

Law School Case Brief

Reed v. Town of Gilbert - 135 S. Ct. 2218 (2015)

RULE:

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 common sense 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. Supreme Court precedents have also recognized a separate and additional category of laws that, though facially content neutral, will be considered content-based regulations of speech: laws that cannot be justified without reference to the content of the regulated speech, or that were adopted by the government because of disagreement with the message the speech conveys. Those laws, like those that are content based on their face, must also satisfy strict scrutiny.

FACTS:

Respondent town adopted Gilbert, Ariz., Land Development Code, ch. 1, § 4.402 (2005), which identified various categories of signs based on the type of information they conveyed, subjecting each category to different restrictions. The sign code imposed more stringent restrictions on signs directing the public to a meeting of a non-profit group than it did on signs conveying other messages. Petitioners, a local church and its pastor, placed temporary directional signs around town to inform the public about its services. Respondent cited petitioners for violating the sign code. Petitioners filed a suit, claiming that the sign code abridged their freedom of speech. The trial court denied petitioners’ motion for a

preliminary injunction, and the appellate court affirmed. Ultimately, the appellate court rendered judgment in respondent's favor. The Supreme Court of the United States reversed the appellate court's judgment.

ISSUE:

Were the provisions of Gilbert, Ariz., Land Development Code, ch. 1, § 4.402 (2005), which imposed more stringent restrictions on signs directing the public to a meeting of a non-profit group than on signs conveying other messages, content neutral?

ANSWER:

No.

CONCLUSION:

The provisions of Gilbert, Ariz., Land Development Code, ch. 1, § 4.402 (2005) were content-based regulations of speech because the restrictions in the sign code that applied to any given sign depended entirely on the communicative content of the sign. The provisions could not survive First Amendment strict scrutiny because respondent town could not claim that placing strict limits on temporary directional signs was necessary to beautify the town while at the same time allowing unlimited numbers of other types of signs that created the same problem. Moreover, respondent had not shown that limiting temporary directional signs was necessary to eliminate threats to traffic safety, but that limiting other types of signs was not.

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