

focus on: Legal Affairs

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Reed v. Town of Gilbert discussed in Indiana sign ordinance lawsuit

A federal judge recently ruled that the former sign ordinance of the City of Indianapolis was unconstitutional. An Indiana billboard company has since asked a judge to bar the city from enforcing its ban on digital billboards. The lawsuit previously challenged the different standards for “on premises” signs and “off premises signs” and “commercial” and “noncommercial” messages.



The constitutionality of signage was brought up last year in the United States Supreme Court case of Reed v. Town of Gilbert, Ariz., 135 S. Ct. 2218 (U.S. 2015). In that case, brought by an Arizona church, the court held that the town’s sign ordinance violated the First Amendment because it limited the size of signs announcing church services. The Court determined that the Town’s ordinance regulated speech based on its content. The temporary direction signs were treated differently than political signs, and both were treated different than ideological signs, showing that the content of the sign determined how it was regulated. The Town offered governmental interests to try to support this distinction of preserving the Town’s aesthetic appeal and traffic safety. However, as other types of signs could be unlimited in number while directional signs were strictly regulated, the Town could not demonstrate how these content regulations protected the Town’s aesthetics. Similarly the Town could not show how limiting directional signs protected traffic safety while at the same time allowing an unlimited number of other signs.

After the filing of the present litigation, the City of Indianapolis amended its original sign ordinance which did violate the First Amendment as it imposed different restrictions on commercial and noncommercial speech. The federal judge ruled that the amended ordinance of the City of Indianapolis is now constitutional under the First Amendment.

The City of Indianapolis amended its Sign Ordinance by removing the noncommercial exemption and adding the following provision:

“Noncommercial messages may be displayed on any sign authorized to display commercial messages.” Indianapolis, Ind. Code § 734-101(b). The definitions of “on-premises,” “off-premises,” and “advertising signs” remained the same as those in the original Sign Ordinance. Similarly, there was no change in the regulations regarding digital components for those sign types. The City’s amendments to the ordinance make clear that the limitations set forth in each of those definitions “[do] not apply to the content of noncommercial messages.” § 734-501(b). Accordingly, under the Amended Ordinance, the on-premises and off-premises distinction now explicitly applies only to commercial speech.

Even under the Amended Ordinance, the Indiana billboard company continues to allege that it is unconstitutional that the “on premises” signs (which advertise solely for the business in the same location as the sign) **are** allowed to have digital content. Whereas “off premises” signs (which advertise for a business or product located or made available elsewhere) **are not** allowed to have digital content.

The Indiana billboard company is presently appealing the parts of the ruling that prevent them from converting the “off premises” signs to digital. The litigation on this particular issue and damages dispute is ongoing.

So how does this effect real estate For Sale signs or Open House signs?

The United States Supreme Court in *Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85 (1977), decided that a prohibition on real estate For Sale signs was unconstitutional. They cannot be prohibited outright. Therefore, it is likely that real estate Open House signs would be treated the same with no absolute prohibition, but subject to reasonable limits on size, placement or duration as other temporary directional signs like in *Gilbert*.

Stay tuned for the continuing litigation on the placement of digital outdoor signs.

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