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Work Session X: How the Supreme Court has Shaped First Amendment Issues for Local Governments from Signs to Legislative Prayer: A Discussion of Town of Greece and Reed v. Town of Gilbert

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U.S. SUPREME COURT REITERATES FIRST AMENDMENT REQUIRES CONTENT NEUTRAL SIGN REGULATIONS

By **Brian Connolly**, *Otten Johnson Robinson Neff & Ragonetti, PC, Denver, Colorado*

Reed et al. v. Town of Gilbert, Arizona, et al. U.S. ___, 135 S. Ct. _____ (2015).U.S. Supreme Court No. 13–502. Decided June 18, 2015.

Regulating signs in a content neutral manner satisfying First Amendment limitations will be more difficult for local governments following June's U.S. Supreme Court decision in the case of **Reed v. Town of Gilbert**.[1] In **Reed**, all nine Supreme Court justices agreed that the Town of Gilbert, Arizona's sign code failed the First Amendment's content neutrality requirement, although the justices arrived at that conclusion in different ways.

The ruling, which resolves a long-standing split between federal circuit courts of appeal on the meaning of *"content neutrality,"* carries significant consequences for the validity of local sign regulations. Indeed, many local codes may become unconstitutional as a result of the case's outcome. Sign litigation can be expensive and risky, and it is likely to become more frequent after **Reed**. Local governments are therefore strongly advised to review their sign codes with a lawyer versed in First Amendment issues to avoid potential liability and invalidation of local sign codes as a result of the **Reed** decision.

Many local codes may become unconstitutional as a result of this case. Sign litigation can be expensive and risky, and it is likely to become more frequent after Reed.

Factual Background

Reed was the first U.S. Supreme Court case since **City of Ladue v. Gilleo**,[2] decided in 1994, to address local sign regulations. The issue in **Reed**: Gilbert's sign code contained a general requirement that all signs obtain a permit, but then exempted several categories of signs from its permitting requirement.[3] These exemptions from the permitting requirement treated certain categories of exempted signs differently. As with many other sign codes around the Unite States, Gilbert's sign code recited traffic safety and aesthetics as the reasons for its existence.

Of relevance to the case were three of these categories: *"political signs," "ideological signs,"* and *"temporary directional signs."* While the town did not prohibit any of these categories of speech, each category was treated differently by the sign code. The town's regulations of political signs, defined as a *"temporary sign designed to influence the outcome of an election called by a public body,"* allowed such signs to have a sign area of up to 16 square feet on residential property and up to 32 square feet on nonresidential property, and such signs could be displayed for up to 60 days before a primary election and up to 15 days following a general election.[4]

Temporary directional signs were defined as a *"[t]emporary [s]ign intended to direct pedestrians, motorists, and other passersby to a 'qualifying event.'"*[5] A *"qualifying event"* was any *"assembly, gathering, activity, or meeting sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar non-profit organization."*[6] Temporary directional signs could not exceed six square feet in sign area, could be placed on private property or in the right-of-way, and no more than four signs could be placed on private property at once. Additionally, temporary directional signs could be displayed for up to 12 hours before the qualifying event, and no more than one hour after the qualifying event, and the date and time of the qualifying event were required to be displayed on each sign.

Finally, *"ideological signs"* were defined as any *"sign communicating a message or ideas for noncommercial purposes that is not a Construction Sign, Directional Sign, Temporary Directional Sign Relating to a Qualifying Event, Political Sign, Garage Sale Sign, or a sign owned or required by a governmental agency."*[7] Ideological signs could be as large as 20 square feet and could be placed in any zoning district without limitations on display time.

Good News Community Church, of which Clyde Reed is pastor, was a *"homeless"* church. The church rented space in local community facilities, such as elementary schools, for Sunday services. In order to inform passersby of its services and the locations thereof, Good News and Pastor Reed placed temporary signs in street right-of-ways advertising religious services. The signs were typically posted for a period of approximately 24 hours. Because the time of the posting exceeded the time limits provided for temporary directional signs, Gilbert attempted in July 2005 to enforce its sign code against the church's signs, and town officials removed at least one of the church's signs.

Court Proceedings

Having failed to reconcile its differences with the town, in March 2008, the church filed an action in federal district court claiming violations of the Free Speech Clauses of the First Amendment.[8] The district court denied the church's motion for a preliminary injunction, and the Ninth Circuit Court of Appeals affirmed.[9] The Ninth Circuit found that the temporary event sign regulations were content neutral as applied, but remanded the question of whether the town impermissibly distinguished between forms of noncommercial speech on the basis of content.

On remand, the district court granted summary judgment in favor of the town, and determined that the town's exemptions from permitting were content neutral, despite the fact that the code regulated on the basis of the messages' category.[10] The Ninth Circuit again affirmed, finding that the code's distinctions between temporary event signs, political signs, and ideological signs were content neutral, since the own *"did not adopt its regulation of speech because it disagreed with the message conveyed."*[11] The Ninth Circuit determined that the town's regulatory interests were unrelated to the content of the signs being regulated.[12]

The Ninth Circuit's decision in **Reed** focused principally on the government's *regulatory purpose* in determining that the town's sign regulations were content neutral, and specifically rejected the suggestion that the Gilbert sign code was content based because it discriminated between categories of noncommercial speech on its face. That decision paralleled similar decisions in other federal circuit courts of appeal, including the Third,[13] Fourth,[14] and Sixth[15] (covering Michigan) circuits. These courts generally rejected arguments raised by sign owners that sign codes differentiating among sign types based on broad categories—*i.e.*, political, real estate, construction, etc.—was indicative of the type of content discrimination prohibited by the First Amendment.

Two other circuits, the Eighth[16] and Eleventh,[1] took a much stricter approach that demanded that sign regulations should not

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in any way differentiate among signs based upon message. Under this approach, if a code enforcement officer was required to read the text of a sign to properly enforce the code, the sign code should be found content based. Thus, distinguishing between, for example, political signs and event signs would be constitutionally fatal under this latter approach.

Recognizing this split among the courts of appeals, the Supreme Court granted *certiorari* review in **Reed**.

Loss for the Town

In the Supreme Court's **Reed** decision, justices unanimously agreed that the town's sign code was content based.

The majority opinion, authored by Justice Clarence Thomas and joined by five other justices, held that regulations of speech must be both *facially* content neutral and content neutral in their *purpose*. As the Court said, the *"commonsense meaning of the phrase 'content based' requires a court to consider whether a regulation of speech 'on its face' draws distinctions based on the message a speaker conveys."*[18] Thus, if a sign code makes *any* distinctions based on the message of the speech, the sign code is content based. According to the majority, only after determining whether a sign code is neutral on its face should a court inquire as to whether the law is neutral in its justification. Because Gilbert's sign code differentiated between political, ideological, and event signs based on the message of the sign, the code was found content based.

Upon making that finding, the majority applied *strict scrutiny*, the most demanding form of constitutional review, which requires the government to show that *"the restriction furthers a compelling interest and is narrowly tailored to achieve that interest."*[19] As exemplified by **Reed**, regulations subjected to strict scrutiny rarely survive a court's review. Because the code placed strict limits on temporary event signs but more freely allowed ideological signs—despite the fact that both sign types have the same effect on traffic safety and community aesthetics—the code failed the narrow tailoring requirement of strict scrutiny.

> *"Because Gilbert's sign code differentiated between political, ideological, and event signs based on the message of the sign, the code was found content based. *** Because the code placed strict limits on temporary event signs but more freely allowed ideological signs—despite the fact that both sign types have the same effect on traffic safety and community aesthetics—the code failed the narrow tailoring requirement of strict scrutiny."*

Three concurring opinions were filed in the case. Justice Samuel Alito filed a concurrence, joined by two other justices, in which he agreed with the majority's ruling, but listed nine forms of sign regulation that he would find to be content neutral. These forms included regulation on the basis of size, location, lighting, fixed versus electronic messaging, public versus private property, residential versus commercial property, on- and off-premises distinctions, and display time limits.[20]

In two concurring opinions, one by Justice Stephen Breyer and the other by Justice Elena Kagan, three justices concurred in the judgment but disagreed with the majority's application of strict scrutiny to the Gilbert code. Justices Breyer and Kagan would have applied *intermediate scrutiny*, a less demanding constitutional standard that requires the government to demonstrate that a speech regulation is narrowly tailored to a significant (as opposed to compelling) governmental interest. Traffic safety and aesthetics, for example, are significant governmental interests.[21] Still, however, both Justices Breyer and Kagan found the Gilbert sign code unconstitutional, because its sign categories were not tailored to the code's stated regulatory purposes. As the majority found, the distinctions between temporary event signs, political signs, and ideological signs did nothing to further the government's goal of beautifying the community and reducing traffic hazards.

Answers and Questions After *Reed*

Reed clarified some aspects of sign regulation, but also left several questions unanswered. Four points of clarification from **Reed** are worth mentioning. First, the decision reaffirmed the principle that content based regulations are subject to strict scrutiny and presumptively unconstitutional. Second, the majority opinion resolved the prior split between the circuit courts of appeal by requiring *both* facial content neutrality and a neutral purpose for sign regulations, and determined that a regulation's purpose is irrelevant if the regulation is not neutral on its face. Third, the Court determined that categorical signs, such as directional signs, real estate signs, construction signs, etc., are content based where they are defined by aspects of the signs' message. Fourth, the Court stated that categorical signs which purport to be *"speaker based,"* that is, the regulation applies to certain speakers but not others, may be found content based and subjected to strict scrutiny.

As for unanswered questions following **Reed**, there are many, including the following:

- Is there any form of sign regulation by category or function which is still constitutional? For example, is there any way for a local government to regulate temporary event signs, political signs, real estate signs, construction signs, directional or wayfinding signs, or are all of these distinctions now constitutionally fatal?
- Is distinguishing between on-premises and off-premises signs still constitutional? This distinction has, for example, allowed states and local governments to regulate billboards and standard onsite business signs differently. The **Reed** majority did not address this question, nor did it specifically overrule **Metromedia v. City of San Diego**, which previously upheld the on-premises/off-premises distinction.
- What does **Reed** mean for commercial speech regulation? Technically, **Reed** applies only to noncommercial speech, but some of the references in **Reed** point to cases that reviewed commercial speech regulations. Specially, **Reed** cites extensively to **Sorrell v. IMS Health**,[22] a 2011 case in which the Supreme Court applied a content neutrality analysis typically reserved for regulations of noncommercial speech to a Vermont regulation of commercial speech. If **Sorrell** implicitly gave more constitutional protection to commercial speech, does **Reed** expand upon this protection?
- What is **Reed's** impact on the highway advertising acts that exist in all 50 of the states? For example, the Michigan Highway Advertising Act of 1972 prohibits signs *"that purport to regulate, warn, or direct the movement of traffic or that interfere with, imitate, or resemble any official traffic sign, signal, or device."*[23] Under the **Reed** majority's analysis, many of these prohibitions could be deemed content based and subject to strict scrutiny.
- Is sign regulation on the basis of land use still constitutional? The **Reed** majority marginalized Gilbert's defense that its sign code did not regulate the content of signage, but rather regulated on the basis of the sign owner or speaker, and noted that speaker-based regulation could also be subject to strict scrutiny if *"the legislature's speaker preference reflects a content preference."*[24] What constitutes speaker-based regulation? When does a speaker preference reflect a content preference? Is sign regulation by land use speaker-based if, say, residential property owners get less signage than commercial property owners?
- Does the **Reed** majority opinion overrule prior cases which upheld special regulations for adult businesses based on the *"secondary effects"* doctrine? The secondary effects doctrine holds that regulations of certain types of speech, such as adult entertainment, are content neutral when they are justified on the grounds that certain types of speech have negative *"secondary effects"* on the surrounding community.[25]
- What governmental interests, if any, are sufficiently compelling for sign regulations to survive strict scrutiny? Lower courts have held that aesthetics is not a compelling interest,

and some have similarly held that traffic safety is not compelling. The **Reed** majority suggests some sign regulations which might survive strict scrutiny, but does not provide much guidance on this question.

Suggestions for Practice

The result in **Reed** puts a much greater obligation on local governments to ensure that sign regulations are content neutral both on their face and in the government's underlying purpose for the regulations. Some observers anticipate that the decision will result in more freedom for sign owners to display signs of various messages, while others have suggested that the result in **Reed** might encourage governments to take a more cautious approach to sign regulation that more broadly suppresses speech. In any event, **Reed** is almost certain to provide sign owners with additional firepower to challenge local sign codes, and puts local governments at increased risk of a sign code challenge.

Local governments are not without options, however. *As a first step, local governments should review their sign codes carefully, with an eye toward whether the code is truly content neutral.* Consult a lawyer knowledgeable in First Amendment and sign issues to conduct an initial review and provide recommendations. If the sign code contains some potential areas of content bias—for example, if the code contains different regulations for political signs, construction signs, real estate signs, or others—consider amending the code to remove these distinctions.

In cases where a sign code update might take time, local planners and lawyers should coach enforcement staff not to enforce distinctions which might cause problems. Gilbert was steadfast in its sign enforcement, but that steadfastness resulted in ten years of litigation and excessive legal fees for the town. If a local sign code contains content based distinctions and a private party complains of differential treatment, it may be wise for the local government to avoid enforcement action on questionably content based rules.

Local governments should also ensure that sign codes contain all of the *"required"* elements of a sign code.

1. The code should contain a *purpose statement* that, at the very minimum, references traffic safety and aesthetics as purposes for sign regulation.
2. The code should contain a message substitution clause that allows the copy on any sign to be substituted with non-commercial copy.
3. The code should contain a severability clause to increase the likelihood that the code will be upheld in litigation, even if certain provisions of the code are not upheld.

In preparing the purpose statement, it is always best to link regulatory purposes to data, both quantitative and qualitative. For example, linking a regulatory purpose statement to goals of the local comprehensive plan, such as community beautification, increases the likelihood that the code will survive a challenge. If traffic safety is one of the purposes of the sign code (it should be), consult studies on signage and traffic safety to draw the connection between sign clutter and vehicle accidents.

In conducting the review of the sign code recommended above, planners and lawyers should look to whether the code contains any of the sign categories that most frequently lead to litigation. For example, if the code creates categories for political signs, ideological or religious signs, real estate signs, construction signs, temporary event signs, or even holiday lights, it is likely that the code is at greater risk of legal challenge. As a general rule of thumb, the more complicated a sign code is, *i.e.*, the more categories of signs the code has, there will be a higher risk of a legal challenge.

Conclusion

Reed is likely to precipitate a significant shift in courts' treatment of sign codes under a First Amendment challenge. Local governments thus would be wise to undertake sign code reviews and, if necessary, revise now to ensure that the code does not contain any of the content based distinctions that created problems for Gilbert. Where necessary, local governments should consult resources—including planners and lawyers knowledgeable in First Amendment issues—to be certain that sign codes do not carry more risk than the local government desires to bear.

Readers are encouraged to obtain a copy of **Michigan Sign Guidebook: The Local Planning and Regulation of Signs**, *published by Scenic Michigan. More information can be found at http://scenicmichigan.org/sign-regulation-guidebook/.*



Q. Which signs in this photo of Times Square must be subject to content neutral sign regulations?
A. All noncommercial signs, and perhaps commercial signs as well. Are your sign regulations content neutral?

Note: Portions of this article are excerpted from Brian J. Connolly, *Supreme Court Will Review Sign Case With Significant Consequences for Governments, Businesses*, ***Rocky Mountain Real Estate Law***, http://www.rockymountainrealestatelaw.com/2014/07/supreme-court-will-review-sign-case-with-significant-consequences-for-governments-businesses/ (Jul. 31, 2014); and Brian J. Connolly, *U.S. Supreme Court Deals Significant Setback for Local Governments in Sign Case*, ***Rocky Mountain Real Estate Law***, http://www.rockymountainrealestatelaw.com/2015/06/u-s-supreme-court-deals-significant-setback-for-local-governments-in-sign-case/ (Jun. 18, 2015).

FOOTNOTES

1 576 U.S. ___, 135 S. Ct. 2218 (2015).
2 512 U.S. 43 (1994).
3 **Reed,** 135 S. Ct. at 2224.
4 *Id.* at 2224. Note that Arizona has a statute which prohibits local governments from removing certain political signs placed in connection with an election. A.R.S. § 16-1019(C).
5 *Id.* at 2225.
6 *Id.*
7 *Id.* at 2224.
8 The church also asserted Free Exercise Clause and Arizona Religious Freedom Restoration Act claims, however, only the Free Speech Clause claims were at issue on appeal.
9 **Reed v. Town of Gilbert,** 587 F.3d 966 (9th Cir. 2009).
10 **Reed v. Town of Gilbert,** 832 F. Supp. 2d 1070 (D. Ariz. 2011).
11 **Reed v. Town of Gilbert,** 707 F.3d 1057, 1071-72 (9th Cir. 2013).
12 *Id.*
13 *See, e.g.,* **Rappa v. New Castle County,** 18 F.3d 1043 (3d Cir. 1994).
14 *See, e.g.,* **Brown v. Town of Cary,** 706 F.3d 294 (4th Cir. 2013).
15 *See, e.g.,* **H.D.V.-GREEKTOWN, LLC v. City of Detroit**, 568 F.3d 609 (6th Cir. 2009).
16 *See, e.g.,* **Neighborhood Enters., Inc. v. City of St. Louis,** 644 F.3d 728 (8th Cir. 2011).
17 *See, e.g.,* **Solantic, LLC v. City of Neptune Beach,** 410 F.3d 1250 (11th Cir. 2005).
18 **Reed**, 135 S. Ct. at 2227.
19 *Id.* at 2231 (citation omitted).
20 *Id.* at 2233.
21 **Members of City Council of Los Angeles v. Taxpayers for Vincent**, 466 U.S. 789, 807 (1984).
22 131 S. Ct. 2653 (2011).
23 M.C.L. § 252.318.
24 Slip op. at 13.
25 *See, e.g.,* **City of Renton v. Playtime Theatres, Inc.,** 475 U.S. 41 (1986). ❑

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135 S.Ct. 2218
Supreme Court of the United States

Clyde REED, et al., Petitioners
v.
TOWN OF GILBERT, ARIZONA, et al.

No. 13–502. | Argued Jan. 12, 2015. | Decided June 18, 2015.

Synopsis

Background: Church and pastor seeking to place temporary signs announcing services filed suit claiming that town's sign ordinance, restricting size, duration, and location of temporary directional signs violated the right to free speech. The United States District Court for the District of Arizona, Susan R. Bolton, J., denied church's motion for preliminary injunction barring enforcement of ordinance. Church appealed. The United States Court of Appeals for the Ninth Circuit, M. Margaret McKeown, Circuit Judge, 587 F.3d 966, affirmed in part and remanded in part.On remand, the District Court, Bolton, J., 832 F.Supp.2d 1070, granted town summary judgment. Church and pastor appealed. The Court of Appeals, Callahan, Circuit Judge, 707 F.3d 1057, affirmed. Certiorari was granted.

Holdings: The Supreme Court, Justice Thomas, held that:

[1] sign code was subject to strict scrutiny, and

[2] sign code violated free speech guarantees.

Reversed and remanded.

Justice Alito filed concurring opinion in which Justices Kennedy and Sotomayor joined.

Justice Breyer filed opinion concurring in the judgment.

Justice Kagan filed opinion concurring in the judgment, in which Justices Ginsburg and Breyer joined.

West Headnotes (21)

[1] **Constitutional Law**
Viewpoint or idea discrimination
Constitutional Law
Content-Based Regulations or Restrictions

Under the First Amendment, a government, including a municipal government vested with state authority, has no power to restrict expression because of its message, its ideas, its subject matter, or its content. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

[2] **Constitutional Law**
Content-Based Regulations or Restrictions
Constitutional Law
Strict or exacting scrutiny; compelling interest test

Content-based laws, that is, 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. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[3] **Constitutional Law**
Content-Based Regulations or Restrictions

Government regulation of speech is "content based," and thus presumptively unconstitutional, if a law applies to particular speech because of the topic discussed or the idea or message expressed, and this commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech on its face draws distinctions based on the message a speaker conveys. U.S.C.A. Const.Amend. 1.

7 Cases that cite this headnote

[4] **Constitutional Law**

Strict or exacting scrutiny; compelling interest test

Constitutional Law

Strict or exacting scrutiny; compelling interest test

Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose, but both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny. U.S.C.A. Const.Amend. 1.

1 Cases that cite this headnote

[5] Constitutional Law

Governmental disagreement with message conveyed

Constitutional Law

Strict or exacting scrutiny; compelling interest test

Laws that, though facially content neutral, cannot be justified without reference to the content of the regulated speech, or that were adopted by the government because of disagreement with the message the speech conveys, like those laws that are content based on their face, must satisfy strict scrutiny. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[6] Constitutional Law

Temporary signs

Town's sign code, which subjected ideological signs to certain restrictions, subjected political signs to greater restrictions, and subjected temporary directional signs relating to events to even greater restrictions, was content based on its face, and thus was subject to strict scrutiny in free speech challenge by church seeking to place temporary signs announcing its services; any innocent motives on part of town did not eliminate danger of censorship, sign code singled out specific subject matter for differential treatment even if it did not target viewpoints within that subject matter, and sign code singled out signs bearing a particular message, i.e., the time and location of a particular event. U.S.C.A. Const.Amend. 1.

4 Cases that cite this headnote

[7] Constitutional Law

Content-Neutral Regulations or Restrictions

The crucial first step in the content-neutrality analysis in a free speech challenge is determining whether the law is content neutral on its face. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

[8] Constitutional Law

Strict or exacting scrutiny; compelling interest test

A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[9] Constitutional Law

Freedom of Speech, Expression, and Press

Constitutional Law

Censorship

Illicit legislative intent is not the sine qua non of a violation of the First Amendment's free speech guarantee, and a party opposing the government need adduce no evidence of an improper censorial motive. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

[10] Constitutional Law

Strict or exacting scrutiny; compelling interest test

Although a content-based purpose may be sufficient in certain circumstances to show that a regulation of speech is content based and thus subject to strict scrutiny, it is not necessary. U.S.C.A. Const.Amend. 1.

1 Cases that cite this headnote

[11] **Constitutional Law**
Strict or exacting scrutiny; compelling interest test

An innocuous justification cannot transform a facially content-based law regulating speech into one that is content neutral and thus subject to a lower level of scrutiny than strict scrutiny. U.S.C.A. Const.Amend. 1.

8 Cases that cite this headnote

[12] **Constitutional Law**
Content-Neutral Regulations or Restrictions
Constitutional Law
Strict or exacting scrutiny; compelling interest test

Because strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny in a free speech challenge. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

[13] **Constitutional Law**
Content-Based Regulations or Restrictions

Government discrimination among viewpoints, or the regulation of speech based on the specific motivating ideology or the opinion or perspective of the speaker, is a more blatant and egregious form of content discrimination, but the First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic. U.S.C.A. Const.Amend. 1.

1 Cases that cite this headnote

[14] **Constitutional Law**
Strict or exacting scrutiny; compelling interest test

A speech regulation targeted at specific subject matter is content based, and thus subject to strict scrutiny, even if it does not discriminate among viewpoints within that subject matter. U.S.C.A. Const.Amend. 1.

1 Cases that cite this headnote

[15] **Constitutional Law**
Content-Neutral Regulations or Restrictions

The fact that a speech-related distinction is speaker based does not automatically render the distinction content neutral and thus subject to a lower level of scrutiny than strict scrutiny. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

[16] **Constitutional Law**
Strict or exacting scrutiny; compelling interest test

Because speech restrictions based on the identity of the speaker are all too often simply a means to control content, laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference. U.S.C.A. Const.Amend. 1.

1 Cases that cite this headnote

[17] **Constitutional Law**
Content-Neutral Regulations or Restrictions

The fact that a speech-related distinction is event based does not render it content neutral and thus subject to a lower level of scrutiny than strict scrutiny. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

[18] **Constitutional Law**
Strict or exacting scrutiny; compelling interest test

Strict scrutiny requires the Government to prove that a restriction on speech furthers a compelling interest and is narrowly tailored to achieve that interest. U.S.C.A. Const.Amend. 1.

1 Cases that cite this headnote

[19] **Constitutional Law**
Temporary signs
Municipal Corporations
Billboards, signs, and other structures or devices for advertising purposes

Town's content-based sign code, which subjected ideological signs to certain restrictions, subjected political signs to greater restrictions, and subjected temporary directional signs relating to events to even greater restrictions, did not survive strict scrutiny, and thus violated free speech guarantees; even if town had compelling government interests in preserving town's aesthetic appeal and traffic safety, sign code's distinctions were underinclusive, and thus were not narrowly tailored to achieve that end, in that temporary directional signs were no greater an eyesore than ideological or political ones, and there was no reason to believe that directional signs posed a greater threat to safety than ideological or political signs. U.S.C.A. Const.Amend. 1.

3 Cases that cite this headnote

[20] **Constitutional Law**
Freedom of Speech, Expression, and Press

A law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction on truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

[21] **Constitutional Law**
Strict or exacting scrutiny; compelling interest test
Constitutional Law
Content-Neutral Regulations or Restrictions
Constitutional Law
Strict or exacting scrutiny; compelling interest test

Not all speech-related distinctions are subject to strict scrutiny, only content-based ones are; laws that are content neutral are instead subject to lesser scrutiny. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

2221** ***Syllabus [*]

Gilbert, Arizona (Town), has a comprehensive code (Sign Code or Code) that prohibits the display of outdoor signs without a permit, but exempts 23 categories of signs, including three relevant here. "Ideological Signs," defined as signs "communicating a message or ideas" that do not fit in any other Sign Code category, may be up to 20 square feet and have no placement or time restrictions. "Political Signs," defined as signs "designed to influence the outcome of an election," may be up to 32 square feet and may only be displayed during an election season. "Temporary Directional Signs," defined as signs directing the public to a church or other "qualifying event," have even greater restrictions: No more than four of the signs, limited to six square feet, may be on a single property at any time, and signs may be displayed no more than 12 hours before the "qualifying event" and 1 hour after.

Petitioners, Good News Community Church (Church) and its pastor, Clyde Reed, whose Sunday church services are held at various temporary locations in and near the Town, posted signs early each Saturday bearing the Church name and the time and location of the next service and did not remove the signs until around ***2222** midday Sunday. The Church was cited for exceeding the time limits for displaying temporary directional signs and for failing to include an event date on the signs. Unable to reach an accommodation with the Town, petitioners filed suit, claiming that the Code abridged their freedom of speech. The District Court denied their motion for a preliminary injunction, and the Ninth Circuit affirmed, ultimately concluding that the Code's sign categories were content neutral, and that the Code satisfied the intermediate scrutiny accorded to content-neutral regulations of speech.

Held : The Sign Code's provisions are content-based regulations of speech that do not survive strict scrutiny. Pp. 2226 – 2233.

(a) Because content-based laws target speech based on its communicative content, they are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *E.g., R.A.V. v. St. Paul,* 505 U.S. 377, 395, 112 S.Ct. 2538, 120 L.Ed.2d 305. Speech regulation is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *E.g., Sorrell v. IMS Health, Inc.,* 564 U.S. ——, —— – ——, 131 S.Ct. 2653, 2663–2664, 180 L.Ed.2d 544. And courts are required to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. *Id.,* at ——, 131 S.Ct., at 2664. Whether laws define regulated speech by particular subject matter or by its function or purpose, they are subject to strict scrutiny. The same is true for laws that, though facially content neutral, cannot be " 'justified without reference to the content of the regulated speech,' " or were adopted by the government "because of disagreement with the message" conveyed. *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661. Pp. 2226 – 2227.

(b) The Sign Code is content based on its face. It defines the categories of temporary, political, and ideological signs on the basis of their messages and then subjects each category to different restrictions. The restrictions applied thus depend entirely on the sign's communicative content. Because the Code, on its face, is a content-based regulation of speech, there is no need to consider the government's justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny. P. 2227.

(c) None of the Ninth Circuit's theories for its contrary holding is persuasive. Its conclusion that the Town's regulation was not based on a disagreement with the message conveyed skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of "animus toward the ideas contained" in the regulated speech. *Cincinnati v. Discovery Network, Inc.,* 507 U.S. 410, 429, 113 S.Ct. 1505, 123 L.Ed.2d 99. Thus, an innocuous justification cannot transform a facially content-based law into one that is content neutral. A court must evaluate each question—whether a law is content based on its face and whether the purpose and justification for the law are content based—before concluding that a law is content neutral. *Ward* does not require otherwise, for its framework applies only to a content-neutral statute.

The Ninth Circuit's conclusion that the Sign Code does not single out any idea or viewpoint for discrimination conflates two distinct but related limitations that the First Amendment places on government ***2223** regulation of speech. Government discrimination among viewpoints is a "more blatant" and "egregious form of content discrimination," *Rosenberger v. Rector and Visitors of Univ. of Va.,* 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700, but "[t]he First Amendment's hostility to content-based regulation [also] extends ... to prohibition of public discussion of an entire topic," *Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N. Y.,* 447 U.S. 530, 537, 100 S.Ct. 2326, 65 L.Ed.2d 319. The Sign Code, a paradigmatic example of content-based discrimination, singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter.

The Ninth Circuit also erred in concluding that the Sign Code was not content based because it made only speaker-based and event-based distinctions. The Code's categories are not speaker-based—the restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. And even if the sign categories were speaker based, that would not automatically render the law content neutral. Rather, "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference." *Turner Broadcasting System, Inc. v. FCC,* 512 U.S. 622, 658, 114 S.Ct. 2445, 129 L.Ed.2d 497. This same analysis applies to event-based distinctions. Pp. 2227 – 2231.

(d) The Sign Code's content-based restrictions do not survive strict scrutiny because the Town has not demonstrated that the Code's differentiation between temporary directional signs and other types of signs furthers a compelling governmental interest and is narrowly tailored to that end. See *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett,* 564 U.S. ——, ——, 131 S.Ct. 2806, 2817, 180 L.Ed.2d 664. Assuming that the Town has a compelling interest in preserving its aesthetic appeal and traffic safety, the Code's distinctions are highly underinclusive. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town when other types of signs create the same problem. See *Discovery Network, supra,* at 425, 113 S.Ct. 1505. Nor has it shown that temporary directional signs pose a greater threat to public safety than ideological or political signs. Pp. 2231 – 2232.

(e) This decision will not prevent governments from enacting effective sign laws. The Town has ample content-neutral options available to resolve problems with safety and aesthetics, including regulating size, building materials, lighting, moving parts, and portability. And the Town may be able to forbid postings on public property, so long as it does so in an evenhanded, content-neutral manner. See *Members of City Council of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 817, 104 S.Ct. 2118, 80 L.Ed.2d 772. An ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—*e.g.,* warning signs marking hazards on private property or signs directing traffic —might also survive strict scrutiny. Pp. 2232 – 2233.

707 F.3d 1057, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C.J., and SCALIA, KENNEDY, ALITO, and SOTOMAYOR, JJ., joined. ALITO, J., filed a concurring opinion, in which KENNEDY and SOTOMAYOR, JJ., joined. BREYER, J., filed an opinion concurring in the judgment. KAGAN, J., filed an opinion concurring in the judgment, in which GINSBURG and BREYER, JJ., joined.

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Opinion

Justice THOMAS delivered the opinion of the Court.

The town of Gilbert, Arizona (or Town), has adopted a comprehensive code governing the manner in which people may display outdoor signs. Gilbert, Ariz., Land Development Code (Sign Code or Code), ch. 1, § 4.402 (2005).[1] The Sign Code identifies various categories of signs based on the type of information they convey, then subjects each category to different restrictions. One of the categories is "Temporary Directional Signs Relating to a Qualifying Event," loosely defined as signs directing the public to a meeting of a nonprofit group. § 4.402(P). The Code imposes more stringent restrictions on these signs than it does on signs conveying other messages. We hold that these provisions are content-based regulations of speech that cannot survive strict scrutiny.

I

A

The Sign Code prohibits the display of outdoor signs anywhere within the Town without a permit, but it then exempts 23 categories of signs from that requirement. These exemptions include everything from bazaar signs to flying banners. Three categories of exempt signs are particularly relevant here.

The first is "Ideological Sign[s]." This category includes any "sign communicating a message or ideas for noncommercial purposes that is not a Construction Sign, Directional Sign, Temporary Directional Sign Relating to a Qualifying Event, Political Sign, Garage Sale Sign, or a sign owned or required by a governmental agency." Sign Code, Glossary of General Terms (Glossary), p. 23 (emphasis deleted). Of the three categories discussed here, the Code treats ideological signs most favorably, allowing them to be up to 20 square feet in area and to be placed in all "zoning districts" without time limits. § 4.402(J).

The second category is "Political Sign[s]." This includes any "temporary sign designed to influence the outcome of an election called by a public body." Glossary 23.[2] The Code treats these signs less favorably than ideological signs. The Code allows the placement of political signs up to 16 square feet on residential property and up to 32 square feet on nonresidential property, undeveloped municipal property, and "rights-of-way." ***2225** § 4.402(I).[3] These signs may be displayed up to 60 days before a primary election and up to 15 days following a general election. *Ibid.*

The third category is "Temporary Directional Signs Relating to a Qualifying Event." This includes any "Temporary Sign intended to direct pedestrians, motorists, and other passersby to a 'qualifying event.' " Glossary 25 (emphasis deleted). A "qualifying event" is defined as any "assembly, gathering, activity, or meeting sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar non-profit organization." *Ibid.* The Code treats temporary directional signs even less favorably than political signs.[4] Temporary directional signs may be no larger than six square feet. § 4.402(P). They may be placed on private property or on a public right-of-way, but no more than four signs may be placed on a single property at any time. *Ibid.* And, they may be displayed no more than 12 hours before the "qualifying event" and no more than 1 hour afterward. *Ibid.*

B

Petitioners Good News Community Church (Church) and its pastor, Clyde Reed, wish to advertise the time and location of their Sunday church services. The Church is a small, cash-strapped entity that owns no building, so it holds its services at elementary schools or other locations in or near the Town. In order to inform the public about its services, which are held in a variety of different locations, the Church began placing 15 to 20 temporary signs around the Town, frequently in the public right-of-way abutting the street. The signs typically displayed the Church's name, along with the time and location of the upcoming service. Church members would post the signs early in the day on Saturday and then remove them around midday on Sunday. The display of these signs requires little money and manpower, and thus has proved to be an economical and effective way for the Church to let the community know where its services are being held each week.

This practice caught the attention of the Town's Sign Code compliance manager, who twice cited the Church for violating the Code. The first citation noted that the Church exceeded the time limits for displaying its temporary directional signs. The second citation referred to the same problem, along with the Church's failure to include the date of the event on the signs. Town officials even confiscated one of the Church's signs, which Reed had to retrieve from the municipal offices.

Reed contacted the Sign Code Compliance Department in an attempt to reach an accommodation. His efforts proved unsuccessful. The Town's Code compliance manager informed the Church that there ***2226** would be "no leniency under the Code" and promised to punish any future violations.

Shortly thereafter, petitioners filed a complaint in the United States District Court for the District of Arizona, arguing that the Sign Code abridged their freedom of speech in violation of the First and Fourteenth Amendments. The District Court denied the petitioners' motion for a preliminary injunction. The Court of Appeals for the Ninth Circuit affirmed, holding that the Sign Code's provision regulating temporary directional signs did not regulate speech on the basis of content. 587 F.3d 966, 979 (2009). It reasoned that, even though an enforcement officer would have to read the sign to determine what provisions of the Sign Code applied to it, the " 'kind of cursory examination' " that would be necessary for an officer to classify it as a temporary directional sign was "not akin to an officer synthesizing the expressive content of the sign." *Id.,* at 978. It then remanded for the District Court to determine in the first instance whether the Sign Code's distinctions among temporary directional signs, political signs, and ideological signs nevertheless constituted a content-based regulation of speech.

On remand, the District Court granted summary judgment in favor of the Town. The Court of Appeals again affirmed, holding that the Code's sign categories were content neutral. The court concluded that "the distinctions between Temporary Directional Signs, Ideological Signs, and Political Signs ... are based on objective factors relevant to Gilbert's creation of the specific exemption from the permit requirement and do not otherwise consider the substance of the sign." 707 F.3d 1057, 1069 (C.A.9 2013). Relying on this Court's decision in *Hill v. Colorado,* 530 U.S. 703, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000), the Court of Appeals concluded that the Sign Code is content neutral. 707 F.3d, at 1071–1072. As the court explained, "Gilbert did not adopt its regulation of speech because it disagreed with the message conveyed" and its "interests in regulat[ing] temporary signs are unrelated to the content of the sign." *Ibid.* Accordingly, the court believed that the Code was "content-neutral as that term [has been] defined by the Supreme Court." *Id.,* at 1071. In light of that determination, it applied a lower level of scrutiny to the Sign Code and concluded that the law did not violate the First Amendment. *Id.,* at 1073–1076.

We granted certiorari, 573 U.S. ——, 134 S.Ct. 2900, 189 L.Ed.2d 854 (2014), and now reverse.

II

A

[1] **[2]** The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech." U.S. Const., Amdt. 1. Under that Clause, a government, including a municipal government vested with state authority, "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dept. of Chicago v. Mosley,* 408 U.S. 92, 95, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972). 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. *R.A.V. v. St. Paul,* 505 U.S. 377, 395, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992); *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.,* 502 U.S. 105, 115, 118, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991).

***2227** **[3]** **[4]** 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. *E.g., Sorrell v. IMS Health, Inc.,* 564 U.S. ——, —— – ——, 131 S.Ct. 2653, 2663–2664, 180 L.Ed.2d 544 (2011); *Carey v. Brown,* 447 U.S. 455, 462, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980); *Mosley, supra,* at 95, 92 S.Ct. 2286. This commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. *Sorrell, supra,* at ——, 131 S.Ct., at 2664. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

[5] Our precedents have also recognized a separate and additional category of laws that, though facially content neutral, will be considered content-based regulations of speech: laws that cannot be " 'justified without reference to the content of the regulated speech,' " or that were adopted by the government "because of disagreement with the message [the speech] conveys," *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). Those laws, like those that are content based on their face, must also satisfy strict scrutiny.

B

[6] The Town's Sign Code is content based on its face. It defines "Temporary Directional Signs" on the basis of whether a sign conveys the message of directing the public to church or some other "qualifying event." Glossary 25. It defines "Political Signs" on the basis of whether a sign's message is "designed to influence the outcome of an election." *Id.,* at 24. And it defines "Ideological Signs" on the basis of whether a sign "communicat [es] a message or ideas" that do not fit within the Code's other categories. *Id.,* at 23. It then subjects each of these categories to different restrictions.

The restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign. If a sign informs its reader of the time and place a book club will discuss John Locke's Two Treatises of Government, 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, the Church's signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas. On its face, the Sign Code is a content-based regulation of speech. We thus have no need to consider the government's justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny.

C

In reaching the contrary conclusion, the Court of Appeals offered several theories to explain why the Town's Sign Code should be deemed content neutral. None is persuasive.

1

The Court of Appeals first determined that the Sign Code was content neutral because the Town "did not adopt its regulation of speech [based on] disagree [ment] with the message conveyed," and its justifications for regulating temporary directional signs were "unrelated to the content of the sign." 707 F.3d, at 1071–1072. ***2228** In its brief to this Court,

the United States similarly contends that a sign regulation is content neutral—even if it expressly draws distinctions based on the sign's communicative content—if those distinctions can be " 'justified without reference to the content of the regulated speech.' " Brief for United States as *Amicus Curiae* 20, 24 (quoting *Ward, supra,* at 791, 109 S.Ct. 2746; emphasis deleted).

[7] **[8]** **[9]** **[10]** **[11]** But this analysis skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of "animus toward the ideas contained" in the regulated speech. *Cincinnati v. Discovery Network, Inc.,* 507 U.S. 410, 429, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993). We have thus made clear that " '[i]llicit legislative intent is not the *sine qua non* of a violation of the First Amendment,' " and a party opposing the government "need adduce 'no evidence of an improper censorial motive.' " *Simon & Schuster, supra,* at 117, 112 S.Ct. 501. Although "a content-based purpose may be sufficient in certain circumstances to show that a regulation is content based, it is not necessary." *Turner Broadcasting System, Inc. v. FCC,* 512 U.S. 622, 642, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994). In other words, an innocuous justification cannot transform a facially content-based law into one that is content neutral.

[12] That is why we have repeatedly considered whether a law is content neutral on its face *before* turning to the law's justification or purpose. See, *e.g., Sorrell, supra,* at ——— – ———, 131 S.Ct., at 2663–2664 (statute was content based "on its face," and there was also evidence of an impermissible legislative motive); *United States v. Eichman,* 496 U.S. 310, 315, 110 S.Ct. 2404, 110 L.Ed.2d 287 (1990) ("Although the [statute] contains no explicit content-based limitation on the scope of prohibited conduct, it is nevertheless clear that the Government's asserted *interest* is related to the suppression of free expression" (internal quotation marks omitted)); *Members of City Council of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 804, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984) ("The text of the ordinance is neutral," and "there is not even a hint of bias or censorship in the City's enactment or enforcement of this ordinance"); *Clark v. Community for Creative Non–Violence,* 468 U.S. 288, 293, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984) (requiring that a facially content-neutral ban on camping must be "justified without reference to the content of the regulated speech"); *United States v. O'Brien,* 391 U.S. 367, 375, 377, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968) (noting that the statute "on its face deals with conduct having no connection with speech," but examining whether the "the governmental interest is unrelated to the suppression of free expression"). Because strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny.

The Court of Appeals and the United States misunderstand our decision in *Ward* as suggesting that a government's purpose is relevant even when a law is content based on its face. That is incorrect. *Ward* had nothing to say about facially content-based restrictions because it involved a facially content-*neutral* ban on the use, in a city-owned music venue, of sound amplification systems not provided by the city. 491 U.S., at 787, and n. 2, 109 S.Ct. 2746. In that context, we looked to ***2229** governmental motive, including whether the government had regulated speech "because of disagreement" with its message, and whether the regulation was " 'justified without reference to the content of the speech.' " *Id.,* at 791, 109 S.Ct. 2746. But *Ward* 's framework "applies only if a statute is content neutral." *Hill,* 530 U.S., at 766, 120 S.Ct. 2480 (KENNEDY, J., dissenting). Its rules thus operate "to protect speech," not "to restrict it." *Id.,* at 765, 120 S.Ct. 2480.

The First Amendment requires no less. Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech. That is why the First Amendment expressly targets the operation of the laws—*i.e.,* the "abridg[ement] of speech"—rather than merely the motives of those who enacted them. U.S. Const., Amdt. 1. " 'The vice of content-based legislation ... is not that it is always used for invidious, thought-control purposes, but that it lends itself to use for those purposes.' " *Hill, supra,* at 743, 120 S.Ct. 2480 (SCALIA, J., dissenting).

For instance, in *NAACP v. Button,* 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963), the Court encountered a State's attempt to use a statute prohibiting " 'improper solicitation' " by attorneys to outlaw litigation-related speech of the National Association for the Advancement of Colored People. *Id.,* at 438, 83 S.Ct. 328. Although *Button* predated our more recent formulations of strict scrutiny, the Court rightly rejected the State's claim that its interest in the "regulation of professional conduct" rendered the statute consistent with the

First Amendment, observing that "it is no answer ... to say ... that the purpose of these regulations was merely to insure high professional standards and not to curtail free expression." *Id.,* at 438–439, 83 S.Ct. 328. Likewise, one could easily imagine a Sign Code compliance manager who disliked the Church's substantive teachings deploying the Sign Code to make it more difficult for the Church to inform the public of the location of its services. Accordingly, we have repeatedly "rejected the argument that 'discriminatory ... treatment is suspect under the First Amendment only when the legislature intends to suppress certain ideas.' " *Discovery Network,* 507 U.S., at 429, 113 S.Ct. 1505. We do so again today.

2

The Court of Appeals next reasoned that the Sign Code was content neutral because it "does not mention any idea or viewpoint, let alone single one out for differential treatment." 587 F.3d, at 977. It reasoned that, for the purpose of the Code provisions, "[i]t makes no difference which candidate is supported, who sponsors the event, or what ideological perspective is asserted." 707 F.3d, at 1069.

The Town seizes on this reasoning, insisting that "content based" is a term of art that "should be applied flexibly" with the goal of protecting "viewpoints and ideas from government censorship or favoritism." Brief for Respondents 22. In the Town's view, a sign regulation that "does not censor or favor particular viewpoints or ideas" cannot be content based. *Ibid.* The Sign Code allegedly passes this test because its treatment of temporary directional signs does not raise any concerns that the government is "endorsing or suppressing 'ideas or viewpoints,' " *id.,* at 27, and the provisions for political signs and ideological signs "are neutral as to particular ideas or viewpoints" within those categories. *Id.,* at 37.

[13] This analysis conflates two distinct but related limitations that the First ***2230** Amendment places on government regulation of speech. Government discrimination among viewpoints—or the regulation of speech based on "the specific motivating ideology or the opinion or perspective of the speaker"—is a "more blatant" and "egregious form of content discrimination." *Rosenberger v. Rector and Visitors of Univ. of Va.,* 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). But it is well established that "[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." *Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N. Y.,* 447 U.S. 530, 537, 100 S.Ct. 2326, 65 L.Ed.2d 319 (1980).

[14] Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter. *Ibid.* For example, a law banning the use of sound trucks for political speech—and only political speech—would be a content-based regulation, even if it imposed no limits on the political viewpoints that could be expressed. See *Discovery Network, supra,* at 428, 113 S.Ct. 1505. The Town's Sign Code likewise singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter. Ideological messages are given more favorable treatment than messages concerning a political candidate, which are themselves given more favorable treatment than messages announcing an assembly of like-minded individuals. That is a paradigmatic example of content-based discrimination.

3

Finally, the Court of Appeals characterized the Sign Code's distinctions as turning on " 'the content-neutral elements of who is speaking through the sign and whether and when an event is occurring.' " 707 F.3d, at 1069. That analysis is mistaken on both factual and legal grounds.

To start, the Sign Code's distinctions are not speaker based. The restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. If a local business, for example, sought to put up signs advertising the Church's meetings, those signs would be subject to the same limitations as such signs placed by the Church. And if Reed had decided to display signs in support of a particular candidate, he could have made those signs far larger—and kept them up for far longer—than signs inviting people to attend his church services. If the Code's distinctions were truly speaker based, both types of signs would receive the same treatment.

[15] **[16]** In any case, the fact that a distinction is speaker based does not, as the Court of Appeals seemed to believe, automatically render the distinction content neutral. Because "[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content," *Citizens United v. Federal Election Comm'n,* 558 U.S. 310, 340, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010), we have insisted that "laws favoring some speakers over others demand strict

scrutiny when the legislature's speaker preference reflects a content preference," *Turner,* 512 U.S., at 658, 114 S.Ct. 2445. Thus, a law limiting the content of newspapers, but only newspapers, could not evade strict scrutiny simply because it could be characterized as speaker based. Likewise, a content-based law that restricted the political speech of all corporations would not become content neutral just because it singled out corporations as a class of speakers. See *Citizens United, supra,* at 340–341, 130 S.Ct. 876. Characterizing a distinction ***2231** as speaker based is only the beginning—not the end—of the inquiry.

Nor do the Sign Code's distinctions hinge on "whether and when an event is occurring." The Code does not permit citizens to post signs on any topic whatsoever within a set period leading up to an election, for example. Instead, come election time, it requires Town officials to determine whether a sign is "designed to influence the outcome of an election" (and thus "political") or merely "communicating a message or ideas for noncommercial purposes" (and thus "ideological"). Glossary 24. That obvious content-based inquiry does not evade strict scrutiny review simply because an event (*i.e.,* an election) is involved.

[17] And, just as with speaker-based laws, the fact that a distinction is event based does not render it content neutral. The Court of Appeals cited no precedent from this Court supporting its novel theory of an exception from the content-neutrality requirement for event-based laws. As we have explained, a speech regulation is content based if the law applies to particular speech because of the topic discussed or the idea or message expressed. *Supra,* at 2226 – 2227. A regulation that targets a sign because it conveys an idea about a specific event is no less content based than a regulation that targets a sign because it conveys some other idea. Here, the Code singles out signs bearing a particular message: the time and location of a specific event. This type of ordinance may seem like a perfectly rational way to regulate signs, but a clear and firm rule governing content neutrality is an essential means of protecting the freedom of speech, even if laws that might seem "entirely reasonable" will sometimes be "struck down because of their content-based nature." *City of Ladue v. Gilleo,* 512 U.S. 43, 60, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994) (O'Connor, J., concurring).

III

[18] **[19]** Because the Town's Sign Code imposes content-based restrictions on speech, those provisions can stand only if they survive strict scrutiny, " 'which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest,' " *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett,* 564 U.S. ——, ——, 131 S.Ct. 2806, 2817, 180 L.Ed.2d 664 (2011) (quoting *Citizens United,* 558 U.S., at 340, 130 S.Ct. 876). Thus, it is the Town's burden to demonstrate that the Code's differentiation between temporary directional signs and other types of signs, such as political signs and ideological signs, furthers a compelling governmental interest and is narrowly tailored to that end. See *ibid.*

The Town cannot do so. It has offered only two governmental interests in support of the distinctions the Sign Code draws: preserving the Town's aesthetic appeal and traffic safety. Assuming for the sake of argument that those are compelling governmental interests, the Code's distinctions fail as hopelessly underinclusive.

Starting with the preservation of aesthetics, temporary directional signs are "no greater an eyesore," *Discovery Network,* 507 U.S., at 425, 113 S.Ct. 1505, than ideological or political ones. Yet the Code allows unlimited proliferation of larger ideological signs while strictly limiting the number, size, and duration of smaller directional ones. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town while at the same time allowing unlimited numbers of other types of signs that create the same problem.

***2232** The Town similarly has not shown that limiting temporary directional signs is necessary to eliminate threats to traffic safety, but that limiting other types of signs is not. The Town has offered no reason to believe that directional signs pose a greater threat to safety than do ideological or political signs. If anything, a sharply worded ideological sign seems more likely to distract a driver than a sign directing the public to a nearby church meeting.

[20] In light of this underinclusiveness, the Town has not met its burden to prove that its Sign Code is narrowly tailored to further a compelling government interest. Because a " 'law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction on truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited,' " *Republican Party of Minn. v. White,*

536 U.S. 765, 780, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002), the Sign Code fails strict scrutiny.

IV

[21] Our decision today will not prevent governments from enacting effective sign laws. The Town asserts that an " 'absolutist' " content-neutrality rule would render "virtually all distinctions in sign laws ... subject to strict scrutiny," Brief for Respondents 34–35, but that is not the case. Not "all distinctions" are subject to strict scrutiny, only *content-based* ones are. Laws that are *content neutral* are instead subject to lesser scrutiny. See *Clark,* 468 U.S., at 295, 104 S.Ct. 3065.

The Town has ample content-neutral options available to resolve problems with safety and aesthetics. For example, its current Code regulates many aspects of signs that have nothing to do with a sign's message: size, building materials, lighting, moving parts, and portability. See, *e.g.,* § 4.402(R). And on public property, the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner. See *Taxpayers for Vincent,* 466 U.S., at 817, 104 S.Ct. 2118 (upholding content-neutral ban against posting signs on public property). Indeed, some lower courts have long held that similar content-based sign laws receive strict scrutiny, but there is no evidence that towns in those jurisdictions have suffered catastrophic effects. See, *e.g., Solantic, LLC v. Neptune Beach,* 410 F.3d 1250, 1264–1269 (C.A.11 2005) (sign categories similar to the town of Gilbert's were content based and subject to strict scrutiny); *Matthews v. Needham,* 764 F.2d 58, 59–60 (C.A.1 1985) (law banning political signs but not commercial signs was content based and subject to strict scrutiny).

We acknowledge that a city might reasonably view the general regulation of signs as necessary because signs "take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation." *City of Ladue,* 512 U.S., at 48, 114 S.Ct. 2038. At the same time, the presence of certain signs may be essential, both for vehicles and pedestrians, to guide traffic or to identify hazards and ensure safety. A sign ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses—well might survive strict scrutiny. The signs at issue in this case, including political and ideological signs and signs for events, are far removed from those purposes. As discussed above, they are facially content based and are neither justified by traditional safety concerns nor narrowly tailored.

* * *

***2233** We reverse the judgment of the Court of Appeals and remand the case for proceedings consistent with this opinion.

It is so ordered.

Justice ALITO, with whom Justice KENNEDY and Justice SOTOMAYOR join, concurring.
I join the opinion of the Court but add a few words of further explanation.

As the Court holds, what we have termed "content-based" laws must satisfy strict scrutiny. Content-based laws merit this protection because they present, albeit sometimes in a subtler form, the same dangers as laws that regulate speech based on viewpoint. Limiting speech based on its "topic" or "subject" favors those who do not want to disturb the status quo. Such regulations may interfere with democratic self-government and the search for truth. See *Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N. Y.,* 447 U.S. 530, 537, 100 S.Ct. 2326, 65 L.Ed.2d 319 (1980).

As the Court shows, the regulations at issue in this case are replete with content-based distinctions, and as a result they must satisfy strict scrutiny. This does not mean, however, that municipalities are powerless to enact and enforce reasonable sign regulations. I will not attempt to provide anything like a comprehensive list, but here are some rules that would not be content based:

Rules regulating the size of signs. These rules may distinguish among signs based on any content-neutral criteria, including any relevant criteria listed below.

Rules regulating the locations in which signs may be placed. These rules may distinguish between free-standing signs and those attached to buildings.

Rules distinguishing between lighted and unlighted signs.

Rules distinguishing between signs with fixed messages and electronic signs with messages that change.

Rules that distinguish between the placement of signs on private and public property.

Rules distinguishing between the placement of signs on commercial and residential property.

Rules distinguishing between on-premises and off-premises signs.

Rules restricting the total number of signs allowed per mile of roadway.

Rules imposing time restrictions on signs advertising a one-time event. Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed. *

In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech. See *Pleasant Grove City v. Summum,* 555 U.S. 460, 467–469, 129 S.Ct. 1125, 172 L.Ed.2d 853 (2009). They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.

Properly understood, today's decision will not prevent cities from regulating signs in a way that fully protects public ***2234** safety and serves legitimate esthetic objectives.

Justice BREYER, concurring in the judgment.

I join Justice KAGAN's separate opinion. Like Justice KAGAN I believe that categories alone cannot satisfactorily resolve the legal problem before us. The First Amendment requires greater judicial sensitivity both to the Amendment's expressive objectives and to the public's legitimate need for regulation than a simple recitation of categories, such as "content discrimination" and "strict scrutiny," would permit. In my view, the category "content discrimination" is better considered in many contexts, including here, as a rule of thumb, rather than as an automatic "strict scrutiny" trigger, leading to almost certain legal condemnation.

To use content discrimination to trigger strict scrutiny sometimes makes perfect sense. There are cases in which the Court has found content discrimination an unconstitutional method for suppressing a viewpoint. *E.g., Rosenberger v. Rector and Visitors of Univ. of Va.,* 515 U.S. 819, 828–829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995); see also *Boos v. Barry,* 485 U.S. 312, 318–319, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988) (plurality opinion) (applying strict scrutiny where the line between subject matter and viewpoint was not obvious). And there are cases where the Court has found content discrimination to reveal that rules governing a traditional public forum are, in fact, not a neutral way of fairly managing the forum in the interest of all speakers. *Police Dept. of Chicago v. Mosley,* 408 U.S. 92, 96, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972) ("Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say"). In these types of cases, strict scrutiny is often appropriate, and content discrimination has thus served a useful purpose.

But content discrimination, while helping courts to identify unconstitutional suppression of expression, cannot and should not *always* trigger strict scrutiny. To say that it is not an automatic "strict scrutiny" trigger is not to argue against that concept's use. I readily concede, for example, that content discrimination, as a conceptual tool, can sometimes reveal weaknesses in the government's rationale for a rule that limits speech. If, for example, a city looks to litter prevention as the rationale for a prohibition against placing newsracks dispensing free advertisements on public property, why does it exempt other newsracks causing similar litter? Cf. *Cincinnati v. Discovery Network, Inc.,* 507 U.S. 410, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993). I also concede that, whenever government disfavors one kind of speech, it places that speech at a disadvantage, potentially interfering with the free marketplace of ideas and with an individual's ability to express thoughts and ideas that can help that individual determine the kind of society in which he wishes to live, help shape that society, and help define his place within it.

Nonetheless, in these latter instances to use the presence of content discrimination automatically to trigger strict scrutiny and thereby call into play a strong presumption against constitutionality goes too far. That is because virtually all government activities involve speech, many of which involve the regulation of speech. Regulatory programs almost always require content discrimination. And to hold that such content discrimination triggers strict scrutiny is to write a recipe for judicial management of ordinary government regulatory activity.

Consider a few examples of speech regulated by government that inevitably involve ***2235** content discrimination, but where a strong presumption against constitutionality has no

place. Consider governmental regulation of securities, *e.g.,* 15 U.S.C. § 78*l* (requirements for content that must be included in a registration statement); of energy conservation labeling-practices, *e.g.,* 42 U.S.C. § 6294 (requirements for content that must be included on labels of certain consumer electronics); of prescription drugs, *e.g.,* 21 U.S.C. § 353(b)(4)(A) (requiring a prescription drug label to bear the symbol "Rx only"); of doctor-patient confidentiality, *e.g.,* 38 U.S.C. § 7332 (requiring confidentiality of certain medical records, but allowing a physician to disclose that the patient has HIV to the patient's spouse or sexual partner); of income tax statements, *e.g.,* 26 U.S.C. § 6039F (requiring taxpayers to furnish information about foreign gifts received if the aggregate amount exceeds $10,000); of commercial airplane briefings, *e.g.,* 14 CFR § 136.7 (2015) (requiring pilots to ensure that each passenger has been briefed on flight procedures, such as seatbelt fastening); of signs at petting zoos, *e.g.,* N.Y. Gen. Bus. Law Ann. § 399–ff(3) (West Cum. Supp. 2015) (requiring petting zoos to post a sign at every exit " 'strongly recommend[ing] that persons wash their hands upon exiting the petting zoo area' "); and so on.

Nor can the majority avoid the application of strict scrutiny to all sorts of justifiable governmental regulations by relying on this Court's many subcategories and exceptions to the rule. The Court has said, for example, that we should apply less strict standards to "commercial speech." *Central Hudson Gas & Elec. Corp. v. Public Service Comm'n of N. Y.,* 447 U.S. 557, 562–563, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980). But I have great concern that many justifiable instances of "content-based" regulation are noncommercial. And, worse than that, the Court has applied the heightened "strict scrutiny" standard even in cases where the less stringent "commercial speech" standard was appropriate. See *Sorrell v. IMS Health Inc.,* 564 U.S. ——, ——, 131 S.Ct. 2653, 2664, 180 L.Ed.2d 544 (2011) (BREYER, J., dissenting). The Court has also said that "government speech" escapes First Amendment strictures. See *Rust v. Sullivan,* 500 U.S. 173, 193–194, 111 S.Ct. 1759, 114 L.Ed.2d 233 (1991). But regulated speech is typically private speech, not government speech. Further, the Court has said that, "[w]hen the basis for the content discrimination consists entirely of the very reason the entire class of speech at issue is proscribable, no significant danger of idea or viewpoint discrimination exists." *R.A.V. v. St. Paul,* 505 U.S. 377, 388, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992). But this exception accounts for only a few of the instances in which content discrimination is readily justifiable.

I recognize that the Court could escape the problem by watering down the force of the presumption against constitutionality that "strict scrutiny" normally carries with it. But, in my view, doing so will weaken the First Amendment's protection in instances where "strict scrutiny" should apply in full force.

The better approach is to generally treat content discrimination as a strong reason weighing against the constitutionality of a rule where a traditional public forum, or where viewpoint discrimination, is threatened, but elsewhere treat it as a rule of thumb, finding it a helpful, but not determinative legal tool, in an appropriate case, to determine the strength of a justification. I would use content discrimination as a supplement to a more basic analysis, which, tracking most of our First Amendment cases, asks whether the regulation at issue works harm to First Amendment interests that is disproportionate in light of ***2236** the relevant regulatory objectives. Answering this question requires examining the seriousness of the harm to speech, the importance of the countervailing objectives, the extent to which the law will achieve those objectives, and whether there are other, less restrictive ways of doing so. See, *e.g., United States v. Alvarez,* 567 U.S. ——, —— – ——, 132 S.Ct. 2537, 2551–2553, 183 L.Ed.2d 574 (2012) (BREYER, J., concurring in judgment); *Nixon v. Shrink Missouri Government PAC,* 528 U.S. 377, 400–403, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000) (BREYER, J., concurring). Admittedly, this approach does not have the simplicity of a mechanical use of categories. But it does permit the government to regulate speech in numerous instances where the voters have authorized the government to regulate and where courts should hesitate to substitute judicial judgment for that of administrators.

Here, regulation of signage along the roadside, for purposes of safety and beautification is at issue. There is no traditional public forum nor do I find any general effort to censor a particular viewpoint. Consequently, the specific regulation at issue does not warrant "strict scrutiny." Nonetheless, for the reasons that Justice KAGAN sets forth, I believe that the Town of Gilbert's regulatory rules violate the First Amendment. I consequently concur in the Court's judgment only.

Justice KAGAN, with whom Justice GINSBURG and Justice BREYER join, concurring in the judgment.

Countless cities and towns across America have adopted ordinances regulating the posting of signs, while exempting

certain categories of signs based on their subject matter. For example, some municipalities generally prohibit illuminated signs in residential neighborhoods, but lift that ban for signs that identify the address of a home or the name of its owner or occupant. See, *e.g.,* City of Truth or Consequences, N. M., Code of Ordinances, ch. 16, Art. XIII, §§ 11–13–2.3, 11–13–2.9(H)(4) (2014). In other municipalities, safety signs such as "Blind Pedestrian Crossing" and "Hidden Driveway" can be posted without a permit, even as other permanent signs require one. See, *e.g.,* Code of Athens–Clarke County, Ga., Pt. III, § 7–4–7(1) (1993). Elsewhere, historic site markers —for example, "George Washington Slept Here"—are also exempt from general regulations. See, *e.g.,* Dover, Del., Code of Ordinances, Pt. II, App. B, Art. 5, § 4.5(F) (2012). And similarly, the federal Highway Beautification Act limits signs along interstate highways unless, for instance, they direct travelers to "scenic and historical attractions" or advertise free coffee. See 23 U.S.C. §§ 131(b), (c)(1), (c)(5).

Given the Court's analysis, many sign ordinances of that kind are now in jeopardy. See *ante,* at 2231 (acknowledging that "entirely reasonable" sign laws "will sometimes be struck down" under its approach (internal quotation marks omitted)). Says the majority: When laws "single[ ] out specific subject matter," they are "facially content based"; and when they are facially content based, they are automatically subject to strict scrutiny. *Ante,* at 2230, 2232 – 2233. And although the majority holds out hope that some sign laws with subject-matter exemptions "might survive" that stringent review, *ante,* at 2232 – 2233, the likelihood is that most will be struck down. After all, it is the "rare case[ ] in which a speech restriction withstands strict scrutiny." *Williams–Yulee v. Florida Bar,* 575 U.S. ——, ——, 135 S.Ct. 1656, 1666, ——L.Ed.2d —— (2015). To clear that high bar, the government must show that a content-based distinction "is necessary to serve a compelling state interest and is narrowly drawn to achieve that end." *Arkansas Writers' Project, Inc.* ***2237** *v. Ragland,* 481 U.S. 221, 231, 107 S.Ct. 1722, 95 L.Ed.2d 209 (1987). So on the majority's view, courts would have to determine that a town has a compelling interest in informing passersby where George Washington slept. And likewise, courts would have to find that a town has no other way to prevent hidden-driveway mishaps than by specially treating hidden-driveway signs. (Well-placed speed bumps? Lower speed limits? Or how about just a ban on hidden driveways?) The consequence—unless courts water down strict scrutiny to something unrecognizable—is that our communities will find themselves in an unenviable bind: They will have to either repeal the exemptions that allow for helpful signs on streets and sidewalks, or else lift their sign restrictions altogether and resign themselves to the resulting clutter. [*]

Although the majority insists that applying strict scrutiny to all such ordinances is "essential" to protecting First Amendment freedoms, *ante,* at 2231, I find it challenging to understand why that is so. This Court's decisions articulate two important and related reasons for subjecting content-based speech regulations to the most exacting standard of review. The first is "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." *McCullen v. Coakley,* 573 U.S. ——, —— – ——, 134 S.Ct. 2518, 2529, 189 L.Ed.2d 502 (2014) (internal quotation marks omitted). The second is to ensure that the government has not regulated speech "based on hostility—or favoritism—towards the underlying message expressed." *R.A.V. v. St. Paul,* 505 U.S. 377, 386, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992). Yet the subject-matter exemptions included in many sign ordinances do not implicate those concerns. Allowing residents, say, to install a light bulb over "name and address" signs but no others does not distort the marketplace of ideas. Nor does that different treatment give rise to an inference of impermissible government motive.

We apply strict scrutiny to facially content-based regulations of speech, in keeping with the rationales just described, when there is any "realistic possibility that official suppression of ideas is afoot." *Davenport v. Washington Ed. Assn.,* 551 U.S. 177, 189, 127 S.Ct. 2372, 168 L.Ed.2d 71 (2007) (quoting *R.A.V.,* 505 U.S., at 390, 112 S.Ct. 2538). That is always the case when the regulation facially differentiates on the basis of viewpoint. See *Rosenberger v. Rector and Visitors of Univ. of Va.,* 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). It is also the case (except in non-public or limited public forums) when a law restricts "discussion of an entire topic" in public debate. *Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N. Y.,* 447 U.S. 530, 537, 539–540, 100 S.Ct. 2326, 65 L.Ed.2d 319 (1980) (invalidating a limitation on speech about nuclear power). We have stated that "[i]f the marketplace of ideas is to remain free and open, governments must not be allowed to choose 'which issues are worth discussing or debating.' " *Id.,* at 537–538, 100 S.Ct. 2326 (quoting *Police Dept. of* ***2238** *Chicago v. Mosley,* 408 U.S. 92, 96, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972)). And we have recognized that such subject-matter restrictions, even though viewpoint-neutral on their face, may "suggest[ ] an attempt to give one side of a debatable public question an advantage in expressing its views to the people." *First Nat.*

Bank of Boston v. Bellotti, 435 U.S. 765, 785, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978); accord, *ante,* at 2233 (ALITO, J., concurring) (limiting all speech on one topic "favors those who do not want to disturb the status quo"). Subject-matter regulation, in other words, may have the intent or effect of favoring some ideas over others. When that is realistically possible—when the restriction "raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace"—we insist that the law pass the most demanding constitutional test. *R.A.V.,* 505 U.S., at 387, 112 S.Ct. 2538 (quoting *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.,* 502 U.S. 105, 116, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991)).

But when that is not realistically possible, we may do well to relax our guard so that "entirely reasonable" laws imperiled by strict scrutiny can survive. *Ante,* at 2231. This point is by no means new. Our concern with content-based regulation arises from the fear that the government will skew the public's debate of ideas—so when "that risk is inconsequential, ... strict scrutiny is unwarranted." *Davenport,* 551 U.S., at 188, 127 S.Ct. 2372; see *R.A.V.,* 505 U.S., at 388, 112 S.Ct. 2538 (approving certain content-based distinctions when there is "no significant danger of idea or viewpoint discrimination"). To do its intended work, of course, the category of content-based regulation triggering strict scrutiny must sweep more broadly than the actual harm; that category exists to create a buffer zone guaranteeing that the government cannot favor or disfavor certain viewpoints. But that buffer zone need not extend forever. We can administer our content-regulation doctrine with a dose of common sense, so as to leave standing laws that in no way implicate its intended function.

And indeed we have done just that: Our cases have been far less rigid than the majority admits in applying strict scrutiny to facially content-based laws—including in cases just like this one. See *Davenport,* 551 U.S., at 188, 127 S.Ct. 2372 (noting that "we have identified numerous situations in which [the] risk" attached to content-based laws is "attenuated"). In *Members of City Council of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984), the Court declined to apply strict scrutiny to a municipal ordinance that exempted address numbers and markers commemorating "historical, cultural, or artistic event[s]" from a generally applicable limit on sidewalk signs. *Id.,* at 792, n. 1, 104 S.Ct. 2118 (listing exemptions); see *id.,* at 804–810, 104 S.Ct. 2118 (upholding ordinance under intermediate scrutiny). After all, we explained, the law's enactment and enforcement revealed "not even a hint of bias or censorship." *Id.,* at 804, 104 S.Ct. 2118; see also *Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 48, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986) (applying intermediate scrutiny to a zoning law that facially distinguished among movie theaters based on content because it was "designed to prevent crime, protect the city's retail trade, [and] maintain property values ..., not to suppress the expression of unpopular views"). And another decision involving a similar law provides an alternative model. In *City of Ladue v. Gilleo,* 512 U.S. 43, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994), the Court assumed *arguendo* that a sign ordinance's exceptions for address ***2239** signs, safety signs, and for-sale signs in residential areas did not trigger strict scrutiny. See *id.,* at 46–47, and n. 6, 114 S.Ct. 2038 (listing exemptions); *id.,* at 53, 114 S.Ct. 2038 (noting this assumption). We did not need to, and so did not, decide the level-of-scrutiny question because the law's breadth made it unconstitutional under any standard.

The majority could easily have taken *Ladue* 's tack here. The Town of Gilbert's defense of its sign ordinance—most notably, the law's distinctions between directional signs and others—does not pass strict scrutiny, or intermediate scrutiny, or even the laugh test. See *ante,* at 2231 – 2232 (discussing those distinctions). The Town, for example, provides no reason at all for prohibiting more than four directional signs on a property while placing no limits on the number of other types of signs. See Gilbert, Ariz., Land Development Code, ch. I, §§ 4.402(J), (P)(2) (2014). Similarly, the Town offers no coherent justification for restricting the size of directional signs to 6 square feet while allowing other signs to reach 20 square feet. See §§ 4.402(J), (P)(1). The best the Town could come up with at oral argument was that directional signs "need to be smaller because they need to guide travelers along a route." Tr. of Oral Arg. 40. Why exactly a smaller sign better helps travelers get to where they are going is left a mystery. The absence of any sensible basis for these and other distinctions dooms the Town's ordinance under even the intermediate scrutiny that the Court typically applies to "time, place, or manner" speech regulations. Accordingly, there is no need to decide in this case whether strict scrutiny applies to every sign ordinance in every town across this country containing a subject-matter exemption.

I suspect this Court and others will regret the majority's insistence today on answering that question in the affirmative. As the years go by, courts will discover that thousands of towns have such ordinances, many of them "entirely reasonable." *Ante,* at 2231. And as the challenges to them mount, courts will have to invalidate one after the other. (This

Court may soon find itself a veritable Supreme Board of Sign Review.) And courts will strike down those democratically enacted local laws even though no one—certainly not the majority—has ever explained why the vindication of First Amendment values requires that result. Because I see no reason why such an easy case calls for us to cast a constitutional pall on reasonable regulations quite unlike the law before us, I concur only in the judgment.

All Citations

135 S.Ct. 2218, 83 USLW 4444, 15 Cal. Daily Op. Serv. 6239, 2015 Daily Journal D.A.R. 6831, 25 Fla. L. Weekly Fed. S 383

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 The Town's Sign Code is available online at http://www. gilbertaz.gov/departments/development-service/planning-development/land-development-code (as visited June 16, 2015, and available in Clerk of Court's case file).

2 A "Temporary Sign" is a "sign not permanently attached to the ground, a wall or a building, and not designed or intended for permanent display." Glossary 25.

3 The Code defines "Right–of–Way" as a "strip of publicly owned land occupied by or planned for a street, utilities, landscaping, sidewalks, trails, and similar facilities." *Id.,* at 18.

4 The Sign Code has been amended twice during the pendency of this case. When litigation began in 2007, the Code defined the signs at issue as "Religious Assembly Temporary Direction Signs." App. 75. The Code entirely prohibited placement of those signs in the public right-of-way, and it forbade posting them in any location for more than two hours before the religious assembly or more than one hour afterward. *Id.,* at 75–76. In 2008, the Town redefined the category as "Temporary Directional Signs Related to a Qualifying Event," and it expanded the time limit to 12 hours before and 1 hour after the "qualifying event." *Ibid.* In 2011, the Town amended the Code to authorize placement of temporary directional signs in the public right-of-way. *Id.,* at 89.

* Of course, content-neutral restrictions on speech are not necessarily consistent with the First Amendment. Time, place, and manner restrictions "must be narrowly tailored to serve the government's legitimate, content-neutral interests." *Ward v. Rock Against Racism,* 491 U.S. 781, 798, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). But they need not meet the high standard imposed on viewpoint- and content-based restrictions.

* Even in trying (commendably) to limit today's decision, Justice ALITO's concurrence highlights its far-reaching effects. According to Justice ALITO, the majority does not subject to strict scrutiny regulations of "signs advertising a one-time event." *Ante,* at 2233 (ALITO, J., concurring). But of course it does. On the majority's view, a law with an exception for such signs "singles out specific subject matter for differential treatment" and "defin[es] regulated speech by particular subject matter." *Ante,* at 2227, 2230 (majority opinion). Indeed, the precise reason the majority applies strict scrutiny here is that "the Code singles out signs bearing a particular message: the time and location of a specific event." *Ante,* at 2231.

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