



LAND USE CASE UPDATES

James L. Dougherty, Jr.

27th Annual Land Use Conference
University of Texas CLE
Austin, Texas
April 20-21, 2023

1



FIRST AMENDMENT (SIGN REGULATIONS)

2

FIRST AMENDMENT (Sign Regulations)

Background *City of Austin v. Reagan National Advert. of Austin*



3

FIRST AMENDMENT (Sign Regulations)

Background *City of Austin v. Reagan National Advert. of Austin*

- City of Austin Sign Code
- Restricted "off-premise" digital sign conversions
- USSC (2022): On-premise/off-premise distinction is "facially content-neutral"
Remand to determine if intermediate scrutiny would apply

4

FIRST AMENDMENT (Sign Regulations)

Updates *City of Austin v. Reagan National Advert. of Austin (2023)*

- **No impermissible purpose for Sign Code**
- **So, "intermediate scrutiny" applies:**
 - City's governmental interests were "substantial"
(traffic safety, esthetics)
 - Need not use "least restrictive means"
 - Some underinclusiveness OK – tailoring need not be "airtight"
 - Common sense and tradition support the Sign Code
- **Sign Code survived intermediate scrutiny; held constitutional**

5

FIRST AMENDMENT (Sign Regulations)

Updates *City of Austin v. Reagan National Advert. of Austin (2023)*

- **No impermissible purpose for Sign Code**
- **So, "intermediate scrutiny" applies:**
 - City's governmental interests were "substantial"
(traffic safety, esthetics)
 - Need not use "least restrictive means"
 - Some underinclusiveness OK – tailoring need not be "airtight"
 - Common sense and tradition support the Sign Code
- **Sign Code survived intermediate scrutiny; held constitutional**

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Land Use Case Updates

First appeared as part of the conference materials for the
27th Annual Land Use Conference session

"Land Use Case Updates: Part 1"