



PANHANDLING REGULATIONS

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MEET PASTOR
 CLYDE REED

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GILBERT ARIZONA SIGN ORDINANCE

Small Town of 267,918

2005 adopted a sign ordinance regulating manner that signs could be displayed in public areas

Banned most signs without a permit BUT

- Allowed TWENTY-THREE categories of signs exempt from permit requirements

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GILBERT ARIZONA SIGN ORDINANCE

Three at issue in the Supreme Court case

- "Ideological Signs" – containing messages or ideas for noncommercial purposes could be 20 ft² and placed in any zoning district for any length of time
- "Political Signs" – including content designed to influence the outcome of an election called by a public body could be no larger than 32 ft² on nonresidential property and 16 ft² on residential property
 - 60 days before election and 15 after
- "Temporary Directional Signs Relating to a Qualifying Event" – directing pedestrians, motorists, and other passersby to events hosted by a non-profit could be no larger than 6 ft²
 - No earlier than 12 hours and no later than 1 hour after the event
 - Only on private property and public rights-of-way
 - No more than 4 signs on single property at a time

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GOOD NEWS COMMUNITY CHURCH

Itinerant church – moved from school to school

Would post signs early in the day Saturday and remove midday on Sunday

Cited twice by sign code compliance manager

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ARIZONA DISTRICT COURT CASE

Church claimed town abridged freedom of speech in violation of First and Fourteenth Amendments

Denied request for preliminary injunction

Church appealed to Ninth Circuit

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NINTH CIRCUIT

Affirmed district court denial of preliminary injunction holding the restrictions on temporary directional signs do not regulate speech on the basis of content

Conceded enforcement would have to read sign to determine portions of sign ordinance to apply but “cursory examination” was not “synthesizing the expressive content of the sign”

Distinctions between ideological, political, and temporary directional signs “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

Lower level of scrutiny applied – No violation of constitutional rights

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SUPREME COURT — JUSTICE THOMAS FOR MAJORITY - 2015

Ordinance content-based on its face because of restrictions in code that apply to any given sign depending entirely on the communicative content of the sign

Church signs treated differently from signs conveying other ideas – no need to consider the government’s justifications or purposes for enacting code to determine if subject to strict scrutiny

- Fundamental constitutional right infringed – narrowly tailored for compelling state interest
- Intermediate scrutiny – usually for content-neutral speech regulation – furthers important governmental interest by means substantially related to that interest
- Rational Basis – due process and equal protection – law rationally related to legitimate governmental interest

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SUPREME COURT — JUSTICE THOMAS FOR MAJORITY

Rejected Ninth Circuit conclusion ordinance content-neutral because regulations not based on disagreements with the messages conveyed and reasons for regulation unrelated to content of signs

“A law that is content-based on its face is subject to strict scrutiny regardless of government’s benign motive, content-neutral justification, or lack of animus toward the idea contained in the regulated speech”

Innocent motives do not eliminate censorship danger because one day governments may use content-based laws to regulate disfavored speech

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SUPREME COURT — JUSTICE THOMAS FOR MAJORITY

Rejected town’s assertion only content-based if it censors or favors specific viewpoints or ideas

Town argued ordinance not unconstitutional because it neither endorsed nor suppressed viewpoints or ideas

Law is content-based if it singles out a specific subject – even though it may not target ideas or viewpoints within that subject matter

Rejected Ninth Circuit’s conclusion ordinance content-neutral because it targeted specific classes of speakers – rather than speech content

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SUPREME COURT — JUSTICE THOMAS FOR MAJORITY

Thomas recognized that speaker-based restrictions were only the beginning — not the end of the inquiry — laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference

Strict Scrutiny applies

- Assuming town's interest of preserving aesthetic appeal and traffic safety compelling
 - Hopelessly underinclusive because of the large number of other signs posing same or greater risk!

Remanded

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ALITO CONCURRENCE WITH KENNEDY AND SOTOMAYOR

Opinion would not prevent a city from regulating signs in a way that fully protects public safety and serves legitimate aesthetic objectives

- Sign sizes
- Locations of signs
- Lighted vs. unlighted signs
- Public vs. private property
- Restriction on number of signs per mile of roadway
- Freestanding signs vs. signs attached to buildings

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CHRIS — THIS IS A HOMELESS SUMMIT...

MA'AM THIS IS A
WENDY'S

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DENNIS CHAMPION



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CHAMPION V. COMMONWEALTH (2017)

2007 Lexington-Fayette Urban County Government enacted blanket prohibition against all begging and solicitation of alms

- (1) No person shall beg or solicit upon the public streets or at the intersection of said public streets within the urban county area.
- (2) Any person who violates any provision of this section shall be fined not less than one hundred dollars (\$100.00) or be imprisoned not less than ten (10) days nor more than thirty (30) days or both for each offense.

Any person in the city streets or at city intersections seeking any form of financial contribution may suffer criminal liability despite the ordinance's title suggesting this prohibition is limited only to solicitation of "alms."

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CHAMPION V. COMMONWEALTH (2017)

Dennis Champion was standing with a handmade sign at a prominent Lexington intersection begging for financial assistance when he was spotted by law enforcement

Champion failed to appear at his designated court date in district court, and a bench warrant was issued for his arrest

He was later arrested and arraigned, at which time he was offered a three-day jail sentence with credit for jail-time served in exchange for a guilty plea

Champion entered a conditional guilty plea, and the district court entered judgment accordingly

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CHAMPION V. COMMONWEALTH (KY. 2017)

On appeal

- Champion questioned the legitimacy of Ordinance 14-5 as a valid exercise of local governmental power to criminalize particular behavior
- He challenged the ordinance as an unconstitutional abridgement of his freedom of speech under the First Amendment to the United States Constitution

Circuit court affirmed district court – Court of Appeals refused discretionary appeal

Supreme Court took up the case

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FIRST AMENDMENT REVIEW

If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because it finds the idea itself offensive or disagreeable

Under the Free Speech Clause, a government is powerless to restrict an expression because of its “message, its ideas, its subject matter, or its content”

This maxim applies equally to federal, state, and municipal governments through the Due Process Clause of the Fourteenth Amendment

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PANHANDLING

Panhandling itself can simplistically be defined as any in-person solicitation for immediate charitable giving of either cash or goods for the purpose of benefiting the person doing the solicitation

But despite the societal stigma associated with panhandling, this form of expression is widely considered to be constitutionally protected speech

In *Schaumburg v. Citizens for a Better Environment*, the Supreme Court reviewed a statute requiring that any charity engaging in door-to-door solicitation must dedicate at least seventy-five percent of its proceeds to charitable purposes

The Court ruled that solicitation intrinsically contained both political and economic expression, and held that it would not engage in the process of determining which aspects of a particular charitable solicitation were constitutionally protected speech and which were not

So *Schaumburg* appears to stand for the proposition that solicitation on behalf of charitable organizations is constitutionally protected speech under the First Amendment

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PANHANDLING

The Supreme Court has yet to extend fully this protection to individuals soliciting for their own well-being

We are confident that case law and normative considerations support the ultimate conclusion that panhandling is constitutionally protected speech

Because this form of expression is not, in and of itself, treated differently under the First Amendment, we must review panhandling regulations under the same standard we would review any other regulation of protected speech

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FORUM OF SPEECH

Critical to any First Amendment analysis is, as a threshold matter, the type of forum implicated in any governmental speech regulation

Public streets and intersections are paradigmatic examples of traditional public forums—areas that serve an important function for purposes of assembly, communicating thoughts between citizens, and discussing public questions

Public forums enjoy a “special position in terms of First Amendment protection” because of the critical role they play in fostering public debate, expression, and assembly

Any content-based laws—those that target particular 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

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HEEEEEERE'S REED V. TOWN OF GILBERT



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APPLICATION OF REED TO LEXINGTON ORDINANCE

Justice Thomas, writing for the Court, wrote that “Government regulation of speech is content-based if a law applies to particular speech because of the topic discussed or the idea the message expressed”

As matter of common sense, this requires a reviewing court to “consider whether a regulation of speech ‘on its face’ draws distinctions based on the message it conveys”

This analysis is independent of whether the government intends to favor or disfavor the type of speech in an underlying regulation

Strict scrutiny applies

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LOWER COURT DETERMINED ORDINANCE CONTENT NEUTRAL

Thereby requiring a less-exacting standard of scrutiny to remain constitutionally viable

But this opinion was issued before the Supreme Court’s decision in *Reed*

We must now review Ordinance 14-5’s constitutionality in light of this most recent addition to First Amendment jurisprudence

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ORDINANCE IS CONTENT-BASED

Lexington concedes, in light of *Reed*, that its ordinance distinguishes speech based on the underlying message

Because of evolving Supreme Court precedent, we agree that Ordinance 14-5 is content-based

The Supreme Court's ruling in *Reed* can be seen as a paradigm shift in the interpretation of public-speech legislation

"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 review"

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ORDINANCE IS CONTENT-BASED

The government's intent only matters if the statute is *facially* neutral - it offers no relief to government censorship when it blatantly distinguishes different forms of constitutionally protected speech, offering a different set of rules for each

In essence, content neutrality is determined by two separate and unique questions

So, if we conclude Lexington's Ordinance 14-5 discriminates against the content of speech on its face, it matters not whether Lexington imposed this regulation to target certain views or because it disfavored those engaged in begging

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PANHANDLING AS CHARITABLE GIVING

Panhandling typically refers to immediate in-person charitable giving

This is actually more limited than Ordinance 14-5's prohibition of all begging or soliciting in public streets

The Lexington ordinance contemplates far more activity than individual immediate solicitations, and these expressions in particular have traditionally employed constitutional protection in courts of law

The ordinance, on its face, prohibits a specific type of message from display in public streets where all other forms of speech remain legal

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PANHANDLING SINGLED OUT

On its face, Ordinance 14-5 singles out speech for criminal liability based solely on its particularized message

Only citizens seeking financial assistance on public streets and intersections face prosecution

- Jesus Loves You
- Not My President
 - Speech OK under ordinance

“Homeless please help” may be convicted of a misdemeanor

- Content the only difference

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ORDINANCE ENFORCEMENT

Law enforcement would have to examine the content of the message conveyed to determine whether a violation has occurred

Prohibits public discussion in a traditional public forum of an entire topic

This ordinance is unambiguously content-based and is presumptively unconstitutional

The true beauty of the First Amendment is that it treats both Cicero and the vagabond as equals without prejudice to their message

Freedom of speech does not exist for us to talk about the weather; to accept this liberty is to welcome controversy and to embrace discomfort

Just as the government may not ban Lolita because it is Lolita, it likewise may not criminalize the beggar for begging—no matter how noble or altruistic its intentions may be

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STRICT SCRUTINY APPLICATION

For the ordinance to remain in effect, the government must satisfactorily prove to us that criminalizing begging and solicitation alone on public streets and intersections furthers a compelling interest and is narrowly tailored to that end

It is clear to us that Lexington cannot offer evidence of a compelling interest, and it most certainly cannot say this law is adequately structured to satisfy the interest it asserts in its defense

As a presumptively invalid statute, Lexington now bears the burden of showing that its content-based regulation of speech exists to safeguard individual rights rather than to inhibit them

And this is an admittedly challenging burden to meet

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STRICT SCRUTINY APPLICATION

But when a lawmaking body threatens an individual's rudimentary fundamental right, it should do so only out of absolute necessity and by the least-restrictive means possible

If government wishes to restrain an individual right in effort to remedy a societal problem, we do not presume the problem exists; the governing body must prove and justify that the behavior in question actually harms society

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SOMETIMES YOU GET A SIGNAL



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A PATH FORWARD

Lexington's primary justification for Ordinance 14-5—a reason it declares satisfies even strict scrutiny—is the city's desire to ensure public safety and to ensure the free flow of traffic

And no doubt, this is something the Supreme Court has recognized as a legitimate governmental goal in regulating activities in its streets and sidewalks

More particularly, Lexington claims the city has a compelling interest in regulating interactions between pedestrians and people driving vehicles

According to the city, the act of stepping into the streets to get money from the motorist and then proceeding to the next vehicle in line impedes traffic and risks the pedestrian's safety

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WHAMMY



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NO EVIDENCE

But the problem with Lexington's rationale is the total lack of evidence that prohibiting panhandling furthers this governmental interest

We have been offered no evidence of traffic delays or auto accidents resulting from pedestrians—panhandlers in particular—approaching stopped motorists

Just because public safety is recognized as a compelling government interest does not empower the government to enact any measure or target particularized behavior in its name without justification

And invocation of that interest in this instance is **disingenuous at best**

Adding insult to injury, this was not the particular behavior for which Champion was cited; law enforcement cited Champion for holding a sign at an intersection, not approaching stopped vehicles

Without additional information, we have no proof he even targeted stopped motorists with this speech

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THE COURT IS JUST GETTING WARMED UP

Even if we accept Lexington's assertion that Ordinance 14-5 furthers its compelling interest to promote public safety and free traffic flow, this law is hopelessly under and overinclusive

The ordinance is underinclusive because Lexington has not bothered to explain why panhandling poses a greater risk to public safety than other forms of speech

We have been given no reason to believe that begging presents substantially greater risks than similar conduct, such as street performances or simply asking for directions

The ordinance is overinclusive because it chills speech otherwise unrelated to interfering with traffic

A person targeting only pedestrians for in-person donations is equally culpable under this ordinance that is allegedly designed for traffic safety

The law does not justify why signage seeking help is inherently more dangerous than one directing motorists to a nearby car-wash fundraiser

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FOLLOW THE LIGHTHOUSE

This is not to say we categorically reject the city's interest in ensuring safe and efficient roadways; there is just simply no indication only one form of expression has actually served to make city streets less safe

And there remain a number of content-neutral ways the city could achieve the same goals without unjustifiably abridging individual rights to free speech

For instance, Lexington could prohibit all individuals from approaching stopped motorists—this more directly targets the behavior the city seeks to alleviate and does so without regard to *why* an individual steps into traffic

Laws that promote public safety reflect a fundamental government purpose when precisely enacted and not invoked as pretext to achieve other social interests

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TAKEAWAYS

Have you looked at your local sign ordinance/panhandling ordinance or other similar ordinances since Reed and Champion?

Creating a record is very, very important

- Always better to have and not need than need and not have
- Dangers of creating reasoning after the fact
 - Disingenuous at best

Look to the problem intersections and traffic issues accidents

- Once those numbers are gathered – you could identify those problem intersections and pass an ordinance
 - Lexington largely took this approach

Do not forget your other existing ordinances

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