

## PRESENTED AT

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Austin, Texas**Finally...Something the Supreme Court Agrees On:**  
*Reed v. Town of Gilbert, Arizona*

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# FINALLY, Something the Supreme Court Agrees on:

## *Reed v. Town of Gilbert, Arizona*

### I. INTRODUCTION:

As I have said before,<sup>1</sup> probably the biggest challenge to any proposed sign regulation is avoiding constitutional challenges and when they occur (and they will), overcoming them. Even the best drafted sign regulations can draw a constitutional challenge. Why? Because challenging the regulation sometimes gets the challenger an accommodation (or even a variance, which by the way should not be given in the context of zoning *use* regulations) to the regulation. Fortunately for this discussion, the parties (e.g., the Town of Gilbert, Arizona and Pastor Clyde Reed on behalf of the Good News Community Church) were well entrenched in their respective positions for over seven years until the case finally made its way to the United States Supreme Court.

The U.S. Supreme Court has made it crystal clear that the First Amendment applies to content-based regulations and unequivocally prohibits any law from abridging the freedom of speech.<sup>2</sup> This case is no different, but in some respects it is a “shaking of the Supreme Court finger” at the Town of Gilbert (“Town”) and the federal government who entered the case as *amicus curiae* to the Town.

Speaking of the Town, let’s talk about it first.

### II. THE PARTIES:

#### A. The Town of Gilbert, Arizona<sup>3</sup>

- Pop. 223,028 – June 2015 (109,697 as of 2000)
- Median population age: 31.9 with 77% of the population under age 50 (33% under the age of 19).
- Highest median incomes in the state of Arizona at \$80,080 at an average of three people per household.
- Self-described “Psychographic Makeup” of:
  - Up and coming families (median household income of \$64,000)
  - Soccer moms (median household income of \$84,000)
  - Boomburbs (median household income of \$105,000)
- By Texas standards, we’re talking about a city the size of Lubbock or Plano.



<sup>1</sup> See “Signs of the Times: Regulations Fundamentals & Cases of Interest”, 2015 Land Use Fundamentals, March 25, 2015.

<sup>2</sup> See *Tex. Dept. of Transp. V. Barber*, 111 S.W.3d 86 (Tex. 2003) citing *Hill v. Colorado*, 530 U.S. 703, 722-23, 147 L. Ed. 2d 597, 120 S. Ct. 2480 (2000) (“the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.”)

<sup>3</sup> <http://www.gilbertdi.com/demographics.php#income>.

## B. The Good News Community Church<sup>4</sup>

At the time of the lawsuit, the Church was a small, cash-strapped congregation that did not own its own facility and held its services at various locations around town. In order to inform the public about its services, it would go around and place temporary signs around town - 15 to 20 - usually in the right-of-way of a public street. Pastor Clyde Reed was at the helm at the time the lawsuit was filed.

Church members believed that “the Bible commands them to go and make disciples of all nations, and that they should carry out this command by reaching out to the community to meet together on a regular basis. To do so, they display signs announcing their services as an invitation for those in the community to attend.” The Church placed 17 signs around its place of worship to announce the time and location of its services, but the Town only allowed four (4) at a time and for limited duration.



*What did they want?* To advertise the time and location of their Sunday church service.

## III. FACTUAL SUMMARY:

Picture it...the Town of Gilbert...sometime in 2005. The Town adopted a comprehensive code that purportedly controlled only the time, place and manner by which outdoor signs were displayed. What the Town's Sign Code also did was it identified various categories of signs based on the type of information that the sign conveyed (*here's our first red flag*), then based on the information being communicated by the sign it applied different restrictions to each category.

***It is at this point that I note the following:*** *valid, solid, constitutionally defensible sign regulations should not care what the sign actually says. Think of it like this – if you can close your eyes or turn the sign around and the regulation in question still applies, then you may have yourself a constitutionally defensible regulation. While this does not represent the end of any sign challenge analysis, it certainly is a good place to start.*

The Town's Sign Code prohibited the display of outdoor signs anywhere in the town without a valid permit, but 23 categories of signs were exempt from the permit requirement. However, three (3) categories of signs in particular were at issue in this case which were:

- Ideological (political, cultural or religious) Signs, defined as any sign communicating a message or ideas for non-commercial purposes that is not a Construction Sign, Directional Sign, Temporary Directional Sign Relating to a Qualifying Event (*remember this one*), Political Sign, Garage Sale Sign, or a sign owned or required by a governmental agency.

**NOTE:** the Town treated ideological signs most favorably.

<sup>4</sup> <http://www.goodnewsdres.com/index.html>

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