

First Amendment



First Amendment

- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
- First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired.



Content Based Restrictions Are Bad

Presumptively invalid

Least restrictive means

Compelling governmental interest

Laws rarely survive strict scrutiny

General Rule

Content neutral

Reasonable time, place, manner restriction

Narrowly tailored

Significant governmental interest

Leaves open ample alternatives for communication

How have cities addressed panhandling?

Created permitting requirements

Created solicitation Free Zones

Prohibited solicitation from medians or in street

Enacted time restrictions (Prohibited at night)

Prohibited aggressive solicitation

Aggressive Solicitation

Within a specific distance of

- Restaurants/patios
- Pay Phones
- Self Service car wash/fuel pump
- Check Cashing place
- ATM/bank

Bus station/stop

Standing in line

Aggressive Solicitation

Intimidating/threatening
manner

Specified distance of person
who declined

Unwanted physical contact

Blocking car or path

Following a person

Cantwell v. Connecticut

310 U.S. 296 (1940)



The Facts

Cantwell, a member of Jehovah's Witnesses, went door to door in Roman Catholic neighborhood trying to sell books and other religious materials.

They would start by playing a record which described one of the books they were trying to sell.

The area was primarily Roman Catholic and one of the records, Enemies, attacked Catholicism.

Cantwell played Enemies to two Catholics on the street.

The Facts

The men didn't attack Cantwell, but wanted to.

Cantwell was arrested and convicted for inciting a breach of the peace.

He claimed the statute denied free speech and prohibited the free exercise of religion.

A breach of the peace destroys public order and tranquility

No statute narrowly drawn to define and punish his specific conduct as constituting a clear and present danger to a substantial interest of the state exists

Key Take Away



State may protect citizens by requiring a person to establish identity and authority to act before soliciting funds

State can regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience

Schaumburg v. Citizens for Better Environment, 444 U.S. 620 (1979)

Village had ordinance which prohibited door-to-door or on-street solicitation by charitable organizations that do not use at least 75% of their receipts for charitable purposes.

It's a direct and substantial limitation on protected activity.

Reason – Fraud Prevention

Village may serve its legitimate interests, but it must do so by narrowly drawn regulations designed to serve those interests without unnecessarily interfering with First Amendment freedoms.

Regulation is overly broad.

Heffron v. Soc'y
for Krishna, 452
U.S. 640 (1981)

- State's agricultural society operated a state fair which restricted the sale or distribution of any merchandise without a license from the society.
- Interest in confining distribution, selling, and fund solicitation activities to fixed locations for orderly movement and control served substantial state interest
- Rule didn't exclude religious organizations nor deny the organization the right to conduct any activity at some point within the forum
- Making them wait for people to come to them didn't make regulation content based

Frisby v. Schultz, 487 U.S. 474 (1988)

Individuals who were opposed to abortion began picketing on a public street outside the residence of a doctor who performed abortions. (11-40+ people)

An ordinance was enacted which prohibited picketing before or about any individual's residence.

Originally excluded labor picketing, but amended to apply uniformly.

Streets were public forum, but state had a substantial interest in protecting an unwilling listener while inside their house.

Ample alternatives available

Content Neutral

Hill v. Colorado, 530 U.S. 703 (2000)

Colorado made it unlawful for any person, within 100ft of a health care facilities' entrance to knowingly approach a person within 8 feet of another person, without consent, to pass "a leaflet or handing to, display a sign to or engage in oral protest education, or counseling with that person.

Narrowly tailored, reasonable time, place, and manner restriction, serving significant and legitimate governmental interests of protecting the public from confrontational and harassing conduct.

Reed v. Town of Gilbert

576 U.S. 155 (2015)

The Reed Opinions

Opinion of Court By Thomas

- Roberts
- Scalia
- Kennedy
- Alito
- Sotomayor

Concurring By Breyer

Concurring Alito

- Kennedy
- Sotomayor

Concurring by Kagan

- Ginsburg
- Breyer

Gilbert's Sign Ordinance

Outdoor signs require a permit with 23 exceptions

Ideological Signs – sign communicating a message or ideas for noncommercial purposes that is not a Construction sign, Directional sign...

Political Sign – temporary sign designed to influence the outcome of an election called by a public body

Temporary Directional Signs Relating to a Qualifying Event – signs directing the public

Gilbert's Sign Ordinance

Ideological Signs –All Zoning Districts, No Time Limit, 20 sq ft)

Political Sign –All Zoning Districts, 60 days before election and 15 days following, 16 sq ft residential/32 sq ft ROW, non-residential, vacant municipal

Temporary Directional Signs Relating to a Qualifying Event- Private property/ROW up to 4 signs, 12 hours before and 1 after, 6 sq ft.

The Facts

Reed was the pastor of a homeless church

The church changed locations and placed signs with time, date, and location of the upcoming service (Temporary Directional Signs)

Church violated the ordinance (placed in public right-of-way, exceeded time restrictions)

Gilbert's sign posting restrictions (time, place, size, etc.) were based on the type of sign (directional, political, etc.)

Direct History

Church filed suit alleging 1st and 14th Amendment violations

Lower Court determined the law was content neutral.

9th Circuit affirmed lower court's finding for Gilbert

- No restrictions were placed on particular viewpoints.
- Officer does not have to analyze the expressive content of the sign
- Officer only needs to note who is speaking and whether/when an event is occurring.

Reed v. Town of Gilbert – Supreme Court

Viewpoint discrimination is a type of content discrimination

An ordinance is content based if it targets a particular subject matter of speech for differential treatment.

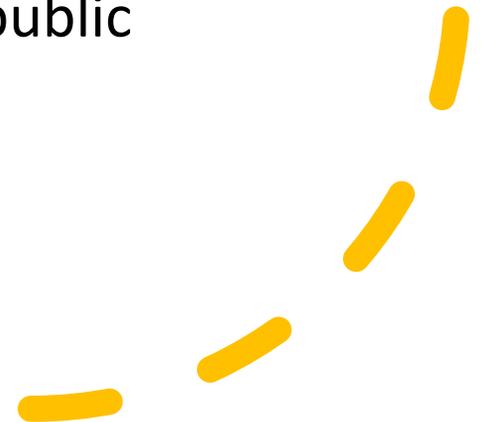
Government regulation of speech is content based if the law applies to particular speech because of the topic discussed or the idea or message expressed.

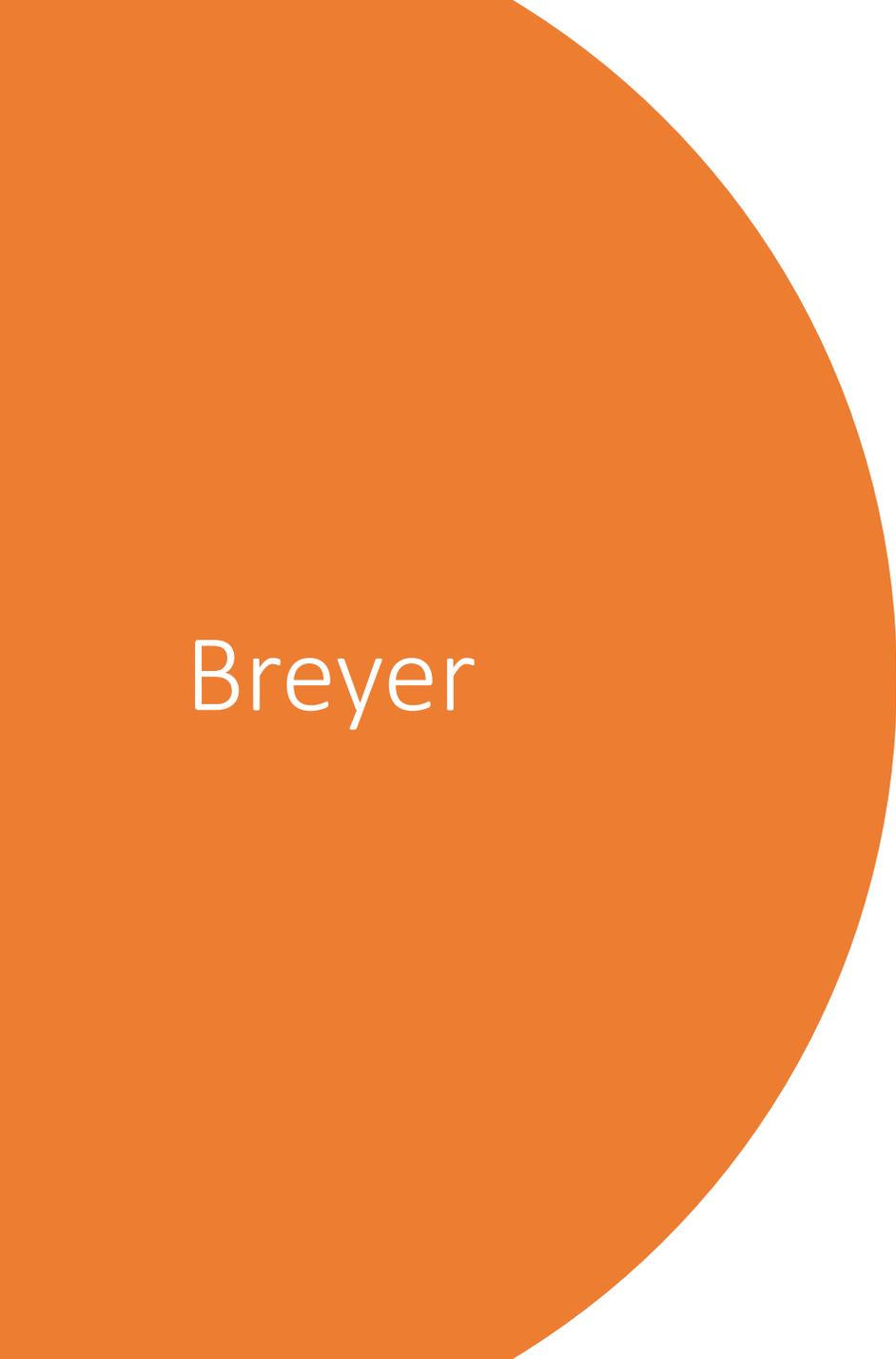
Thomas

- “Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.”
- “This commonsense meaning of the phrase “content based” requires a court to consider whether a regulation of speech “on its face” draws distinctions based on the message a speaker conveys.”
- “Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.”

Alito's Concurring Opinion

- The regulations at issue are replete with content-based distinctions, so strict scrutiny applies.
- Content-neutral criteria includes rules distinguishing between...
 - Lighted and unlighted signs
 - Fixed message v. changing electronic message
 - On-premises and off-premises
 - Placement on private property v. public property...





Breyer

Content discrimination should not always trigger strict scrutiny

Regulations shouldn't interfere with the free marketplace of ideas and an individual's ability to express thoughts and ideas

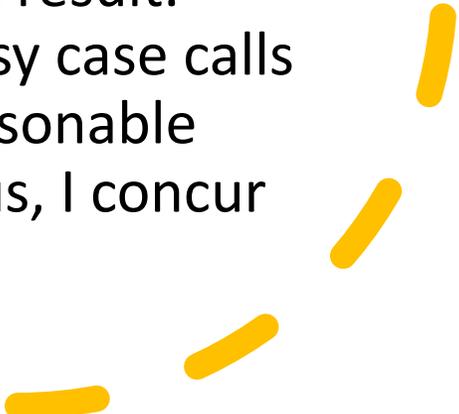
This helps us determine what society we want, shape it, and define our place in it

FDA labels, etc.

A large orange circle is positioned on the left side of the slide, partially overlapping the text area.

Kagan

“I suspect this Court and others will regret the majority’s insistence today on answering that question in the affirmative. As the years go by, courts will discover that thousands of towns have such ordinances, many of them “entirely reasonable.” And as the challenges to them mount, courts will have to invalidate one after the other. (This Court may soon find itself a veritable Supreme Board of Sign Review.) And courts will strike down those democratically enacted local laws even though no one—certainly not the majority—has ever explained why the vindication of First Amendment values requires that result. Because I see no reason why such an easy case calls for us to cast a constitutional pall on reasonable regulations quite unlike the law before us, I concur only in the judgment.”

A decorative graphic consisting of several short, curved yellow dashes is located in the bottom right corner of the slide.

Thayer V. City of Worcester

Thayer v. City of Worcester

Ordinance 1 – Cannot beg, panhandle or solicit in aggressive manner
(Aggressive Panhandling Ord.)

Ordinance 2 – Prohibits standing or walking on traffic island or roadway
except crossing street/entering/exiting vehicle for lawful purpose

Motivation – Public Safety and Panhandling is a blight

Thayer v. City of Worcester – District Court

Soliciting contributions is expressive activity protected by the First Amendment

Ordinances are content neutral

City has a substantial legitimate interest which outweighs plaintiff's unfettered right to solicit in public areas

Reasonable time, place, manner restriction

Thayer v. City of Worcester – 1st Circuit

Night time ban was enjoined by duty panel and City didn't argue against it, so it wasn't considered further.

All provisions are Content Neutral

Probably some overbreadth but not to a substantial degree

Thayer v.
City of
Worcester –
Supreme
Court

- “Judgement vacated, and case remanded to the U.S. Court of Appeals for the First Circuit for further consideration in light of Reed v. Town of Gilbert.”

McLaughlin v. City of Lowell

Panhandling – solicitation of any item of value through a request for an immediate donation (includes sale for inflated price)

Prohibited in downtown historic district, except passive panhandling (400 acres of most trafficked areas)

Prohibited aggressive solicitation

McLaughlin v. City of Lowell

Downtown prohibition is clearly content-based.

- It targets a specific form of speech (solicitation for immediate donations)
- Officers would have to listen to the speech to enforce it

Secondary effects doctrine doesn't apply

- No meaningful evidence supports city targeting of secondary effects
- City is primarily concerned with panhandler's direct behavior

Promotion of tourism and business are not compelling interests

Public Safety was post-hoc rationalization

McLaughlin v. City of Lowell

Aggressive solicitation ordinance relies on same content based definition of panhandling

Serves compelling public safety interest

Duplicative Offenses

Coercive but not criminal

Location related

Aggressive Solicitation - Duplicative Offenses

Criminalizes panhandling while engaged in conduct which is already a crime

Plaintiff argued they could enforce the laws on the books

Subjects those engaged in particular expressive acts to more liability

Can't deem criminal activity worse because it is conducted in combination with protected speech

Aggressive Solicitation – Non-Criminal, Coercive

Following a person to panhandle

Panhandling after a negative response

- “If panhandling is truly valuable expressive speech, then panhandlers may have a right to more than one shot of getting their message across.”

Panhandling in group of two or more in intimidating fashion

- Interpret as rising to the level of assault/disorderly conduct makes it duplicative
- Alternate interpretation restricts more speech and requires stronger justification
- Infringes upon assembly

Aggressive Solicitation - Location

- Person waiting in line
- Within 20 feet
 - Bank
 - ATM
 - Check cashing business
 - Transit stop
 - Public restroom
 - Pay phone
 - Theater
 - Outdoor seating
 - Associated Parking Area
- Elevated risk/fear of physical harm
 - Not least restrictive means
 - Could create exemption for passive panhandling
 - Allow signs near edge of lot, but not near car door
- Captive Audience
 - Not tailored to public safety

Browne v. City of Grand Junction (MSJ)

Panhandle – knowingly approach, accost, or stop another person in a public place and solicit that person without their consent for money, employment, or other thing of value.

Aggressive panhandling ordinance which included a night restriction

Some, but not all provisions challenged

Content based – regulates only speech for money, employment, thing of value

Public safety is compelling interest

Browne v. City of Grand Junction (MSJ)

Challenged

- Night time restriction
- Request after declined
- Within 20 ft of ATM or bus stop
- In a public parking garage
- Patio or sidewalk serving area of business or waiting in line

Not Challenged

- Engages in conduct that is intimidating, threatening, coercive or obscene and that causes the person solicited to reasonable fear for his/her safety
- Fighting words
- Touches/grabs another
- Obstruct sidewalk

Browne v. City of Grand Junction

City hasn't shown night panhandling a public safety risk

A second request for money does not pose a public safety risk.

Solicitation within 20 feet of an ATM does not pose a threat to public safety.

No instances shown in record at bus stop, parking facility, in line, or patio, and not a public safety threat

Browne v. City of Grand Junction

- Prohibited soliciting employment or contributions of any kind from occupant of vehicle on any highway in the interstate or state highway system
- Held to be content based during injunction hearing because it distinguishes between topics. Permits distribution of literature. Only restricts speech relating to requests for money/employment.
- Preliminary injunction abandoned based upon agreement.
- This provision removed by amendment

Thayer v.
Worcester –
Dist. Ct. on
Remand

Ordinance 1 – Cannot beg, panhandle or solicit in aggressive manner (Aggressive Panhandling Ord.)

Definitions included immediate donation qualifier

Content Based – discussion not needed, substantially all courts post *Reed* have found them content based.

Often duplicative

Not least restrictive means

Cutting v. City of Portland, Maine (1st Circuit)

No person shall sit, stand, stay, drive, or park on a median strip except for crossing the street.

Five individuals cited for panhandling

City's practice, but not law, permitted political signs to be posted in the median

District Court found City adopted an official interpretation of the ordinance which allowed the signs so the ordinance was content based

Cutting v. City of Portland, Maine (1st Circuit)

An official interpretation can't render an ordinance facially unconstitutional

Medians are traditional forum

Ordinance is content neutral

Imposes serious burdens on speech

Medians range from 8 inches wide to fifty feet wide

Some are island refuges per Portland Public Service Director

Cutting v. City of Portland, Maine (1st Circuit)

Danger to drivers

- evidence limited to a handful of intersections

Danger to pedestrians

- only one incident involving pedestrian in last 4 years
- Was cyclist crossing street (not prohibited under ordinance)
- 14 damaged signs in medians (not sure what caused damage)

City didn't try less restrictive means or explain why they didn't

City said they needed laws allowing proactive not reactive enforcement

Ordinance is a sweeping ban – not narrowly tailored

Thayer v. Worcester – Dist. Ct. on Remand

- Ordinance 2 – Prohibits standing or walking on traffic island or roadway except crossing street/entering/exiting vehicle for lawful purpose
- Content Neutral
- Sweeping ban is not narrowly tailored

Norton v. City of Springfield, Ill (Norton I)

Ordinance prohibited panhandling in the downtown district

The ordinance defined panhandling as “oral request for an immediate donation of money”

Norton and Otterson regularly panhandle on public sidewalks in Springfield to have money for food, housing, and other essentials

Both desired to panhandle in downtown district because it was busier

Norton v. City of Springfield, Ill (Norton I-PR)

Regulated the manner in which the message was transmitted

Was justified without referencing the content of the regulated speech

Acknowledged division among Circuits (Clatterbuck v. Charlottesville)

Difficult to determine the line between subject-matter (usually allowed) and content-based (usually forbidden)

Content neutral time, place, manner restriction which was narrowly tailored.

Norton v. Springfield, Ill - 7th Circuit Rehear

Reed effectively abolishes distinction between content regulation and subject-matter regulation.

Ordinance is a content based regulation.

Parties had stipulated that ordinance stood or fell on whether it was content based

“Few regulations will survive this rigorous standard.”

Norton II – District Court

Can't approach within 5ft of person being solicited while panhandling

Content based – prohibits panhandling speech while allowing other forms of speech

City failed to provide a compelling interest

Homeless Helping Homeless v. Tampa*

- Ordinance bans the solicitation of donations or payment except solicitation by only holding a sign
 - Downtown Zone
 - Bus or transit stop
 - Sidewalk cafe
 - 15ft ATM/entrance financial institution
- Other “aggressive solicitation” provisions not challenged
- “...an opinion that resolves a dispute about parishioners temporarily planting some small signs directing people to a church service is written in such sweeping terms that the opinion appears to govern an ordinance that regulates face-to-face demands for money from casual passers-by”

Homeless Helping Homeless v. Tampa*

Content Based – distinguishes between solicitation and other speech (ex: it's ok to ask for petition signature)

“Without Reed which governs for the moment (despite prominently featuring the badges of a transient reign), I would follow Judge Easterbrook in Norton...” (Norton I before rehearing)

“demonstrably benign legislative attempt to fairly and humanely [address] a tangible and persistent problem in a manner narrowly and artfully tailored to fit the compelling facts in the affected community”

Left Field
Media LLC v.
City of
Chicago (PI)

Peddling of any item prohibited on sidewalks immediately adjacent to Wrigley Field

Doesn't apply to speech, only peddling

Content-neutral because regulates all sales alike

Require peddlers license for selling everything, except newspapers

Indicated Reed would apply to evaluation

Content Based, but Court didn't abuse discretion

Texas Trans.
Code
552.007
and
552.0071

- A person may not stand in a roadway to solicit a ride, contribution, employment, or business from the occupant of a vehicle, except that a person may stand in a roadway to solicit a charitable contribution if authorized to do so by the local authority having jurisdiction over the roadway.
- A local authority SHALL grant authorization for a person to stand in a roadway to solicit a charitable contribution as provided by 552.007(a) if the persons to be engaged in solicitation are employees or agents of the local authority and the other requirements of this section are met.

Houston Chronicle v. City of League City

Chronicle street vendors were cited for violation of Texas Transportation Code 552.007.

State court permanently enjoined League City from enforcing.

League City created ordinance requiring registration including background check, \$30 fee and \$1,000 bond.

Minors of youth organizations were exempt from requirement

These provisions were held unconstitutional and repealed.

League City Ordinance

- “No person who is within a public roadway may solicit or sell or distribute any material to the occupant of any motor vehicle stopped on a public roadway in obedience to a traffic control signal light. It is specifically provided, however, that a person, other than a person twelve years of age or younger may, may solicit or sell or distribute material to the occupant of a motor vehicle on a public roadway so long as he or she remains on the surrounding sidewalks and unpaved shoulders, and not in or on the roadway itself, including the medians and islands.”
- Provision standing alone is content neutral.

League City Cont.

Plaintiff's were not cited for the section at issue

Plaintiff claimed a mandatory exception is created by operation of law.

Fifth Circuit didn't rule on claim because they didn't timely raise it, but noted that future enforcement intentions are inadequate factual basis for "de facto discrimination" finding or as-applied analysis

As-applied unconstitutionality issue may arise in the future

Watkins v. City of Arlington

- Watkins and other members of Tarrant County Open Carry were distributing copies of the constitution in the roadway at an intersection in the City's entertainment district in violation of City Ordinance.
- City ordinance prohibited the distribution/solicitation within 500 or 1,000ft of specified intersections.
- Court issued preliminary injunction.
- City amended ordinance to mirror League City Ordinance.

Watkins v. City of Arlington

Evidence of public safety concern was important.

City acknowledged it was bound by Texas Transportation Code 552.0071 and intended to comply.

Court determined that ordinance couldn't be facially unconstitutional based upon state law not adopted into ordinance.

As-applied challenge possible in the future.

Texas Trans. Code 552.007

A person may not stand in a roadway to solicit a ride, contribution, employment, or business from the occupant of a vehicle, except that a person may stand in a roadway to solicit a charitable contribution if authorized to do so by the local authority having jurisdiction over the roadway.

AG opinion concluded it is content based (DM-367)

AG can't determine constitutionality because it is a question of fact

Held unconstitutional by Jornaleros De Las Palmas v. City of League City, 945 F. Supp. 2d 779, 787 (S.D. Tex. 2013).

Texas Trans.
Code
552.0071

- A local authority SHALL grant authorization for a person to stand in a roadway to solicit a charitable contribution as provided by 552.007(a) if the persons to be engaged in solicitation are employees or agents of the local authority and the other requirements of this section are met.

McCraw v. City of Oklahoma City

Oklahoma City has several medians of a variety of sizes with some spanning an entire city block and one containing a fire station.

Before 2015 – prohibited pedestrians from soliciting in roadways without a permit

December 2015 – prohibited standing, sitting, or staying on any portion of a median either less than 30ft wide or located less than 200ft from an intersection. Eliminated permit exception for soliciting.

2017 – prohibited pedestrians on medians for streets with a speed limit of 40 mph or more

McCraw v. City of Oklahoma City

103 medians not impacted/ approx. 400 impacted

Lower Court – valid time, place, and manner restriction under the First Amendment because it was narrowly tailored and provided ample alternative channels of communication.

Appeal Court – There has been a long expressive history for medians and they are traditional public fora. City failed to demonstrate adequate alternative channels.

Supreme Court – Denied Cert.

NEWS

OKC ordered to pay nearly \$1 million to attorneys who challenged panhandling ordinance, taxpayers could foot bill

William Crum Oklahoman
Published 12:00 p.m. CT Aug. 27, 2021

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A federal judge has ordered the city of Oklahoma City to pay nearly \$1 million — \$986,350 in legal fees and \$2,676.56 in expenses — to the public-interest attorneys who successfully challenged a 2015 panhandling ordinance.

In a 14-page order, U.S. District Judge Joe Heaton wrote the award "fairly compensates plaintiffs' counsel for their efforts, is substantial enough to encourage attorneys to undertake representation in public interest cases like this one, and is reasonable under the circumstances."

The original intent of the ordinance was to force panhandlers from traffic medians at busy intersections, where they seek handouts from drivers waiting at



A driver passed money to a panhandler in Oklahoma City in August 2010. The city of Oklahoma City must pay nearly \$1 million to public interest attorneys who won a First Amendment challenge to a 2015 ordinance aimed at restricting panhandling. *The Oklahoman File*

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Brenda Andrew, only woman on Oklahoma's death row, closer to execution
NEWS

City of Austin v. Reagan Nat'l Adver. of Austin

142 S. Ct 1464

April 21, 2022

The Austin Opinions

Opinion of Court By Sotomayor

- Roberts
- Breyer
- Kagan
- Kavanaugh

Concurring By Breyer

Concurring in Part/Dissenting in Part By Alito

- Thomas

Dissent By Thomas

- Gorsuch
- Barrett

The Facts

Austin regulates off-premise signs (signs that advertise things not located on the same premises as the sign.)

New off-premise signs prohibited.

Old signs are grandfathered, but can't be digitized.

On premise signs can be digital.

Reagan owns billboards and applied to digitize them.

Application was denied.

Reagan's View

- City's prohibition against digitizing off-premise signs violates the First Amendment – Free Speech
- Per Reed – some facial distinctions based on message are obvious and others are more subtle, defining regulated speech by its function or purpose

Austin's View

- The regulation is content neutral
- Content neutrality is a question of generality and turns on the level of specificity at which the government regulates speech

Court's Opinion (Sotomayor)

The on-premise/off-premise distinction has existed for a really long time and the distinction has been well settled as acceptable

Highway Beautification Act of 1965 prompted numerous similar ordinances

“The Court’s precedents and doctrines have consistently recognized that restrictions on speech may require some evaluation of the speech and nonetheless remain content neutral.”

Reed didn’t cast doubt on Supreme Court precedents which have consistently recognized that content neutral restrictions on speech may require some evaluation of the speech.

A regulation of speech is facially content based if it targets speech based on its communicative content

Applies to particular speech because of the topic discussed or the idea or message expressed

The rule which holds that a regulation cannot be content neutral if it requires reading the sign at issue is too extreme of an interpretation of this Court's precedent.

The City's on-/off-premise distinction is facially content neutral.



Austin's regulations don't single out any topic or subject matter for differential treatment.

The sign's substantive message is not relevant to the application of the provisions

The City's off-premise distinction requires an examination of speech only in service of drawing neutral, location-based lines. It is agnostic as to content.

Breyer Concurs

- Reed's reasoning was wrong
- We should use a common sense rule of thumb approach to content discrimination
- A formal rule requiring strict scrutiny because they refer to particular content will result in entirely reasonable regulations which reflect the will of the people being struck down
- Does the regulation at issue work to harm First Amendment interests that is disproportionate in light of the relevant regulatory objectives?
 - Seriousness of the harm to speech
 - Importance of countervailing objectives
 - Extent law will achieve objectives
 - Are there less restrictive ways to achieve objectives

Alito Concur & Dissents

Concur- The Court of Appeals ruling should be overturned

Dissent- The court's opinion went too far by issuing a categorical statement that Austin's sign code provision doesn't discriminate on the basis of "the topic discussed or the idea or message expressed"

- The appeals court didn't apply the tests which must be met before a law is held facially unconstitutional
- Some signs were commercial speech and a different review applies
- Most, if not all, signs were on vacant property so they were clearly off-premise
- The provisions defining on- and off- premise signs clearly discriminate on those grounds and strict scrutiny should apply in some as applied situations

The Dissent By Thomas

In Reed “we held that speech regulations is content based—and thus presumptively invalid – if it ‘draws distinctions based on the message a speaker conveys.’”

“we concluded that ‘a clear and firm rule governing content neutrality is an essential means of protecting the freedom of speech, even if laws that might seem entirely reasonable will sometimes be struck down because of their content-based nature.’”

Reed abolished any distinction between content regulation and subject-matter regulation

The majority is rewriting Reed’s bright-line rule for content based restrictions.

Gilbert and Austin identified categories of signs based on the type of information they convey and subject them to different restrictions based on the category

Both require the content of the sign to be reviewed.

Example: Catholic Bookstore

- Visit the Holy Land
- Buy More Books
- Go to Confession

Things to Consider when Regulating

Other Cities' Ordinances

- When was it enacted?
- Basis for enactment?
- Has it been challenged? When? Result?

Forum

Government interest

- Public Safety (compelling)
- Blight (significant)
- Tourism (significant)

More Things to Consider

Conduct

Available data

Other criminal regulations

Other city ordinances

State law

Alternatives to achieve goal?

Availability of alternative forums



Local News

As Expected, Dallas Sued Over Panhandling Median Ordinance

The city of Dallas will now send its lawyers to court to defend an ordinance that levies a \$500 fine for standing in a median. Legal experts say the ordinance is unconstitutional.

By Bethany Erickson | December 14, 2022 | 3:43 pm



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Key Points

Reed established a new analysis for determining if a law is a content-based restriction

Supreme Court indicated Reed applies to solicitation

Most panhandling ordinances challenged post *Reed* held unconstitutional

Texas Transportation Code 552.0071 presents even more of a challenge to Texas cities.

The Supreme Court “narrowed” Reed in the Austin case leaving a lot of gray



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Non-Enforcement Options

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QUESTIONS?