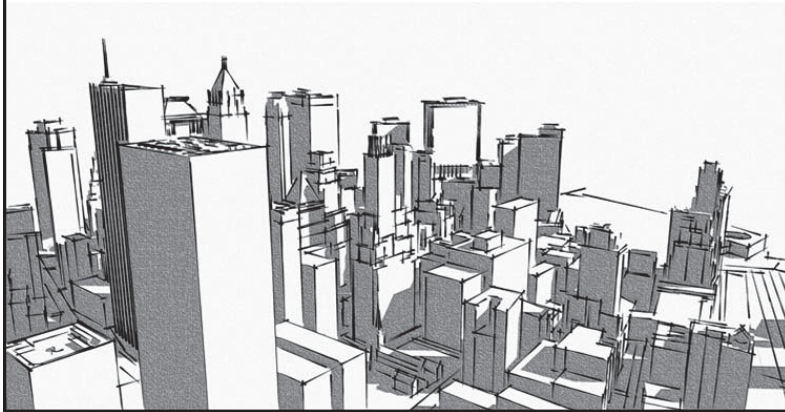


# THE REGULATION OF SOLICITATION, THE HOMELESS, AND CHARITABLE DONATION BINS IN THE SHADOW OF *REED V. TOWN OF GILBERT*

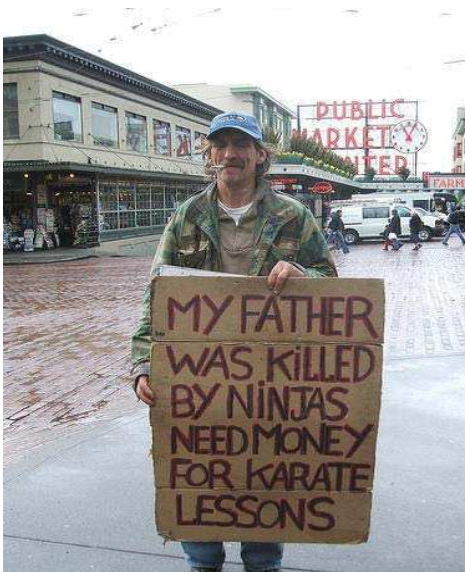
---



Christopher L. Nichols  
THE NICHOLS FIRM, PLLC  
The Warrant Building  
1010 N. San Jacinto St., Ste. 100  
Houston, Texas 77002  
713.275.7832 – T  
832.709.2478 – F  
[chris@nicholsfirm.com](mailto:chris@nicholsfirm.com)

CN1  
CN2

## ”Competing 1<sup>st</sup> Amendment Interests”



## The path to *Reed*.

- **Panhandling Regulations**
  - Recognized as protected speech since the late 1980s
    - *United States v. Kokinda*, 497 U.S. 720, 725 (1990)
    - *Vill. of Schaumburg v. Citizens for a Better Env't.*, 444 U.S. 620, 629 (1980)
  - Division among the circuits emerged over content-neutrality
    - **CONTENT BASED / STRICT SCRUTINY**
    - 2<sup>nd</sup> Circuit (1993) – NY Penal Code criminalized panhandling (e.g., San Antonio)
    - 9<sup>th</sup> Circuit (2006) – invalidated Las Vegas Ordinance as being content-based
    - 4<sup>th</sup> Circuit (2013) – distinguished between different types of solicitations
    - 6<sup>th</sup> Circuit (2013) – prohibition on category of speech protected by 1<sup>st</sup> Amendment
    - **NOT CONTENT BASED / INTERMEDIATE SCRUTINY**
    - 7<sup>th</sup> Circuit (Norton – 2014) – Location-specific ordinances content neutral
    - 1<sup>st</sup> Circuit (Thayer – 2014) – Ordinances were content-neutral
    - District of Columbia - prohibiting solicitation near park monuments
- **Then *Reed* in June 2015, followed by *Thayer* a few weeks later.**
  - While the *Reed* decision on sign regulation came out of nowhere, the *Thayer* case had been cooking for some time as the issue made its way through the various circuit courts.
  - *Reed* reset the standard on 1<sup>st</sup> Amendment jurisprudence; *Thayer* followed.

## It all began in the “desert.”

- **Town of Gilbert, Arizona**
  - Population as of June 2015: 233,028
  - Doubled every five years from 1980-2000
  - Median Population Age: 31.9
    - 77% of population under age 50
    - 33% of population under age 19
  - Highest median incomes in the state of Arizona: \$80,080
- **The Good News Community Church (Pastor Reed)**
  - Small and cash-strapped (lawsuit)
  - Did not own a facility
  - “Mobile” services
  - Used temporary signs to advertise services
  - All they wanted to do was advertise their church services.



## Everything was *fine* until...

- Gilbert adopted a comprehensive sign code in 2005
  - Appendix “A”: Sign Code as of 11-30-14
- **Purpose:**
  - Promote optimum conditions for serving sign owners’ needs
  - Respecting [sign owners] rights to identification while balancing the community’s aesthetic interests
- **Necessary and in the public interest because:**
  - A. To promote and aid the public and private sectors in the identification, location, and advertisement of goods and services.
  - B. To enhance the beauty, unique character, and quality of the Town of Gilbert, which will attract commerce, businesses, residents and visitors.
  - C. To promote economic development and the value of commercial properties, be sensitive to surrounding land uses and maintain an attractive community appearance.
  - D. To promote general safety by ensuring properly designed and located signs.
  - E. To encourage signs that are clear and legible to the user.
  - F. To emphasize small town historical character by promoting pedestrian oriented and appropriately scaled signage in the Heritage Village Center zoning district.

## Categorical Content Regulations

- **Ideological Signs:**
  - 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, Political Sign, Garage Sale Sign, or a sign owned or required by a governmental agency
- **Political Signs:**
  - any temporary designed to influence the outcome of an election called by a public body.
- **Temporary Directional Signs relating to Qualifying Event:**
  - any "temporary sign" intended to direct pedestrians, motorists, and other passersby to a "qualifying event."

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: Regulation of Solicitation, the Homeless, and Charitable Donation Bins

First appeared as part of the conference materials for the  
22<sup>nd</sup> Annual Land Use Conference session

"Regulation of Solicitation, the Homeless, and Charitable Donation Bins"