

Reed v. Gilbert:

Issues:

1) Does the Gilbert statute regulating signage violate Reed's first amendment right to free speech; 2) Does the Gilbert statute impermissibly discriminate between different types of non-commercial speech in violation of the 14th Amendment's equal protection clause:

Rules:

The applicable standard for reviewing a regulation for First Amendment purposes depends upon whether or not the regulation is based on the content of speech. If a statute attempts to regulate the content of speech, it must serve a compelling state interest and must narrowly tailored to achieve that interest (the "**compelling government interest test**")

If the regulation is not based on the content of speech, then the regulation must still be "narrowly tailored to serve a significant governmental interest" (the "**balancing test**"). There must be a significant governmental interest, the regulation must advance that interest, and the statute still must be narrowly tailored. **But, a narrowly tailored regulation will not be invalid simply because the government's interest could be served by some less speech restrictive alternative.**

For purposes of the 14th Amendment, a statute may not impermissibly discriminate between different types of non-commercial speech.

Facts/Analysis:

The Good News Community Church wishes to spread the word about its Sunday services by placing temporary directional signs around the town of Gilbert Arizona. The signs announce the services as an invitation in the community. The church was placing about 17 signs in areas surrounding the Church. The signs were placed early in the day each Saturday and removed following the services on Sunday mid-day. The signs are movable, and can be anchored in the ground. The content varies slightly, but generally contain the name "Good New Community", the phrase "your Community Church", a website address and phone numbers, the location and time of the services, and an indicator directing people to the services.

Gilbert's ordinance prohibits certain types of signs altogether. For signs not prohibited, the Code imposes a general ban on displaying signs without a permit and establishes some generally applicable restrictions. The sign code does exempt certain types of signs from the permitting requirement. The signs used by Good News fall under one of the exemptions.

The church is then cited by a Code compliance officer because its signs had been sited too early and in a public right-of-way. Later, the church was again cited for displaying it signs outside of the hours allowed and did not include a date for the religious services.

When determining whether an ordinance may be targeting content, and the ordinance or exemption is based on identification of a speaker or event instead of content, a court must determine whether the enforcement officer would need to distinguish content to determine applicability of the ordinance.

In Gilbert, the Ninth Circuit concluded that the Gilbert statute was not a content based regulation as it did not single out certain content for differential treatment. To enforce the statute an officer only need to note content neutral elements of who is speaking through the sign and whether and when an event is occurring. There is no determination of whether the regulation applies based on the content of the sign.

Finding that the restriction provided by the statute is a “time, place, and manner” restriction, the court found that aesthetics and traffic and pedestrian safety were legitimate government interests advanced by the statute, and because Reed had alternative channels for communication, the statute was narrowly tailored.

Regarding the 14th amendment issue, the Court noted that the statute regulated “Ideological” “Political” and “Qualifying Event” signs, all of which can constitute non-commercial speech. Since the regulation is different for each type of sign, and because the Court did not evaluate whether Gilbert would be likely to prevail on the merits, the Circuit remanded this issue back to the District Court to make a determination.