
In a Victory for Public Agencies, United States Supreme Court Upholds City Off-Premises Sign Ordinance

May 19, 2022
Number 19

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In its recent holding in *City of Austin, Texas v. Reagan National Advertising of Austin, LLC* (U.S., Apr. 21, 2022, No. 20-1029), The United States Supreme Court upheld the right of public agencies to regulate on-premises and off-premises signs differently.

The City of Austin, Texas (City) regulates signs that advertise things that are not located on the same premises as the sign (known as off-premises signs). The City's sign code at the time of this dispute prohibited construction of new off-premises signs or changes to signs if the change would increase the degree of nonconformity or change the method or technology used to convey a message. The City regulation was intended to protect the aesthetic value of the City and to protect public safety. On-premises signs were not similarly restricted.

Reagan National Advertising of Austin, LLC (Reagan) is an outdoor-advertising company that owns billboards in the City. The City denied Reagan's permit applications to digitize some of its off-premises billboards. Reagan filed suit in federal court alleging that the City's prohibition against digitizing off-premises signs, but not on-premises signs, violated the First Amendment's Free Speech Clauses.

First Amendment Free Speech Scrutiny

When analyzing whether a law or regulation violates the First Amendment's Free Speech Clause, courts will apply either strict scrutiny or intermediate scrutiny depending on whether the law or regulation is content-based or content-neutral. Content-based restrictions are those that discriminate based on the topic discussed or the idea or message expressed. Content-based restrictions are subject to strict scrutiny. To meet the strict scrutiny standard, a law or regulation must further a compelling governmental interest, and be narrowly tailored to achieve that interest. Content-neutral restrictions, on the other hand, are justified if they are narrowly tailored to serve a significant governmental interest, without reference to the content of the regulated speech and leave open ample alternative channels for communication of the information.

The question before the courts was whether the City's regulation is subject to strict or intermediate scrutiny. Reagan argued that because the City must read each sign to determine whether the sign was on-premises or off-premises, the City is "examining" the speech, thus making the regulation content-based and subject to strict scrutiny.

The U.S. District Court held that the challenged sign code was content-neutral because the on/off-premises distinction for signs "did not require a viewer to evaluate the topic, idea, or viewpoint of the sign." The District Court also found that there was no evidence that the City applied the sign code "differently for different messages or speakers." Accordingly, the District Court reviewed the City's sign code using intermediate scrutiny applicable to content-neutral regulations of speech.

The Court of Appeals reversed the District Court decision, finding that the City's on/off-premises distinction required a reader to inquire "who is the speaker and what is the speaker saying." The Court of Appeals reasoned that the fact that a government official must read a sign's message to determine the sign's purpose was enough to render the regulation subject to strict scrutiny. The Court of Appeals further found that the City's justifications for the distinction between on and off-premises signs did not meet the high strict scrutiny standard.

The Supreme Court disagreed with the appellate court, holding that the City's on/off-premises sign distinction is content-neutral under the First Amendment because it is akin to a time, place, and manner restriction, which does not require the application of strict scrutiny. The Court remanded the case back to the lower courts to consider whether the City's sign ordinance met the intermediate scrutiny test.

Takeaways

This holding is good news for public agencies as it upholds their ability to enact ordinances that distinguish between on and off-premises signs.

Despite this outcome, public agencies should be aware that the Court's decision was relatively narrow. In its opinion, the Court pointed out that other First Amendment issues related to distinguishing between on and off-premises signs may arise. Among other things, the Court stated that a content-neutral restriction may nevertheless be content-based if the ordinance is passed for an impermissible purpose or justification. Also, to survive intermediate scrutiny, sign restrictions must still be "narrowly tailored to serve a significant governmental interest." Additionally, regulations may not single out any topic or subject matter for differential treatment and may not restrict public discussion on an entire topic.

Public agencies are free to enact ordinances that distinguish between on and off-premises signs. However, public agencies must still ensure that their ordinances are content-neutral, are narrowly tailored to serve a significant governmental interest, and do not restrict public discussion on an entire topic.

If you have any questions about *City of Austin, Texas v. Reagan National Advertising of Austin, LLC* or First Amendment issues, please contact the authors of this Client News Brief or an attorney at

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