



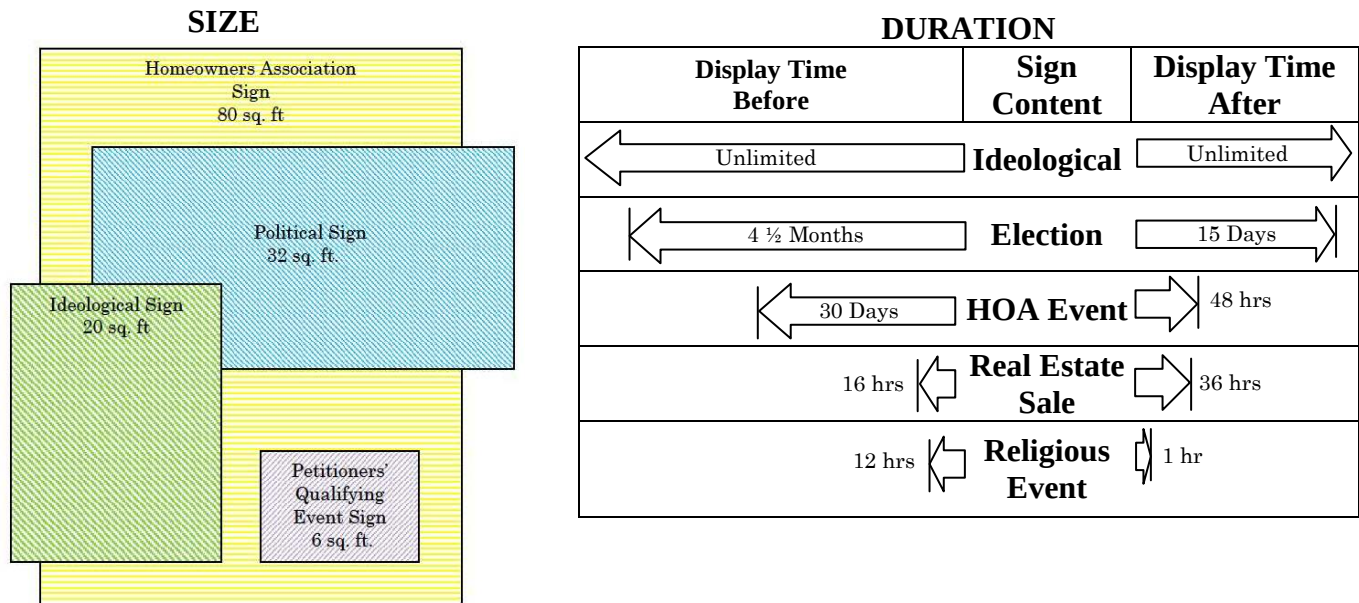
U.S. SUPREME COURT SNAPSHOT *Reed v. Town of Gilbert*

Case Summary

Alliance Defending Freedom represents Good News Community Church, a small church located in Gilbert, Ariz., and Pastor Clyde Reed. The church rents space in temporary locations for its weekly service. It uses small, temporary signs to invite and direct the community to its services. The Town of Gilbert Sign Code imposes strict limits on the size, location, number, and duration of the church's signs. It does not impose the same restrictions on political, ideological, and homeowners' association signs. **If the church violates the code, Pastor Reed could be fined and possibly jailed.**

The text of the town's code regulates signs based on what they say, and the town is applying the code in a manner that overtly singles out the church's religious speech for discriminatory treatment. Both are impermissible under the First Amendment. The church filed suit against the town in 2007, arguing that the code – *both as written and as applied to its signs* – is an unconstitutional restriction on its First Amendment right to free speech.

The following diagrams depict the town code's content-based discrimination in relation to size and duration of signs:



Gilbert's targeting of the church's signs for discriminatory treatment led to the lawsuit, and the town has only perpetuated that discrimination through a series of amendments to the sign code. When this case was filed in 2007, the church's signs faced a near-ban through a provision directed at "Religious Assembly" signs. Political, ideological, and other noncommercial signs enjoyed liberal access. In 2008, in response to the church asking the court to prohibit the ordinance from being enforced, the town passed an amendment that did not fix the code's content-based discrimination, but instead subjected additional nonprofit organizations' signs to the same severe restrictions the town applies to the church. While on appeal, the town passed a 2011 amendment requiring the church's signs to announce events only within Gilbert. The town plainly targeted the church with this amendment, as Good News had recently moved its services a few blocks across the Gilbert border to a school in neighboring Chandler.

Unfortunately, the Ninth Circuit excused the town's content-based discrimination, based on its conclusion that Gilbert lacked a bad motive for adopting its sign code. The finding contradicted numerous Supreme Court decisions that say a free speech plaintiff need not prove discriminatory *intent* to prevail.

The circuit court also agreed with Gilbert's argument that political and ideological signs are of greater First Amendment value than the church's religious signs, so may be afforded preferential treatment. In his dissent, Judge Watford rightly concluded that the town is forbidden from making the kind of "value judgment" that the district court and court of appeals allowed. He wrote that "Gilbert's sign ordinance violates the First and Fourteenth Amendments by drawing content-based distinctions among different categories of non-commercial speech," observing that "the most glaring illustration" of these content-based distinctions is "the ordinance's favorable treatment of 'political' and 'ideological' signs relative to the treatment accorded the non-commercial signs [Good News] seek[s] to display."

Case Status

The U.S. Supreme Court agreed in July 2014 to hear Good News' case. Good News filed its opening brief Sept. 15. Oral arguments took place on Jan. 12, 2015. The court is expected to hand down its ruling in June 2015.

What Alliance Defending Freedom is Arguing

This case proves true the adage that "a picture is worth a thousand words." [The Alliance Defending Freedom opening brief to the Supreme Court](#) points out that Gilbert's code allows wide latitude for several categories of noncommercial, temporary signs while unlawfully subjecting church signs to strict size, time, location, and other restrictions.



Thus, it is common for those driving through Gilbert to be bombarded with political signs, which are permitted virtually all year long.

But the town's strict limitations on the church's signs make it highly unlikely that drivers would ever see a sign inviting them to the church's services. *The town essentially only allows the church's message to be displayed overnight, under the cover of darkness, and in the early morning hours.*

The town cites "aesthetic" and "safety" concerns in an attempt to justify its targeted discrimination. But these interests are a woefully inadequate explanation given that the town grants highly favorable treatment to political, ideological, and other noncommercial signs that impact the same interests at least as much (and far more than in the case of political signs) as the church's signs. This severe "underinclusiveness" is a key reason, among others, that *Gilbert's code fails the strict scrutiny standard* necessary to pass constitutional muster.



The opening brief also highlights the First Amendment prohibition on government-invented "balancing tests" that empower the government to make judgments concerning the "value" of protected speech. The district court correctly ruled that Good News' "signs communicate a religious message" and that they therefore "fall within the category of protected speech." *The town even admitted that "[Good News'] signs are speech that is protected by the First Amendment."* Despite its own admission that the First Amendment protects the church's religious signs, Gilbert imposes its severe restrictions based on its determination that religious speech is less valuable than political or ideological speech. The First Amendment exists to protect citizens from exactly this kind of government infringement on free speech rights.

Gilbert's sign code is constitutionally defective in at least the following three ways:

- 1) It singles out certain noncommercial temporary signs for restrictions based on their content.
- 2) It grants favorable treatment to political and ideological signs based on the town's judgment that such speech is more valuable than the church's religious signs.
- 3) Its speech-specific distinctions among signs are not justified by the town's safety and aesthetic concerns, given that it grants highly favorable treatment to political, ideological and other signs, which pose a greater threat to purported "safety" and "aesthetic" interests than do the church's signs.

Further, this case illustrates the problematic, long-standing conflict among the federal circuit courts over the role of governmental motive in judging whether a sign code regulates on the basis on content. Currently, some of these courts interpret existing law to excuse content-based discrimination whenever the government has a "good motive" – or is careful enough to obscure a bad motive. Essentially, this gives the government *carte blanche* authority to drive certain ideas or viewpoints from the marketplace, as long as government's "heart was in the right place."

In order to resolve this circuit court conflict and to ensure the greatest possible free speech protections, Alliance Defending Freedom is asking the Court to reaffirm that:

- 1) Once facial content discrimination is found, nothing more is necessary to conclude that a law is content based.
- 2) A content-based purpose is sufficient but not necessary to prove content-based discrimination.
- 3) Purportedly "good" regulatory motives cannot exonerate a law that facially regulates only certain kinds of speech and content, and assigns preferred treatment to other kinds of speech and content.

Sample of Authorities (complete list can be found [here](#))

McCullen v. Coakley, 134 S. Ct. 2518 (2014): The Supreme Court reaffirmed that "the guiding First Amendment principle" in judging content neutrality is that the "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *McCullen*, 134 S. Ct. at 2529.

City of Cincinnati v. Discovery Network, 507 U.S. 410 (1993): The Supreme Court found a Cincinnati city ordinance unconstitutional that adopted a ban on newsracks that contained "'commercial handbills', but not 'newspapers.'" *Discovery Network*, 507 U.S. at 429. "Under the city's newsrack policy, whether any particular newsrack falls within the ban is determined by the content of the publication resting inside that newsrack. Thus, by any commonsense understanding of the term, the ban in this case is 'content based.'" *Id.*

Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd., 502 U.S. 105 (1991): The Supreme Court rejected the government's argument that discriminatory treatment "is suspect under the First Amendment only when the legislature intends to suppress certain ideas," admonishing the government that "[t]his assertion is incorrect; our cases have consistently held that '[i]llicit legislative intent is not the sine qua non of a violation of the First Amendment.'" *Simon & Schuster*, 502 U.S. at 117.

Bottom Line

The U.S. Constitution clearly protects a church's right to invite people to its services and events without being targeted for discriminatory speech restrictions. *A ruling in favor of Good News and Pastor Reed* would limit the government's speech censorship power and affirm the First Amendment's explicit protection of religious speech. *A ruling in favor of the town* would allow government actors broad and arbitrary powers to pick-and-choose what speech it will accord special treatment and what speech it will disfavor and restrict. All the government would need in order to violate a citizen's free speech rights is to prove a "good motive" or mask a bad motive for the violation. The Supreme Court should reverse the Ninth Circuit and uphold the free speech rights of Good News Community Church.