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U.S.

Limits on Church Signs Ruled Unconstitutional

By ADAM LIPTAK JUNE 18, 2015

WASHINGTON — The Supreme Court on Thursday unanimously ruled that an Arizona town had violated the First Amendment by placing limits on the size of signs announcing church services.

The case, Reed v. Town of Gilbert, No. 13-502, concerned an ordinance in Gilbert, Ariz., that has differing restrictions on political, ideological and directional signs. It was challenged by a church and its pastor.

All of the justices agreed that the distinctions drawn by the ordinance were impermissible. But they divided 6 to 3 on the rationale, with the majority saying that all content-based laws require the most exacting form of judicial review, strict scrutiny, one that is exceptionally hard to satisfy.

"Content-based laws — those that target speech based on its communicative content — are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests," Justice Clarence Thomas wrote for the majority.

He suggested that a great many laws, some far removed from sign ordinances, may be subject to constitutional attack. "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," he wrote, citing as an example a decision on the marketing of pharmaceuticals.

Justice Elena Kagan, who wrote an influential law review article on how to think about content-based laws, said the majority's reasoning was far too sweeping. "I see no reason why," she wrote, "such an easy case calls for us to cast a constitutional pall on reasonable regulations quite unlike the law before us."

The town's defense of its ordinance, she wrote, "does not pass strict scrutiny, or intermediate scrutiny, or even the laugh test."

Justices Ruth Bader Ginsburg and Stephen G. Breyer joined Justice Kagan's concurrence.

The ordinance set limits on the dimensions of various kinds of temporary signs based on the messages they conveyed.

Political signs, concerning candidates and elections, were permitted to be as large as 32 square feet, were allowed to stay in place for months and were generally unlimited in number. Ideological signs, about issues more generally, were not permitted to be larger than 20 square feet, could stay in place indefinitely and were unlimited in number.

But signs announcing church services and similar events were limited to six square feet, could be displayed only just before and after an event, and were limited to four per property.

Those distinctions, Justice Thomas wrote, were not permitted by the First Amendment.

"If a sign informs its reader of the time and place a book club will discuss John Locke's 'Two Treatises of Government,'" he wrote, "that sign will be treated differently from a sign expressing the view that one should vote for one of Locke's followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke's theory of government."

"More to the point," he added, "the church's signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas."

A second concurrence from three justices who signed Justice Thomas's majority opinion said municipalities can still enact many kinds of content-neutral sign regulations. Justices Samuel A. Alito Jr., joined by Justices Anthony M. Kennedy and Sonia Sotomayor, gave examples in an extended list.

Laws regulating the size and location of signs are content neutral, Justice Alito wrote. So are ones that restrict the total number of signs on a road or that draw distinctions between signs on public and private property.

Justice Kagan called the list commendable but inadequate. "This court," she wrote, "may soon find itself a veritable Supreme Board of Sign Review."

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