

On the 2018 proposed amendments for the Village of Flat Rock Sign Control Ordinance (ordinance no. 78)

Since the 2015 U.S. Supreme Court decision of *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015), courts presume that sign ordinances that restrict speech are unconstitutional. The courts now look first to the effect of the sign ordinance and whether the ordinance regulates signs differently based on the content or message of the sign in order to analyze the ordinance's constitutionality.

The *Reed v. Town of Gilbert* decision made it unconstitutional for local governments to create different regulations based on sign content without showing that a compelling government interest required such regulation and that such regulation is tightly written. For a government to regulate speech based on content, the regulations must serve "a legitimate or compelling government interest such as public safety and be narrowly tailored to address the compelling government interest."¹

A government can regulate the place, time, and manner of signs (regulations that can include specifics such as size, lighting, material, number, etc.) as well as whether or not to allow any signs at all on public property, but a government cannot differentiate signs based on content and has to meet strict standards in order to regulate signs on private property.²

Sign Control Ordinance proposed amendments:

Article V: Definitions, Sign Characteristics. *Proposed definition of political sign:* "A sign designed to indicate the support of or opposition to a candidate, issue or proposition upon which voters or members of a public legislative body may vote."

Article VI: Sign Regulations. *Section 603. Signs regulated but not requiring a permit.*

* Political signs, provided that:

Proposed addition: Signs relating an issue or proposition upon which voters may vote must be removed within three days after election day. Signs relating to issues or propositions upon which members of a public body may vote must be removed within three days following the date upon which members of the public legislative body take a final vote on the issue or proposition or table the matter without further consideration or vote.

CLG does not think that this proposed language passes the necessary constitutional test.

Just because an issue is voted on by a public legislative body does not mean that citizens affected by that decision can no longer publicly express their opinion after such vote. This is protected

¹ Association of Minnesota Counties. *Balancing Free Speech & Sign Regulation*. From www.mncounties.org

² Lovelady, Adam. (July 21, 2015). *Sign Litigation: A Brief Analysis of Reed v. Town of Gilbert*. Coates' Canons: NC Local Government Law. UNC School of Government. From <https://canons.sog.unc.edu/sign-litigation-a-brief-analysis-of-reed-v-town-of-gilbert/>

noncommercial opinion speech—opinion speech is protected speech and is not restricted by whether or not a vote has occurred.

In *City of Ladue v. Gilleo*, 512 U.S. 43, 114 S. Ct. 2038 (1994), a property owner displayed a sign in protest of the first Iraq war that said “For Peace in the Gulf.” The city deemed that the sign violated the city’s sign control ordinance, but the Court upheld that a municipality’s sign ordinance must be content neutral. It did not matter that the U.S. Congress had already voted on military action in Iraq—the Court reaffirmed an individual’s right to speak freely in his home or on his private property.

The process by which a sign ordinance is implemented and enforced should focus on regulating a sign’s medium, not its message. The village’s proposed amendments do not address the issue that the village’s sign control ordinance treats signs differently based on their content. Real estate signs (including open house, rental, sale or lease signs) are permitted for extended periods as well as construction signs.³ This indicates that the village is determining whether or not a sign is in violation of the sign ordinance based on its message—and that is unconstitutional.

CLG requests that the village obtain First Amendment legal advice on the most appropriate way to ensure that the village’s sign control ordinance is constitutional and can withstand legal challenges.

³ Village of Flat Rock. (November 12, 2015). *Sign Control Ordinance for the Village of Flat Rock North Carolina*. Pages 8-9.
