so that enforcement officers can determine whether it's expired.
- Because the expiration date is tied to the date of issuance, there is no risk of content-discrimination.
- The sticker itself would be considered government speech.

# ***Immediate Practice Pointer***



*Municipal zoning regulations that give greater leeway in terms of time of display and size for political and ideological type signs when compared to directional signs for non-profits and religiously affiliated organizations will likely be found to violate the First Amendment. Local zoning regulations with regards to signs should be promptly reviewed in consultation with legal counsel to determine if amendments should be adopted by the town meeting or town or city council.*

# "Signs" of Hope in the Court

## OPINION OF THE COURT

*Thomas*

Roberts

Scalia

Alito

Kennedy

Sotomayor

## CONCURRING OPINIONS

*Alito*

*Kagan*

*Breyer*

Kennedy

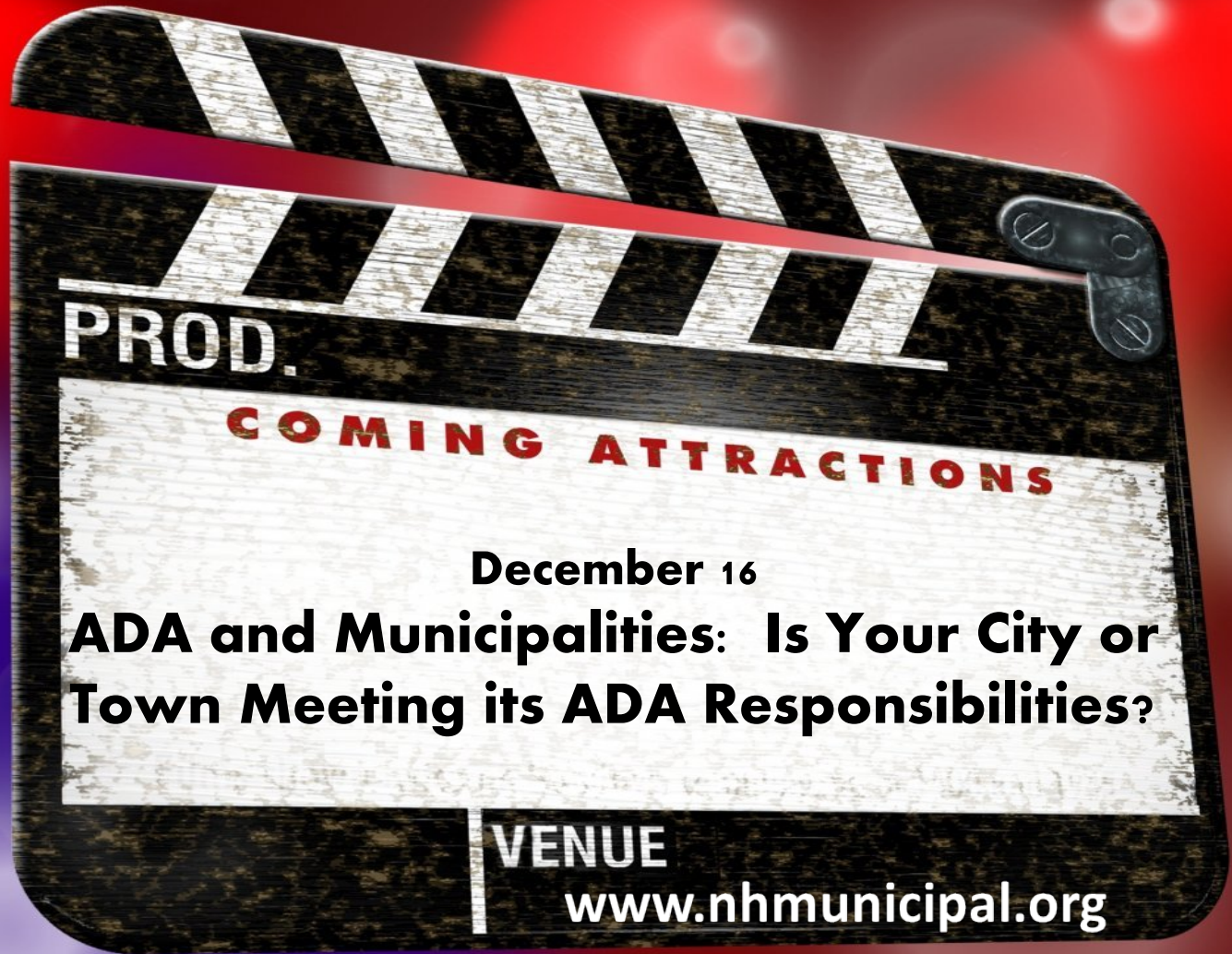
Ginsburg

Sotomayor

Breyer

*The Court's Middle Ground*





New Hampshire Municipal Association - 74<sup>th</sup> Annual Conference  
*Navigating the Waters of Municipal Government*

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The New Hampshire Municipal Association is a non-profit, non-partisan association working to strengthen New Hampshire cities and towns and their ability to serve the public as a member-funded, member-governed and member-driven association since 1941. We serve as a resource for information, education and legal services. NHMA is a strong, clear voice advocating for New Hampshire municipal interests.

