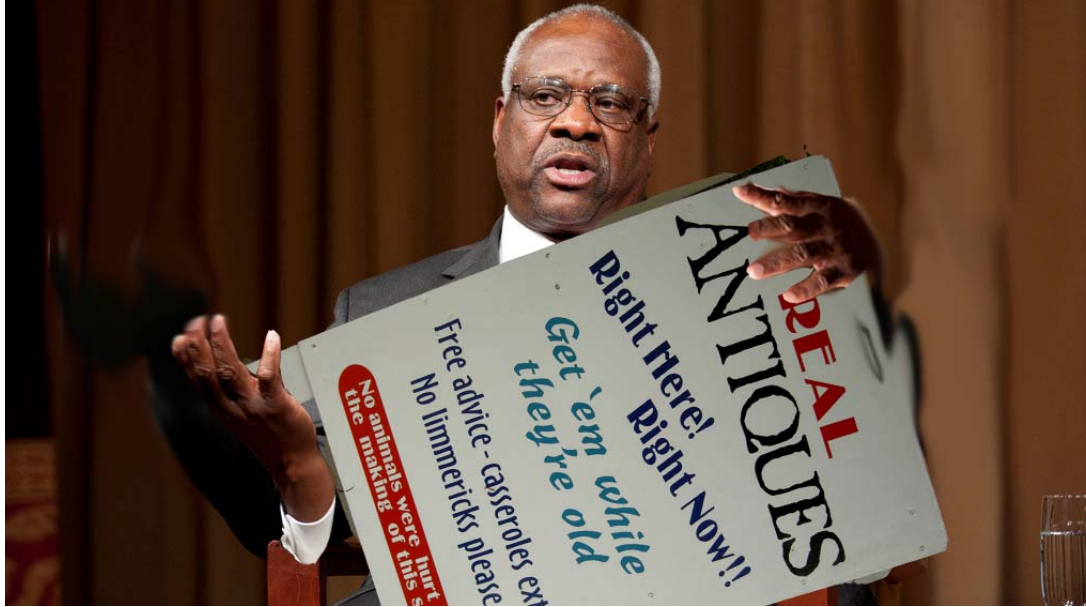


Clarence Thomas is coming for your Sandwich Board!
Call:
Supreme Court: 202.479.3000 | 1 First Street NE, Washington, D.C. 20543

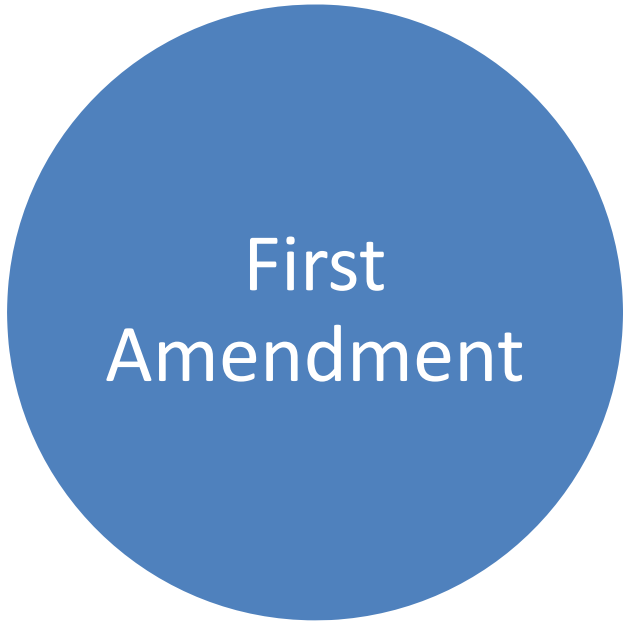


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REED AFTER TWO: WHAT DO YOU DO?



How to Get into Trouble



Bans



Exemptions



Categories



Applications



Types of Cases (142 reported)

- Panhandling
- Robocalls
- Ballot selfies
- Trademarks (pending US SC decision)
- Credit card surcharges
- White House fence-jumping
- Public coercion

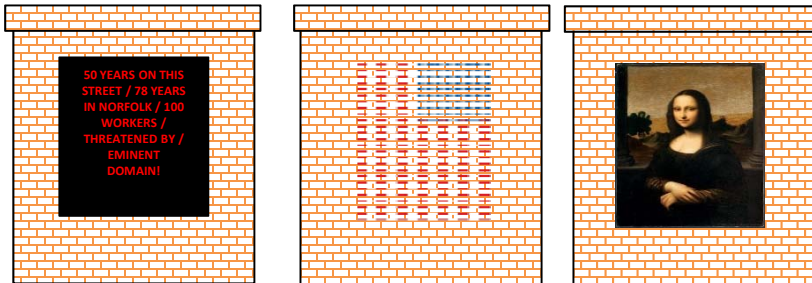
Sign Cases

- 24 reported (17%), 10 invalidated (42%)
- Examples:
 - **Temporary / political signs** (*Wagner v. City of Garfield Heights* (6th Cir. Jan. 13, 2017))
 - **Attention-getting devices (balloons)** (*Palmer v. City of Missoula* (D. Mont. 2017))
 - **Mobile billboards** (*Lone Star Sec. & Video, Inc. v. City of Los Angeles* (9th Cir. 2016))
 - **Wall signs / painted signs** (*Peterson v Village of Downers Grove* (N.D. Ill. 2016))
 - **Offsite commercial signs** (*Lamar Central Outdoor, LLC v City of Los Angeles* (Cal. App. 2016))
 - **Offsite commercial & non-commercial signs** (*Thomas v. Schroer* (WD Tenn. 2017))

Content => Compelling => Scrutiny

What is “Content”?

- It’s the Exemptions, Stupid!
 - Election / Political / Opinion
 - Historic attraction
 - Sale/lease
 - On premise
 - Life/safety purpose
 - Holiday decorations
 - Agricultural products
 - Events



Central Radio v. City of Norfolk (4th Cir. 2016)

What are “Compelling” Interests?

- Compelling
 - Consumer privacy (*Brickman v. Facebook, Inc.*, (N.D. Cal. 2017))
 - Avoiding false, criminal, crime-provoking content (limited)
- Substantial
 - Aesthetics
 - **Traffic safety**
 - Promoting business
 - Promoting tourism
 - Administration
 - Grandfathering





What happened to “intermediate scrutiny” (*Central Hudson*)?

Commercial Speech

- Commercial categories or regulations
 - On- versus Off-Premise Signs
- Substitution Clauses
- Unrelated exemptions

Recent Developments

- *Expressions Hair Design v. Schneiderman* (U.S. 2017)
- *Thomas v. Schroer* (WD Tenn. 2017)

Thomas v. Schroer (WD Tenn. 2017)

Over-Inclusive



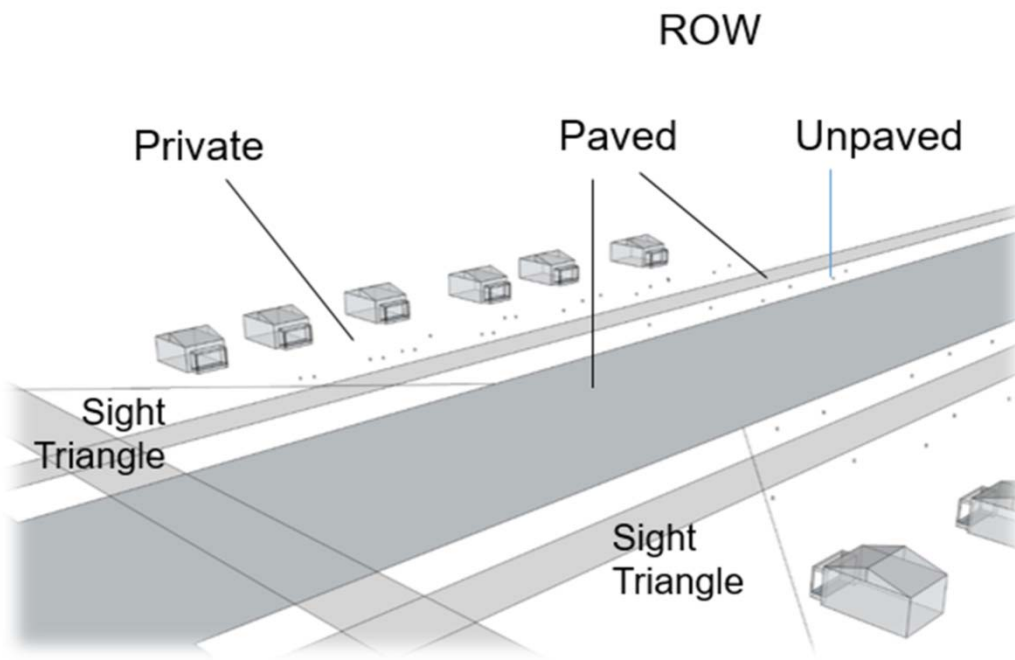
Under-Inclusive




Least Restrictive Means

Alternative	Response
Commercial only	CN - IS
Size only	Less restrictive
Spacing only (500')	Not less restrictive (2000-1000-200)
Any sign	Seriously?
Public ROW v. Private property	Overinclusive (but could exempt MUTCD)
Substitution clause	As restrictive
Content-neutral spacing	Less restrictive
Presentation (size, lights, colors, font size, electronic messages, or moving parts)	Less restrictive

What about Rogue State Laws?



- Political sign exemptions?
- Public and nonconforming signs exempt by state law not content based (*Signs for Jesus v. Town of Pembroke* (D.N.H. 2017))
- Ignore (*Watkins v. City of Arlington* (N.D. Tex. 2015))



Geft Outdoor LLC v. Consolidated City of Indianapolis (S.D. Ind. 2016)

- Sign Ordinance amended per *Reed*

On- v. Off-premise distinction



Same



Noncommercial opinion signs
(*number, area, height, setback, no
time limits*)*



Folded into
“yard sign”



Digital component (*C / I only, 40%
limit, 15 second hold, not on off-
premise*)



Same



No substitution clause

INTERNATIONAL
SIGN ASSOCIATION

www.signs.org

Monument Signs

Definition embodied in sign regulations (avoids having to flip between definition and standards in sign regulations)

Graphic illustrates sign type



that meet the intent of this Section. Channel letters are permitted. Painted surfaces and wood are not permitted.

- Definition.** A detached sign whose sign surface is attached to a proportionate base or structural frame. Said base shall not exceed a height of three feet above the average finished grade. An enclosed or solid sign base shall not be required if the sign face is within two feet of the average finished grade. The materials of the base of a monument sign shall be either masonry, wood, anodized metal, stone or concrete.
- Monument Sign Base.** The sign base of a monument sign shall have a width of at least two-thirds (2/3rds) of the width of the sign face cabinet.
- Materials.** The monument sign base shall have a masonry or concrete substructure with an exterior base consisting of durable masonry materials and include brick, split or scored concrete masonry units (CMU), natural or synthetic stone, or other architectural material(s).

Table consolidates information about –

- where signs are permitted
- Whether permits are required
- Size and location
- Whether and how signs may be illuminated, where changeable copy is allowed, etc.

↓ Requirements	Zoning Districts→							
	NR	O	G-1	G-2	D	I-1	I-2	MD
1. Permitted?	NR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2. Permit required?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3. Number per street frontage	1	1	1	1	1	-	--	1
4. Number-total (*=the first monument sign replaces a wall sign)	1	2	2	2	2	1 per entrance	1	2
Dimensions								
5. Sign area (maximum-sq-ft)	72	32	72	72	32	72	72	72
6. Height (maximum-feet)	6	6	6	16	6	6	6	16
Location								
7. Property Line Setback (minimum-feet)	--	10	10	10	0-5	10	10	10
8. Spacing between other monument, pillar or pole signs (minimum-feet)	--	75	75	75	--	75	75	75
Design Characteristics								
9. Digital	No	No	No	No	No	No	No	No
10. Illumination, Internal	No	No	Yes	Yes	No	Yes	Yes	Yes
11. Illumination, External	No	No	Yes	Yes	Yes	Yes	Yes	Yes
12. Illumination, Halo Lit	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
13. Changeable copy	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes



10 things to remember about *Reed*:

1. This case is not about **temporary** signs. It's about **content**.
2. **Topic** or **message** = content
3. There are 2 ways you get into trouble: (1) **exemptions** (2) **categories**
4. Identify **temporary** signs by **structure** type and **uniform event** triggers.
5. Identify all signs (permanent or temporary) by **structure** or **design** (structure, design, location)
6. Distinctions between **on-** and **off-site** signs are **probably** sufficient
7. So far, **intermediate** scrutiny for distinctions between **commercial** signs is intact.
8. It **doesn't help sign** industry.
9. Use **allocation** based systems that allow the property owner to distribute messages.
10. Remember **other** First Amendment caselaw requirements (**overbreadth**, **vagueness**, **secondary effects** [i.e., adult uses])