

**FREE SPEECH LAW FOR ON-PREMISE SIGNS**

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## **CHAPTER II: FREE SPEECH LAW PRINCIPLES**

### **§ 2:4. Content Neutrality**

#### **§ 2:4[2]. Reed v. Town of Gilbert**

David L. Hudson, Jr., *The Content-Discrimination Principle and the Impact of Reed v. Town of Gilbert*, 70 Case W. Res. L. Rev. 259 (2019); Daniel R. Mandelker, *Billboards, Signs, Free Speech, and the First Amendment*, 55 Real Prop. Tr. & Est. L.J. 367, 415-430 (2020) (discussing *Reed v. Town of Gilbert*); Susan L. Trevarthen & Adam M. Hapner, *The True Impact of Reed v. Town of Gilbert on Sign Regulation*, 49 Stetson L. Rev. 509 (2020).

#### **§ 2:4[3]. When Regulations Are Content Based [New Title]**

*Conteers LLC v. City of Akron*, No. 5:20-CV-00542, 2020 WL 5529656, at \*9 (N.D. Ohio Sept. 15, 2020) (ordinance did not distinguish between various types of outdoor advertising by content).

*Baldwin Park Free Speech Coal. v. City of Baldwin Park*, 843 F. App'x 21, 23 (9th Cir. 2021) (temporary sign ordinances held content-neutral and narrowly tailored; interests in traffic safety and aesthetics were significant and not diminished by permit-exempt and special sign rules; ordinance narrowly tailored, requirement that an applicant submit a “drawing or photograph of the proposed temporary sign” to show “[h]eight, [w]idth and [l]anguage” upheld).

*GEFT Outdoor, L.L.C. v. City of Westfield*, 491 F. Supp. 3d 387, 406 (S.D. Ind. 2020) (invalidating exemptions based on a sign's communicative content that regulated speech based on a message's function or purpose, such as flags, text or logos on gasoline pumps or ATM machines, and non-permanent, on-premises signs; must determine purpose to decide whether sign is exempt from permit requirement).

*Bruce & Tanya & Assocs., Inc. v. Bd. of Supervisors of Fairfax Cty., Virginia*, No. 19-1151, 2021 WL 1854750, at \*5 (4th Cir. May 10, 2021) (upholding exemption of government signs); *Signs for Jesus v. Town of Pembroke, NH*, 977 F.3d 93, 104 (1st Cir. 2020) (same, citing cases).

#### **§ 2:4[5]. The “Need to Read” Test**

*GEFT Outdoor, L.L.C. v. City of Westfield*, 491 F. Supp. 3d 387, 405 (S.D. Ind. 2020) (definition of on premise sign); *Withers v. Vill. of Airmont*, No. 07 CIV. 9674 (SCR), 2010 WL 11712641, at \*3 (S.D.N.Y. Apr. 30, 2010) (political signs; village code content-based because it

was necessary to look at content of sign to know which provisions apply, even within the category of temporary signs).

## **§ 2:6. Judicial Standards for Regulating Commercial Speech**

### **§ 2:6[1]. An Overview**

Daniel R. Mandelker, *Billboards, Signs, Free Speech, and the First Amendment*, 55 *Real Prop. Tr. & Est. L.J.* 367, 382-402 (2020) (discussing *Central Hudson* and *Metromedia*).

*Int'l Outdoor, Inc. v. City of Troy*, 974 F.3d 690, 702-08 (6th Cir. 2020), (applied *Reed* to hold intermediate-scrutiny standard for commercial speech only to speech regulation that is content-neutral on its face; regulation of commercial speech that is not content-neutral is subject to strict scrutiny under *Reed*). Accord *GEFT Outdoor, L.L.C. v. City of Westfield*, 491 F. Supp. 3d 387, 404 (S.D. Ind. 2020) (when ordinance affected both commercial and noncommercial speech).

## **§ 2:7. Time, Place and Manner Regulations**

### **§ 2:7[1]. What They Are**

Daniel R. Mandelker, *Billboards, Signs, Free Speech, and the First Amendment*, 55 *Real Prop. Tr. & Est. L.J.* 367, 402-406 (2020) (discussing time, place, and manner regulations); R. George Wright, *Time, Place, and Manner Restrictions on Speech*, 40 *N. Ill. U. L. Rev.* 265, 266 (2020).

## **§ 2:8. The Prior Restraint Doctrine**

### **§ 2:8[1]. General Principles**

*Lacroix v. Town of Fort Myers Beach*, No. 2:20-CV-992-SPC-NPM, 2021 WL 1087217, at \*4 (M.D. Fla. Mar. 22, 2021) (ordinance prohibiting portable signs did not raise prior restraint problem).

*GEFT Outdoor, L.L.C. v. City of Westfield*, 491 F. Supp. 3d 387, 408 (S.D. Ind. 2020) (requiring permit for all signs but exempting content based signs from permit requirement held an impermissible prior restraint).

### **§ 2:8[3]. The Substantive Standards**

Standards invalid: *Outdoor One Commc'ns, LLC. v. Charter Twp. of Canton*, No. 20-10934, 2021 WL 807872, at \*5 (E.D. Mich. Mar. 3, 2021) (must look at content of sign to decide if message falls into a permit-exempt category); *Conteers LLC v. City of Akron*, No. 5:20-CV-00542, 2020 WL 5529656, at \*11 (N.D. Ohio Sept. 15, 2020) (conditional use must “be

harmonious with and in accordance with the general objectives of the City's Comprehensive Plan,” and “be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the same area,” and “not be hazardous or disturbing to existing or future neighboring uses;” and “not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance”).

Ordinance valid: *Baldwin Park Free Speech Coal. v. City of Baldwin Park*, 843 F. App'x 21, 22 (9th Cir. 2021) (discretion not overly broad; temporary permit “shall be granted when the City Planner finds the proposed sign to be in conformance with all applicable provisions of th[e] chapter, the Sign Design Guidelines and other applicable regulations;” standards and requirements clearly delineated; ability to “apply conditions of approval to ensure compliance” did not confer unbridled discretion since these conditions were imposed “only to achieve [the] specified purpose [ ]” of compliance).

No standards, held invalid: *Withers v. Vill. of Airmont*, No. 07 CIV. 9674 (SCR), 2010 WL 11712641, at \*5 (S.D.N.Y. Apr. 30, 2010).

## **CHAPTER III: SOME BASIC FREE SPEECH ISSUES CONCERNING ON-PREMISE SIGN REGULATIONS**

### **§ 3:4. The Federal Highway Beautification Act**

*L.D. Mgmt. Co. v. Gray*, 988 F.3d 836, 838 (6th Cir. 2021) (follows *Thomas v. Bright*; “In more ways than one, the Act differentiates between billboards advertising off-site activities and those advertising on-site activities.”).

*Adams Outdoor Advert. Ltd. P'ship by Adams Outdoor GP, LLC v. Pennsylvania Dep't of Transportation*, 930 F.3d 199, 207 (3d Cir. 2019) (applying Third Circuit rule; state had not carried its burden to justify exemption for signs concerning activities on the property).

### **§ 3:5. Definitions**

Problems are created by definitions that attempt to distinguish billboards from on premise signs. *Reagan Nat'l Advert. of Austin, Inc. v. City of Austin*, 972 F.3d 696, 704 (5th Cir. 2020) held an ordinance that typically defined an off premise sign as sign that advertises “a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs persons to any location not on that site” was content-based. Accord *GEFT Outdoor, L.L.C. v. City of Westfield*, 491 F. Supp. 3d 387, 405 (S.D. Ind. 2020). See also §3.4.

Signs for Jesus v. Town of Pembroke, 977 F.3d 93, 108 (1st Cir. 2020) (“including but not limited language” in sign definition held not prior restraint).

## **CHAPTER IV. SPECIALIZED ON-PREMISE SIGNS, HOW THEY ARE REGULATED, AND THE FREE SPEECH ISSUES THESE REGULATIONS PRESENT**

### **§ 4:2. Digital Signs, or Electronic Message Centers (EMCs)**

Signs for Jesus v. Town of Pembroke, 977 F.3d 93, 105 (1st Cir. 2020) (upholding ordinance restricting electronic signs to a commercial district; ordinance narrowly tailored to serve a significant governmental interest, and not overinclusive or underinclusive).

### **§ 4:4. Freestanding Signs**

GEFT Outdoor, L.L.C. v. City of Westfield, 491 F. Supp. 3d 387, 407 (S.D. Ind. 2020) (pole sign prohibition held content neutral but underinclusive and not narrowly tailored because flags allowed and pole sign recently allowed by city).

### **§ 4:6. Portable and Temporary Signs**

#### **§ 4:6[1]. In General**

Baldwin Park Free Speech Coal. v. City of Baldwin Park, 843 F. App'x 21, 23 (9th Cir. 2021) (temporary sign ordinances held content-neutral and narrowly tailored, interests in traffic safety and aesthetics were significant and not diminished by permit-exempt and special sign rules; ordinance narrowly tailored; requirement that an applicant submit a “drawing or photograph of the proposed temporary sign” to show “[h]eight, [w]idth and [l]anguage” upheld).

#### **§ 4:6[2]. Total Prohibitions**

Lacroix v. Town of Fort Myers Beach, No. 2:20-CV-992-SPC-NPM, 2021 WL 1087217, at \*4 (M.D. Fla. Mar. 22, 2021) (ordinance defining portable sign “as any movable sign not permanently affixed to the ground” does not apply to temporary signs, is not content based, and is justified by aesthetic and traffic safety interests).

