

The Reed Decision:  
What a Difference a Year Makes!

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In the twelve months since the United States Supreme Court issued its decision in Reed v. Town of Gilbert, 576 U.S. \_\_\_, 135 S. Ct. 2218, 192 L.Ed.2d. 236 (2015), numerous courts have addressed this ruling in a variety of cases, and under a variety of circumstances.

In Reed, the Court majority announced a new, four-step rule for local sign ordinances specifically, and for the protection of non-commercial free speech generally.

This new rule is summarized as follows:

**Step One:** If a sign ordinance, on its face, draws distinctions based upon the message conveyed by a sign - - by its subject matter, idea, purpose, or function - - it is content-based, and subject to a strict scrutiny analysis.

**Step Two:** If a sign ordinance survives Step One, but is justified by referencing the content of its regulated speech - - such as an ordinance that allows more yard signs during the Fall, justified by a need to accommodate election signs - - it is content-based and subject to a strict scrutiny analysis.

**Step Three:** If a sign ordinance survives Steps One and Two, but was adopted because the government disagrees with the message conveyed on a sign - - it is content-based and subject to a strict scrutiny analysis.

**Step Four:** If, and only if, a sign ordinance survives Steps One, Two, and Three -- is it content-neutral and subject to an intermediate scrutiny analysis.

Cases that have utilized, distinguished, or rejected on *Reed* analysis of a government regulation that purportedly limits some form of speech include the following, grouped by topic:

### **Sign Ordinances:**

*California Outdoor v. City of Corona*, \_\_F.Supp.3d. \_\_, No. 15-03172 (C.D. Cal., Jul. 9, 2015).

*Central Radio v. City of Norfolk*, 811 F.3d. 625 (4<sup>th</sup> Cir., 2016).

*Contest Promotions v. San Francisco*, \_\_F.Supp.3d. \_\_, No. 15-cv-00093 (N.D. Cal., July 28, 2015).

*Herson v. City of Richmond*, \_\_F.3d. \_\_, No. 11-18028 (9<sup>th</sup> Cir., Jan. 22, 2016).

*Lone Star Security v. Los Angeles*, \_\_F.3d. \_\_, Nos. 14-55014 & 14-55050 (9<sup>th</sup> Cir., July 7, 2016).

*Marin v. Town of Southeast*, \_\_F.Supp.3d. \_\_, No. 14-cv-2094 (S.D. N.Y., Sept. 30, 2015).

*Peterson v. Village of Downers Grove*, \_\_F.Supp.3d. \_\_, No. 14-c-9851 (N.D. Ill., Dec. 14, 2015).

*Timilsina v. West Valley City*, \_\_F.Supp.3d. \_\_, No. 2:14-cv-00046 (D. Utah, July 1, 2015).

### **Panhandling:**

*Browne v. City of Grand Junction*, \_\_F.Supp.3d. \_\_, No. 14-cv-00809 (D. Colo., Sept. 30, 2015).

*Cutting v. City of Portland*, 802 F.3d. 79 (1<sup>st</sup> Cir., 2015).

*McLaughlin v. City of Lowell*, \_\_F.Supp.3d. \_\_, No. 14-10270 (D. Mass., Oct. 23, 2015).

*Norton v. City of Springfield*, \_\_F.3d. \_\_, No. 13-3581 (7<sup>th</sup> Cir., Aug. 7, 2015).

*Thayer v. City of Worcester*, \_\_F.Supp.3d. \_\_, No. 13-40057 (D. Mass., Nov. 9, 2015).

### **Other Types of Public Solicitation:**

Centro de la Comunidad Hispana, \_\_F.Supp.3d. \_\_, No. 10-cv-2262 (E.D. N.Y., Sept. 3, 2015).

FF Cosmetics v. Miami, \_\_F.Supp.3d. \_\_, No. 14-cv-22072 (S.D. Fla., Aug.31, 2015).

Left Field Media v. Chicago, \_\_F.Supp.3d. \_\_, No. 15-c-3115 (N.D. Ill., Oct. 5, 2015).

Watkins v. City of Arlington, 123 F.Supp.3d. (N.D. Tex., 2015).

Working America v. City of Bloomington, 142 F.Supp.3d. 823 (D. Minn., 2015).

### **Electronic Media:**

Defense Distributed v. US DOS, \_\_F.Supp.3d. \_\_, No. 1-15-cv-372 (W.D. Tex., Aug. 4, 2015).

North Carolina v. Packingham, \_\_N.C. \_\_, No. 366-PA-13 (N.C., Nov. 6, 2015).

Rideout v. Gardner, \_\_F.Supp.3d. \_\_, No. 14-cv-489 (D.N.H., Aug. 11, 2015).

### **Robo-Calls:**

Cahaly v. Larosa, 796 F.3d. 399 (4<sup>th</sup> Cir., 2015).

Patriotic Veterans v. Indiana, \_\_F.Supp.3d \_\_, No. 1:10-cv-723 (S.D Ind., Apr. 7, 2016).

### **Anti-Surcharge Laws:**

Dana's Railroad Supply v. Florida, 807 F.3d. 1235 (11<sup>th</sup> Cir., 2015).

Expressions Hair Design v. Schneiderman, \_\_F.3d. \_\_, Nos. 13-4533 & 13-4537 (2<sup>nd</sup> Cir., Dec.11, 2015).

Rowell v. Pettijohn, \_\_F.3d \_\_, No. 15-50168 (5<sup>th</sup> Cir., Mar. 2, 2016).

### **Other Economic Regulations:**

*Chiropractors United v. Conway*, \_\_F.Supp.3d \_\_, No. 3:15-cv-00556 (W.D. Ky., Oct. 1, 2015).

*Intn'l Franchise Assoc. v. Seattle*, \_\_F.3d \_\_, No. 15-35209 (9<sup>th</sup> Cir., Sept. 25, 2015).

*S.F. Apartment Assoc. v. San Francisco*, \_\_F.Supp.3d \_\_, No. 15-cv-01545 (N.D. Cal., Nov. 5, 2015).

### **Zoning:**

*BBL v. City of Angola*, 809 F.3d. 317 (7<sup>th</sup> Cir., 2015).

*Citizens for Free Speech*, \_\_F.Supp.3d \_\_, No. 14-02513 (N.D. Cal., July 16, 2015).

*Congregation Rabbinical College v. Village of Pomona*, \_\_F.Supp.3d \_\_, No. 07-cv-6304 (S.D. N.Y., Sept. 29, 2015).

*Thomas v. Schroer*, \_\_F.Supp.3d \_\_, No. 2:13-cv-02987 (W.D. Tenn., Mar. 30, 2016).

### **Other Regulations:**

*CTIA v. City of Berkeley*, \_\_F.Supp.3d \_\_, No. 15-2529 (N.D. Cal., Sept. 21, 2015).

*Wollschlaeger v. Florida*, \_\_F.3d \_\_, No. 12-14009 (11<sup>th</sup> Cir., Dec. 14, 2015).

The next twelve months should continue to see courts struggle with the Reed decision and the extent of its reach beyond sign regulations. If the last twelve months are any predictor of future action, these judicial efforts should include (1) finding more governmental interests to be “compelling”; (2) finding that more local laws regulate “conduct” instead of speech, (3) finding that more local laws are “content-neutral,” even in the face of arguably subject-based distinctions; and (4) refusing to expand Reed to commercial speech or in other contexts.