

# Sign Regulations: Where we are and where are we going?

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## The Lead Up

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- *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981).
  - Commercial speech.
  - Substantial government interest.
- In 1983, the City of Austin prohibits off-premise signs.
- *Reed v. Town of Gilbert*, 576 U.S. 155 (2015).
  - Non-commercial speech.
  - Regulations based on the content of the speech.

## *Reagan National Advertising v. City of Austin*

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- In 2017, Reagan National Advertising sought to convert some of its billboards into digital signs.
- After the City denied the applications, Reagan National Advertising sued the City of Austin alleging that the City's 34-year distinction between on-/off-premise signs is an unconstitutional content-based restriction on speech.
  - In 2019, the trial court ruled in the City's favor.
  - In 2020, the Fifth Circuit Court of Appeals reversed.

## The Fifth Circuit's Ruling

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- Is Austin's distinction between on-/off-premise signs was content-based?
- Does Austin regulate commercial speech?

## Is the Distinction Content-Based?

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- The Court explained that a regulation can be content-based if it defines regulated speech by its function or purpose.
  - *Reed v. Town of Gilbert*, 576 U.S 155 (2015).
  - *Thomas v. Bright*, 937 F.3d 721 (6<sup>th</sup> Cir. 2019).
  - *Act Now to Stop War and End Racism Coalition and Muslim American Society Freedom Foundation, v. District of Columbia*, 846 F.3d 391, 396 (D.D.C 2017).
- The Court concluded that the City's regulates speech based on its purpose.

## Is the Distinction Content-Based?

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- The Court concluded that if a person must read the sign to determine whether the sign complies, the regulation is content-based.
  - Who is the speaker?
  - What is the speaker saying?
- The Court concluded that the City's distinction is content-based.

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