

## Your Sign Bylaw or Ordinance Is Probably Unconstitutional!

On June 18, 2015, the Supreme Court unanimously invalidated the Town of Gilbert's municipal sign code as an unconstitutional "content-based" restriction on free speech in *Reed v. Town of Gilbert, Arizona*.

Gilbert's municipal sign code imposed few restrictions on political signs but strictly limited the size, duration of their display and, in some cases, the number of directional signs permitted on a parcel. Gilbert offered two governmental interests that it believed to be served by the code: preservation of Town aesthetics and traffic safety. While the Court assumed, for the purpose of its decision, that both were "compelling" governmental interests, it concluded that they were not served constitutionally by Gilbert's sign code.

The Court stated that the constitutionality of sign regulations should be reviewed under a standard of "strict scrutiny": whether the regulation furthers a compelling governmental interest utilizing the most narrowly tailored means. The Ninth Circuit had applied a less stringent "intermediate scrutiny" standard, which requires only that a law further an important government interest by means that are substantially related to that interest. The Court determined that strict scrutiny was required because the code was "content based on its face," a finding directly contrary to the findings of the lower courts. Once strict scrutiny was applied to the sign code, the Court easily concluded that the governmental interests failed to justify the regulation. The code was "hopelessly underinclusive" in preserving aesthetics, since a directional sign is no greater an eyesore than a political sign. Nor is a directional sign a greater threat to traffic safety; indeed, Justice Thomas noted that a political sign's message could be more distracting than a directional sign. Thus, the court concluded, the code was not narrowly tailored to further a compelling governmental interest.

The decision leaves all sign regulation in a constitutionally suspect posture, as noted by the concurring justices. Its impact may even extend beyond the regulation of signs. Indeed, shortly after reaching its decision, the Supreme Court remanded for reconsideration the Massachusetts case of *Thayer v. Worcester*, in which the First Circuit Court of Appeals had upheld the constitutionality of Worcester's ordinance prohibiting panhandling. We will keep an eye on that case when the First Circuit takes it up.