Sign Regulation in Alachua:

Recommendations for Updates

Eric Damian Kelly, J.D., Ph.D., FAICP

Contents

Overview of Sign Law since June 2015

In June of 2015, in *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (U.S. 2015), the U.S. Supreme Court held that the Gilbert, Arizona, sign ordinance was unconstitutional because of the multiple distinctions that it made among signs based on their content.

From this often-split Court, there are four separate opinions, but there was no dissent. The Court was essentially unanimous in holding that content-based distinctions in sign ordinances are subject to heightened ("strict" according to the majority) scrutiny. The Court here did not decide whether traffic safety and aesthetic concerns (the typical policy underpinnings of sign ordinances) are "compelling" governmental interests but held that, if those are assumed to be compelling interests, the Town's ordinance was "hopelessly underinclusive" (135 S. Ct. at 2231, 192 L. Ed. 2d at 250). The Court noted that the ordinance:

> [A]llows 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.

135 S. Ct. at 2231-32, 192 L. Ed. 2d at 250-51. Although Kagan (joined by Breyer and Ginsburg) argues in a concurring opinion that the Court erred in applying strict scrutiny, she said of the town and its ordinance:

> 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 14-15 (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.

135 S. Ct. at 2239, 192 L. Ed. 2d at 258-59.

The Supreme Court explained "strict scrutiny" this way in another recent case:

> Because the Act [a state law regulating "violent" video games] imposes a restriction on the content of protected speech, it is invalid unless California can demonstrate that it passes strict scrutiny--that is, unless it is justified by a compelling government interest and is narrowly drawn to serve that interest. The State must specifically identify an "actual problem" in need of solving, and the curtailment of free speech must be actually necessary to the solution… That is a demanding standard. "It is rare that a regulation restricting speech because of its content will ever be permissible." [Internal citations omitted; internal quotations are to *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 120 S. Ct. 1878, 146 L. Ed. 2d 865 (2000)

Brown v. Entm't Merchs. Ass'n, 131 S. Ct. 2729, 2738, 180 L. Ed. 2d 708, 720 (U.S. 2011).

The core dispute in *Gilbert* presented unappealing facts from the town's perspective. The challenged ordinance provided for three types of noncommercial signs: "ideological signs," which could be up to 20 square feet in size and were allowed in all zoning districts without time limits (135 S. Ct. at 2224, 192 L. Ed. 2d at 243 "political signs," which relate to an election, and which can be 16 square feet in size on

residential property and up to 32 square feet on commercial property and on "undeveloped municipal property" and rights-of-way; political signs are time-limited, allowed up to 60 days before a primary election and until 15 days after a general election (135 S. Ct. at 2224-25, 192 L. Ed. 2d at 243); and "temporary directional signs relating to a qualifying event," which can be only six feet in size and can appear only 12 hours before the event and 1 hour afterward (135 S. Ct. at 2225, 192 L. Ed. 2d at 243). Reed is the pastor of a "small, cash-strapped" church that holds services in a variety of available locations and needs and wants to publicize those. Reed and his church-members were apparently not serious lawbreakers; they erected the signs on Saturday morning (perhaps 24 hours before the service rather than 12) and took them down Sunday afternoon (maybe 4 or 5 hours after the service). They were cited by the town for violations and town inspectors apparently rejected an attempt by Reed and his church to reach "an accommodation."

The square holding in the case is broad: content-based distinctions in sign ordinances will result in strict scrutiny of those ordinances. The discussion of the facts in the case is much narrower – focusing on frankly weird distinctions among types of non-commercial signs, applied to a religious institution. That gap between the case that was squarely decided and the stated holding have implications discussed below.

The Current Alachua Ordinance

Eleven years ago, when I assisted the city attorney, city staff, planning board, and city commission in preparing the city's updated sign ordinance, I thought it was clear where sign law was headed – toward a decision like *Reed v. Gilbert*. Thus, the ordinance adopted by the City is mostly content-neutral, although the sweeping nature of the majority's holding in *Reed v. Gilbert* suggests the need for further updates.

Following this overview, this report examines sections of the ordinance with provisions that are or might be considered content-based and offers comments and suggestions. We made no real distinctions among non-commercial messages on signs, thus completely avoiding the problems which the Town of Gilbert created with its ordinance.

There are two issues that need analysis and discussion. One appears to be resolved by the *Gilbert* decision but may not be, and the other simply was not addressed directly in that decision. The issue that may have been resolved relates to time limits on event-related signs (the current ordinance requires that they be removed within seven days after the end of the event); the one that was not addressed deals with commercial signs in residential districts.

Discussion of Particular Issues

Time Limits

The majority opinion in *Gilbert* was clearly concerned with the very restrictive time limits allowed for the "directional" signs used by Pastor Reed and his church and those time limits were clearly part of what led to the finding of unconstitutionality by the Court majority. In a concurring opinion, however, Justice Alito asserted that "Rules imposing time restrictions on signs advertising a one-time event" (135 S. Ct. at 2233, 192 L. Ed. 2d at 252) would continue to pass Constitutional muster under the decision, but I do not think that is what the majority says. Neither did Justice Kagan, who also noted this inconsistency in her concurring opinion (135 S. Ct. at 2237, 192 L. Ed. 2d at 256, in an unnumbered note). Courts will have to

sort out that apparent inconsistency, but I would be inclined to rely on the specific language of the concurring justices related to "one-time" events – which would presumably include events that occur only one time per year or once every two or four years.

The current Alachua ordinance includes time limits on temporary signs, particularly in the rural, agricultural and residential districts:

> (a) If a temporary sign relates to an election or other specific event, it shall be removed within ten days after the occurrence of the event.
>
> (b) A sign offering the premises for sale, rent, or lease shall be posted only during such time as the premises is actually available for sale, rent, or lease; such a sign shall be removed within five days of the execution of a lease or rental agreement, closing of sale, or actual occupancy of the property by a new owner or tenant, whichever shall first occur. A sign advertising a lawful garage or yard sale may be posted not more than 24 hours before the beginning of the sale and shall be removed within two hours of the conclusion of the sale.
>
> Alachua Land Development Code, §6.5.5(A)(2).

This is a much simpler set of time limits than those in the Gilbert ordinance, and it does not lend itself to the type of discrimination that appeared to occur in Gilbert.

One of the major concerns of the Court with the Gilbert ordinance was its "underinclusiveness." The asserted purposes of the ordinance related to community aesthetics and traffic safety. Two signs of similar size and design are likely to have very similar effects on traffic safety and aesthetics, regardless of the messages that they contain. The Town of Gilbert failed to provide any basis for treating different signs differently while attempting to accomplish those purposes. I think that we can lay out a record that explains that temporary signs related to elections and other events play an important role in the community. As the Supreme Court itself said in *City of Ladue v. Gilleo*, 512 U.S. 43, 114 S. Ct. 2038, 129 L. Ed. 2d 36 (1994), where it struck down an ordinance that local officials said prohibited a "Peace in the Gulf" sign on Mrs. Gilleo's residential property:

> Signs that react to a local happening or express a view on a controversial issue both reflect and animate change in the life of a community. Often placed on lawns or in windows, residential signs play an important part in political campaigns, during which they are displayed to signal the resident's support for particular candidates, parties, or causes. They may not afford the same opportunities for conveying complex ideas as do other media, but residential signs have long been an important and distinct medium of expression. [footnote omitted]

512 U.S. 43, 55, 114 S. Ct. 2038, 2045, 129 L. Ed. 2d 36, 47 (1994).

There is clearly a public purpose in allowing such signs, but to serve the purposes of traffic safety and community aesthetics there is a legitimate reason for the signs for past events to go away. I am not sure that we can make a "compelling" government interest case for that, but we can certainly show a "substantial" government interest in it. It would help to have some homeowners and maybe even appraisers testify that truly temporary signs that then go away do not have the same negative effects on a neighborhood as do signs that become permanent.

We might also get at the issue by requiring the removal of signs based on the materials used – that is, we might require that any signs made of non-durable materials (yes, we can define that) be removed within 90 days or some similar period. Such a regulatory approach would clearly be defensible under *Gilbert.* I am not sure that it would be very practical to enforce. If your enforcement people see a sign related to an election or a concert or a revival occurring on a specified date, they can tell instantly whether that date has passed and whether it has been ten or more days since the event ended. Unless you decide to require date-stamped permits for all temporary signs, there is no easy way to track when a temporary sign was erected. I would recommend against requiring permits for temporary signs; I think the backlash regarding political and real estate signs in particular would be enormous.

Someone reading this memo may come up with a better idea, but at this point my recommendation is that we add findings to the ordinance regarding the substantial government interest in allowing temporary signs for events (communication) and the equally substantial interest in having them go away (community aesthetics

Limits on Commercial Signs in Residential Districts

The current ordinance includes this limitation on messages on permanent signs in agricultural and most residential districts:

> Messages, other than commercial messages, including but not limited to names of occupants, address, and expressions of opinions shall be allowed on such signs.

Alachua Land Development Code §6.5.4(A)(1).

Temporary signs in those districts are subject to these restrictions:

> (d) There shall be no more than two temporary signs bearing a limited commercial message on a single lot or tract at any time, where the message is limited to a commercial message offering the property on which it is located for sale, rent, or lease, or advertising a garage or yard sale, which may be lawfully held on the lot or parcel on which it is located. No other commercial message is allowed.
>
> (e) There shall be no limit on the number of temporary signs not bearing commercial messages on a lot or tract.

Alachua Land Development Code §6.5.5(A)(1).

The Supreme Court's decision in *Gilbert* includes no discussion of commercial speech. One colleague suggested that perhaps the decision "does not apply to" commercial speech. I disagree. The logic of *Gilbert* very much applies to commercial speech and the many content-based rules imposed on it in local sign ordinances.

It was, however, only 40 years ago that the Supreme Court first decided that the First Amendment applies to commercial speech in *Virginia State Board of Pharmacy v. Virginia Consumer Council*, 425 U.S. 748, 96 S. Ct. 1817, 48 L. Ed. 2d 346 (1976) (advertising prescription drug prices) and *Bates v. State Bar of Arizona*, 33 U.S. 350, 355, 97 S. Ct. 2691, 53 L. Ed. 2d 810 (1977) (advertising legal services). In those decades, however, the Court has accorded significant Constitutional protection to commercial speech. In *Gilbert* the Court majority cited multiple times to its decision in *Sorrell v. IMS Health Inc.,* 131 S. Ct. 2653, 180 L. Ed. 2d 544 (U.S. 2011), which was very much a commercial speech case. In *Sorrell,* the

Court struck down a Vermont law that prohibited the mining of data about the prescribing practices of physicians, data used by pharmaceutical representatives to target their presentations to individual doctors. The decision was 6 to 3. The majority opinion said in part:

> Under a commercial speech inquiry, it is the State's burden to justify its content-based law as consistent with the First Amendment. To sustain the targeted, content-based burden § 4631(d) imposes on protected expression, the State must show at least that the statute directly advances a substantial governmental interest and that the measure s drawn to achieve that interest. There must be a "fit between the legislature's ends and the means chosen to accomplish those ends." As in other contexts, these standards ensure not only that the State's interests are proportional to the resulting burdens placed on speech but also that the law does not seek to suppress a disfavored message.. [multiple citations omitted]

131 S.Ct. at 2667-68, 280 L.Ed.2d at 560.

What is significant in *Sorrell* is that it applies a "heightened" scrutiny test and thus requires a "substantial government interest" to support content-based distinctions. That is a relatively high bar, but a lower one than "strict scrutiny" and a "compelling government interest." This maintains the Constitutional primacy of noncommercial speech but certainly does not leave commercial speech without protection.

The majority opinion in *Gilbert* is tacitly contradictory, saying at one point that any content-based distinction will subject an ordinance to strict scrutiny but then citing extensively to the four-year old *Sorrell* opinion in which the Court applied only "heightened scrutiny" to the regulation of commercial speech. Because there was no real discussion of commercial speech in the decision, and because the clear concern of the Court was with the weird distinctions among noncommercial signs in the ordinance, a fair reading of the decision would be that any content-based distinction among noncommercial signs will be subject to strict scrutiny, but restrictions on commercial speech will continue to be subject only to heightened scrutiny.

It might seem tempting simply to ban commercial signs in residential neighborhoods, but nothing in the Gilbert decision repudiated the Supreme Court's decision four decades ago striking down a ban on "for sale" and "sold" signs in residential districts (in that case, intended to halt racially-based "block busting"). *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85, 52 L. Ed. 2d 155, 97 S. Ct. 1614 (1977). Thus, we are required to allow at least "for sale" signs in residential districts, and it is difficult to believe that the Supreme Court or lower courts would extrapolate the combination of *Willingboro* and *Gilbert* to hold that we must also allow "Eat at Joe's Hamburgers" signs on front lawns.

Signs for yard sales enjoy no particular Constitutional protection, but a prohibition on them is likely to lead to widespread breaches of the ordinance – something that is likely to undercut the effectiveness of the ordinance in general.

My recommendation is that the City continue to allow a limited number of commercial signs in residential and agricultural districts but that we build a good legislative record to support a "substantial government interest" basis for content distinctions among the few commercial signs allowed in residential districts.

Off-Site Signs

This is an elephant in the room. The entire structure of billboard regulation in the country is based on the on-site/off-site distinction that concerned the Supreme Court when it struck down the San Diego ordinance more than 30 years ago in *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 510, 101 S. Ct. 2882, 69 L. Ed. 2d 800 (1980). The language is embedded in the federal Highway Beautification Act and the state laws adopted to implement it. Although Lady Bird Johnson truly conceived these restrictions as a way to beautify the nation's roadways, they now also contain substantial legal protection for billboards. Although I argue elsewhere in this memo that content-based distinctions between **commercial** and **noncommercial** signs are defensible, I think it will be much more difficult to defend content-based distinctions between different classes of commercial signs. Because the billboard industry is so dependent on these laws for protection, this issue is going to involve high-stakes litigation. I do not think that Alachua wants to run a test case.

I thus strongly recommend that we eliminate the prohibition on off-site signs and address the issue with these additional controls:

- Sign size limits as a percentage of the lot area on which the sign is located (billboards are often on very small leased parcels); and
- Sign size limits as a percentage of the floor area of the building located on the site (a large sign in front of Wal-Mart is much less disruptive to the landscape than a sign of similar size on a vacant parcel or in front of a small hot-dog stand.

I will need some help from planning staff in figuring out what these numbers ought to be and whether we need other controls, also, but I strongly recommend that we take this step.

Traffic and Other Public Signs

The little-noted decision of the Supreme Court in *Pleasant Grove City v. Summum*, 129 S. Ct. 1125, 172 L. Ed. 2d 853 (U.S. 2009) gives governments broad discretion in displaying their own messages. The issue in *Summum* centered on the refusal of Pleasant Grove to accept for display in a public park a monument with a religious (Gnostic) message when it had accepted for display in the park other monuments with messages, including another religious message. Although not directly related to the issues here, the decision is important in recognizing the legal and Constitutional ability of governments to engage in their own speech. Note that in *Summum* the Court carefully distinguished the case from the "public forum" cases, in which local governments have been prohibited from choosing among speakers or messages; the Court noted the significant difference between a permanent or seemingly permanent monument and "Speakers, who no matter how long-winded, will eventually come to the end of their remarks." 129 S. Ct.at 1137, 172 L. Ed. 2d at 868.

Underinclusiveness

There is a dual legal problem with ordinances like the *Gilbert* one in that they make what appear to be arbitrary distinctions among sign types and, in doing so, they appear to allow signs that cause exactly the kinds of problems that they say they want to solve. The underinclusiveness that was at the root of the Supreme Court decision is a common problem with sign ordinances that treat signs with different content differently. In terms of content, it is extraordinarily difficult to show in court that a purple sign that says "Smith for Mayor" (16-foot maximum in Gilbert) is uglier than one that says "save the whales" (20-foot maximum). Similarly it is hard to argue that a "Worship service Sunday at 10" sign (6-square-

foot maximum in Gilbert with significant time limits) is more distracting to drivers than the "Smith for Mayor" sign. Actually the best argument on this issue cuts the other way – the temporary directional sign may be so small that it is hard to read and drivers need to slow to make sense of it.

In other communities, the exceptions are different but equally hard to defend. Consider this extract from the Eleventh Circuit decision striking down the Neptune Beach, Florida, sign ordinance in *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250 (11th Cir. Fla. 2005):

> [T]he sign code recites only the general purposes of aesthetics and traffic safety, offering no reason for applying its requirements to some types of signs but not others. As to traffic safety, the ordinance states that motorists' safety "is affected by the number, size, location, lighting and movement of signs that divert the attention of drivers." § 27-574(2). The sign code therefore permits signs that are "designed, constructed, installed and maintained in a manner which does not endanger public safety or unduly distract motorists." § 27-575(2). The code does not, however, explain how these factors affect motorists' safety, or why a moving or illuminated sign of the permissible variety—for example, a sign depicting a religious figure in flashing lights, which would be permissible under § 27-580(17)'s exemption for "religious displays"—would be any less distracting or hazardous to motorists than a moving or illuminated sign of the impermissible variety—for example, one depicting the President in flashing lights, which falls within no exemption and is therefore categorically barred by § 27-581(5)'s prohibition on signs containing "lights or illuminations that flash." Likewise, a homeowner could not erect a yard sign emitting an audio message saying, "Support Our Troops," since § 27-581(9) generally bans signs that "emit any sound that is intended to attract attention," but the government would be free to erect an equally distracting—and presumably unsafe—sign emitting the audio message, "Support Your City Council," since governmental signs are completely exempt from regulation under § 27-580(4).
>
> Regarding aesthetics, the sign code states that "uncontrolled and unlimited signs may degrade the aesthetic attractiveness of the natural and manmade attributes of the community." § 27-574(5). This provision similarly fails to explain how the sign code's content-based differentiation among categories of signs furthers the City's asserted aesthetic interests. For example, we are unpersuaded that a flag bearing an individual's logo (which is not exempt from regulation), is any less aesthetically pleasing than, say, a flag bearing the logo of a fraternal organization (which is exempt from regulation under § 27-580(3)). Nor is it clear to us that a government-authorized sign reading, "Support Your City Council" in flashing lights (which is exempt from regulation under § 27-580(4)), or a religious sign reading, "Support Your Church" (which is exempt under § 27-580(17)), degrades the City's aesthetic attractiveness any less than a yard sign reading, "Support Our Troops" in flashing lights.
>
> Although the sign code's regulations may generally promote aesthetics and traffic safety, the City has simply failed to demonstrate how these interests are served by the distinction it has drawn in the treatment of exempt and nonexempt categories of signs. Simply put, the sign code's exemptions are not narrowly tailored to accomplish either the City's traffic safety or aesthetic goals.
>
> * * *

> The City has provided no justification, other than its general interests in aesthetics and traffic safety—which are offered only at the highest order of abstraction and applied inconsistently—for exempting certain types of signs but not others. We do not foreclose the possibility that traffic safety may in some circumstances constitute a compelling government interest, but Neptune Beach has not even begun to demonstrate that it rises to that level in this case. Accordingly, we are constrained to conclude that Neptune Beach's sign code is not justified by a compelling government purpose.
>
> Because its enumerated exemptions create a content-based scheme of speech regulation that is not narrowly tailored to serve a compelling government purpose, Neptune Beach's sign code necessarily fails to survive strict scrutiny. Moreover, these exemptions are not severable from the remainder of the ordinance; we are therefore required to find the sign code unconstitutional.

410 F.3d at 1267-69.

Detailed Analysis of the Alachua Ordinance

Section	Text	Comment
6.5.1.G	[Purpose Section] Protecting public interest. To prohibit most commercial signs in residential areas, while allowing residents to use signs to communicate their opinions on matters they deem to be of public interest;	I will draft an entirely new "findings" section to replace the existing "purpose" section; it will reflect the discussion in this memo.
6.5.4.A.1.	[Residential and Agricultural districts] For a residential use, not more than two freestanding permanent signs per lot, each of which shall be limited in size of no more than two square feet each and a height of no more than four feet. Messages, other than commercial messages, including but not limited to names of occupants, address, and expressions of opinions shall be allowed on such signs.	See discussion above regarding commercial speech; I recommend that we keep this.
6.5.4.A.2.	[Residential and Agricultural Districts] [Neighborhood Identification Signs] [b] Each such sign must identify a distinct subarea of	

	the City and be located at the entrance to such neighborhood from a collector or arterial street;	
6.5.4.A.2.	[Residential and Agricultural Districts] [Neighborhood Identification Signs] [g] The sign must bear no commercial message;	See discussion above on commercial speech. Keep.
6.5.4.B	[Agricultural Districts Only] (1) Because agricultural districts in a growing community represent a blending of the business of agriculture and residential uses, it is necessary to provide for some types of signs that are not allowed in purely residential districts, but that serve the business of agriculture. (2) For that reason, any agricultural or other business conducted lawfully in an agricultural district shall be allowed one freestanding sign not to exceed 100 square feet in size and not to exceed 16 feet in height.	This language relates to the use, not the sign content. Keep.
6.5.4.C(2)(c)	[Business Districts] Signage permitted in accordance with Section 6.5.4(C)(2)(b) shall not be considered off-site signage.	Language not necessary in light of other proposed revisions; delete.
6.5.4.C(2)(e)	[Business Districts] To assist in way-finding and to promote a sense of place, freestanding signs may include the name of the building or development. When a freestanding sign includes the name of the building or development, and such name contains no commercial message, the name of the building or development shall be considered one item of information as defined in Section 6.5.7(J).	Delete. This language is not essential and abuse is unlikely. A center might lease part of its signage to a neighboring business, but there is little harm in that – and I think any content-based distinction among commercial messages is likely to pose problems.
6.5.4.C(2)(g)(iv)	[Business Districts -- Outparcels] The freestanding sign shall be utilized to advertise tenants located on the outparcel upon which the	Delete; see comment immediately above.

	freestanding sign is located;	
6.5.4.D	[General Standards for Freestanding Signs] Address. The E-911 address of an agricultural use, institutional use, or business use may be included on the sign face or on the sign structure. Inclusion of the E-911 address will not be included in the calculation of the maximum area of the sign face, nor will it cause the sign structure to be included in the calculation of the maximum area of the sign face.	Keep; will add appropriate findings; need testimony from public safety officials.
6.5.4.F	Signs in the public rights-of-way. The following permanent signs are allowed in the public rights-of-way: (1) Public signs erected by or on behalf of a governmental body to post legal notices, identify public property, convey public information, and direct or regulate pedestrian or vehicular traffic. (2) Bus stop signs erected by a public transit company authorized to operate in the City. (3) Informational signs of a public utility regarding its poles, lines, pipes or other facilities. (4) Other signs appurtenant to a use of public property permitted under a franchise or lease agreement with the City.	Government speech; see discussion of *Pleasant Grove* in text of memo.
6.5.4.G	Welcome signs. Signs identifying entry into the corporate limits of the City which are located on public property, in easements granted to the City, or in the public rights-of-way shall not exceed 150 square feet and shall be subject to the provisions of Section 6.5.4(D).	Government speech under *Pleasant Grove.* Keep.
6.5.5.A(1)(d)	[Temporary Signs in Residential and Agric Districts] There shall be no more than two temporary signs bearing a limited commercial message on a single lot	See text discussion on this issue; I would recommend keeping this provision, but we ought

	or tract at any time, where the message is limited to a commercial message offering the property on which it is located for sale, rent, or lease, or advertising a garage or yard sale, which may be lawfully held on the lot or parcel on which it is located. No other commercial message is allowed.	to discuss.
6.5.5.A(1)(e)	There shall be no limit on the number of temporary signs not bearing commercial messages on a lot or tract.	I think we can keep, but we should discuss. We need findings to address the underinclusiveness issue under both *Gilbert* and *Solantic*.
6.5.5.A(2)	[Temporary Signs in Residential and Agric Districts] (a) If a temporary sign relates to an election or other specific event, it shall be removed within ten days after the occurrence of the event. (b) A sign offering the premises for sale, rent, or lease shall be posted only during such time as the premises is actually available for sale, rent, or lease; such a sign shall be removed within five days of the execution of a lease or rental agreement, closing of sale, or actual occupancy of the property by a new owner or tenant, whichever shall first occur. A sign advertising a lawful garage or yard sale may be posted not more than 24 hours before the beginning of the sale and shall be removed within two hours of the conclusion of the sale.	See discussion in text. We need good findings and some testimony on some of these issues – and we need to discuss.
6.5.5.A(3)(d)	[Residential and Agric Districts – Accessory Signs for New Developments] Such sign shall be removed on the earlier of the following: (i) Three years after the approval of the sign permit for such sign; or (ii) Upon transfer of title of 80 percent or more of the available lots, dwellings, or dwelling units included in the approved plat.	This language relates to the use and is not content-based. I think it is acceptable under *Gilbert.*

6.5.5.A(4)	[Residential and Agric. Districts] Notice and other official signs. Temporary signs required to provide notice or for other purposes under Federal or State law or local ordinance or by order of a court of competent jurisdiction shall be allowed. Such signs shall be removed at the end of the period of required posting. The size limitations applicable to other temporary signs in these districts shall not apply to signs posted to conform to statutory requirements or judicial orders, where the clear language of the statute or the order requires that such sign be larger or taller than would otherwise be permitted under this subsection.	Some of these are not technically "government speech" in the classic sense, but they should all qualify as such with appropriate findings.
6.5.5.B(1)(d)	[Temporary Signs – Business Dists] Such sign may be used for the purpose of advertising the property, or a portion thereof, for sale, rent or lease, or for expressing support for a candidate for office or a ballot issue or expressing an opinion on any other matter deemed by the person expressing the view to be of public interest; the sign may contain a message related to that purpose.	Need to discuss. It would be safer just to allow an extra sign, which could contain any commercial or noncommercial message.
6.5.5.B(1)(e)	[Temporary Signs – Business Districts] If such sign relates to an election or other specific event, it shall be removed within ten days after the occurrence of the event. If the sign relates to the sale, rent, or lease of property, it shall be removed within five days of the execution of a lease or rental agreement, closing of a sale, or actual occupancy of the property by a new owner or tenant, whichever shall first occur.	See discussion in text regarding time limits. I think we can keep this, but we need to discuss.
6.5.5.B(3)	[Temporary Signs – Business Districts] Notice and other official signs. Temporary signs required to provide notice or for other purposes	Government Speech under *Pleasant Grove.*

	under Federal or State law or local ordinance or by order of a court of competent jurisdiction shall be allowed. Such signs shall be removed at the end of the period of required posting. The size limitations applicable to other temporary signs in these districts shall not apply to signs posted to conform to statutory requirements or judicial orders, where the clear language of the statute or the order requires that such sign be larger or taller than would otherwise be permitted under this subsection.	
6.5.5.B(4)(d)	[Sandwich Board Signs] Such sign may contain commercial messages related to goods and services offered at the business establishment or messages other than commercial messages;	This should probably be changed to allow any commercial or non-commercial message. Since the operator of the business is responsible for putting the sign out and taking it in daily, I cannot imagine that it would be used for any purpose other than promoting that business. If there is abuse, the city could amend the ordinance to prohibit sidewalk signs.
6.5.5.B(4)(e)	The sign shall be taken inside the establishment when the business closes each night or at 9:00 p.m., whichever is earlier; and shall not be placed outside again until 7:00 a.m. or when the business opens each morning, whichever is later. Three or more violations of this provision during any 60-day period shall be grounds for the City to suspend or revoke the right of the violator to have a sandwich board sign; and	This time limit has nothing to do with sign content and should be defensible under *Gilbert.*
6.5.5.C(1)(a)	One temporary banner may be displayed on property no more than four times per year. The banner may be displayed for up to 14 days per occurrence, with a minimum of 45 days between each occurrence.	This time limit is aesthetic based and has nothing to do with sign content; it is completely defensible under *Gilbert.*
6.5.5.C(2)(a)	[Banners on Public ROW]	Need to discuss. Is this provision used much? This raises some of the

	The message on the banner relates to an event meeting all of the following criteria: (i) The primary sponsor of such event is a governmental entity in the State of Florida or a nonprofit organization with a current tax exemption under Section 501(c) of the Internal Revenue Code;Such event has been conducted at least three times in the past five years and has attracted 250 or more visitors or other participants; and (ii) The event is held in the City of Alachua or for the benefit of an organization based in the City.	issues that concerned the Court in *Gilbert*.
6.5.6.	(A) *Generally.* One or more flags shall be permitted on a single lot or parcel, provided that all flagpoles shall be set back from each property boundary a distance equal to the height of the flagpole. (B) Commercial messages. Flags with commercial messages are permitted in the same locations and subject to the same restrictions as other signs with commercial messages. (C) Relationship to other limits. The square footage of flags bearing a commercial message shall be counted against the maximum sign area allowed.	This could raise underinclusiveness issues under *Gilbert* and *Solantic.* We should probably at least limit the number of poles and the number of flags per pole.
6.5.7.C	[Prohibited Signs] Signs on public property, except signs erected by a public authority for a public purpose. Any sign installed or placed on public property, except in conformance with the requirements of this section, shall be deemed illegal and shall be forfeited to the public and subject to confiscation. In addition to the other remedies herein, the City shall have the right to	This meets public speech test. Keep.

	recover from the owner or person placing such sign the cost of removal and disposal of such sign.	
6.5.7.J.	[Prohibited Signs] Signs legible from a public right-of-way containing more than 15 items of information on each sign face. An item of information is a word, an initial, a logo, an abbreviation, a number, a symbol or a geometric shape. This prohibition shall not apply to signs posted to conform to statutory requirements or judicial orders, where clear language of the statute or the order requires that such sign contain more than 15 items of information.	I would recommend deleting this. It was based on a concept developed by my friend Prof. Daniel Mandelker, but it looks a lot like a content control. We could address the same issue by imposing minimum letter height requirements (there are guidelines in the *Manual of Uniform Traffic Control Devices,* published by the Federal Highway Administration – but that seems overly complex. Let's discuss.
6.5.7.K.	[Prohibited Signs] Off-site signs, except as otherwise provided for within these LDRs in Section 6.5.4(C)(2) and Section 6.5.4(G).	See discussion and recommendation in text.
6.5.7.L.	[Prohibited Signs] Snipe signs, which consist of off-site signage which is tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, stakes, fences, or to other objects.	Delete "off-site" and this is fine.
6.5.8	Substitution of message. Any sign allowed under this section or a predecessor ordinance, by sign permit, by conditional use permit, or by variance, or may contain, in lieu of any other message or copy, any lawful message that does not direct attention to a business operated for profit, or to a product, commodity, or service for sale or lease, or to any other commercial interest or activity, so long as said sign complies with the size, height, area, and other requirements of this section and these LDRs.	May become irrelevant, but not a bad safety clause to keep.

Treatise Reference

The material covered here is treated in depth – with a complete historical background – in Chapter 17 of *Zoning and Land Use Controls* (LexisNexis – Matthew Bender); see especially §17.02 "Regulating Signs Using Content-based Distinctions." For the last couple of years, that section has included an "Analysis and Warning" suggesting that sign law was trending in exactly the direction reflected in this opinion.

Author Bio

Eric Damian Kelly is a lawyer and city planner with forty years of experience in the field. He is a Professor of Urban Planning at Ball State University, but he also maintains a consulting practice. Much of his consulting work in the last twenty years has focused on the intersection of the First Amendment and land-use law – dealing specifically with regulation of signs and sex businesses. He has been General Editor of Matthew Bender's *Zoning and Land Use Controls* since 1995; he is the author of two other books and of seven technical reports published by the American Planning Association. He holds a B.A. in Political Economy from Williams College, Master of City Planning and Juris Doctor from the University of Pennsylvania, and a Ph.D. in Public Policy from The Union Institute. He is a member and past national president of the American Planning Association, and a member of the College of Fellows of the American Institute of City Planners and the American Bar Association. He is admitted to practice law in Colorado.

Eric Damian Kelly
413 Park Avenue
Salida CO 81201

Or

3410 West University Ave.
Muncie IN 47304

E-mail: planatty@comcast.net

Cell: 765-215-3559

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. 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.

SUPREME COURT OF THE UNITED STATES

Syllabus

REED ET AL. *v*. TOWN OF GILBERT, ARIZONA, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13–502. Argued January 12, 2015—Decided June 18, 2015

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 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

Syllabus

speech that do not survive strict scrutiny. Pp. 6–17.

(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. 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. ___, ___–___. 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 ___. 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. Pp. 6–7.

(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. Pp. 7.

(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. 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 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, 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. 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. This same analysis applies to event-based distinctions. Pp. 8–14.

(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. ___, ___. 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. Nor has it shown that temporary directional signs pose a greater threat to public safety than ideological or political signs. Pp. 14–15.

(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. 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. 16–17.

Syllabus

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

SUPREME COURT OF THE UNITED STATES

No. 13–502

CLYDE REED, ET AL., PETITIONERS *v.* TOWN OF GILBERT, ARIZONA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

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.

[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).

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." §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.*

---

[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.

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 loca-

---

[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.

tions, 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 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 (CA9 2013). Relying on this Court's decision in *Hill* v. *Colorado*, 530 U. S. 703 (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. ___ (2014), and now reverse.

II

A

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 (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 (1992); *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 115, 118 (1991).

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. ___, ___–___ (2011) (slip op., at 8–9); *Carey* v. *Brown*, 447 U. S. 455, 462 (1980); *Mosley*, *supra,* at 95. 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 ___ (slip op., at 8). 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.

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 (1989). Those laws, like those that are content based on their face, must also satisfy strict scrutiny.

B

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. 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; emphasis deleted).

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 (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. 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 (1994). In other words, an

innocuous justification cannot transform a facially content-based law into one that is content neutral.

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 ___–___ (slip op., at 8–9) (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 (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 (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 (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 (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. In that context, we looked to 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. But *Ward*'s framework "applies only if a statute is content neutral." *Hill*, 530 U. S., at 766 (KENNEDY, J., dissenting). Its rules thus operate "to protect speech," not "to restrict it." *Id.,* at 765.

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 (SCALIA, J., dissenting).

For instance, in *NAACP* v. *Button*, 371 U. S. 415 (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. 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. 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. 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.

This analysis conflates two distinct but related limitations that the First 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 (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 (1980).

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. 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.

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 (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. 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. Characterizing a distinction 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.

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 6. 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 (1994) (O'Connor, J., concurring).

III

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. ___, ___ (2011) (slip op., at 8) (quoting *Citizens United*, 558 U. S.*,* at 340). 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 tai-

lored 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, 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.

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.

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 (2002), the Sign Code fails strict scrutiny.

IV

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.

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 (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 (CA11 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 (CA1 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. 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.

* * *

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

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 13–502

CLYDE REED, ET AL., PETITIONERS *v.* TOWN OF GILBERT, ARIZONA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

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 (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 (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 safety and serves legitimate esthetic objectives.

---

*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 (1989). But they need not meet the high standard imposed on viewpoint- and content-based restrictions.

SUPREME COURT OF THE UNITED STATES

No. 13–502

CLYDE REED, ET AL., PETITIONERS *v.* TOWN OF GILBERT, ARIZONA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

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 (1995); see also *Boos* v. *Barry*, 485 U. S. 312, 318–319 (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 (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 (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 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 (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. ___, ___ (2011) (BREYER, J., dissenting) (slip op., at ___). The Court has also said that "government speech" escapes First Amendment strictures. See *Rust* v. *Sullivan*, 500 U. S. 173, 193–194 (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 (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 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. ___, ___–___ (2012) (BREYER, J., concurring in judgment) (slip op., at 1–3); *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 400–403 (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.

SUPREME COURT OF THE UNITED STATES

No. 13–502

CLYDE REED, ET AL., PETITIONERS *v.* TOWN OF GILBERT, ARIZONA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

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 14 (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 12, 16–17. And although the majority holds out hope that some sign laws with subject-matter exemptions "might survive" that stringent review, *ante*, at 17, 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. ___, ___ (2015) (slip op., at 9). 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.* v. *Ragland*, 481 U. S. 221, 231 (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.*

---

*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 2 (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

Although the majority insists that applying strict scrutiny to all such ordinances is "essential" to protecting First Amendment freedoms, *ante*, at 14, 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. ___, ___–___ (2014) (slip op., at 8–9) (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 (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 (2007) (quoting *R. A. V.*, 505 U. S., at 390). 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 (1995). It is also the case (except in nonpublic or limited public forums) when a law restricts "discussion of an entire topic" in public debate. *Consolidated*

---

differential treatment" and "defin[es] regulated speech by particular subject matter." *Ante*, at 6, 12 (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 14.

Edison Co. of N. Y. v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 537, 539–540 (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 (quoting *Police Dept. of Chicago* v. *Mosley*, 408 U. S. 92, 96 (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 (1978); accord, *ante*, at 1 (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 (quoting *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 116 (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 14. 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; see *R. A. V.*, 505 U. S., at 388 (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 (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 (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 (listing exemptions); see *id.*, at 804–810 (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; see also *Renton* v. *Playtime Theatres, Inc.*, 475 U. S. 41, 48 (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 (1994), the Court assumed *arguendo* that a sign ordinance's exceptions for address signs, safety signs, and for-sale signs in residential areas did not trigger strict scrutiny. See *id.*, at 46–47, and n. 6 (listing exemptions); *id.*, at 53 (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 14–15 (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 14. 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.

ORDINANCE 18-01

AN ORDINANCE OF THE CITY OF ALACHUA, FLORIDA, RELATING TO THE AMENDMENT OF THE CITY'S LAND DEVELOPMENT REGULATIONS ("LDRS"); AMENDING SECTION 2.4.11(A) TO CORRECT A SCRIVENER'S ERROR; AMENDING SECTIONS 2.4.11(C)(5) AND (6), RELATING TO ON-SITE SIGNS AND INCIDENTIAL SIGNS; AMENDING SECTION 3.7.2(C)(5)(h)(i) FOR INTERNAL CONSISTENCY; AMENDING SECTION 6.5.1, RELATING TO THE FINDINGS AND PURPOSE OF THE CITY'S SIGN REGULATIONS; AMENDING SECTION 6.5.4(C)(2), RELATING TO FREESTANDING SIGNS FOR MULTI-TENANT BUILDINGS OR DEVELOPMENTS; AMENDING SECTION 6.5.4(C)(3), RELATING TO WALL SIGNS; AMENDING SECTION 6.5.4(F), RELATING TO SIGNS IN THE PUBLIC RIGHTS-OF-WAY; AMENDING SECTION 6.5.5(B)(1), RELATING TO THE GENERAL PROVISIONS FOR TEMPORARY SIGNS IN BUSINESS DISTRICTS; AMENDING SECTION 6.5.5(B)(4), RELATING TO SANDWICH BOARD SIGNS; AMENDING SECTION 6.5.5(C)(1), RELATING TO TEMPORARY BANNERS; AMENDING SECTION 6.5.6, RELATING TO FLAGS; AMENDING SECTION 6.5.7, RELATING TO PROHIBITED SIGNS; AMENDING SECTION 6.5.9(D), TO CORRECT A SCRIVENER'S ERROR; DELETING SECTION 8.5.2 AND AMENDING SECTIONS 8.5.3 AND 8.5.4, WHICH RELATE TO THE REMOVAL OF NONCONFORMING SIGNS, THE REMOVAL OF NONCONFORMING SIGN LIGHTING, AND THE REMOVAL OF SIGNS RENDERED NONCONFORMING DUE TO A LACK OF MAINTENANCE, AND RENUMBERING SUBSEQUENT SUBSECTIONS OF SECTION 8.5; DELETING SECTION 8.5.5(E), WHICH RELATES TO THE REMOVAL OF NONCONFORMING FLAGPOLES; AND AMENDING SECTION 10.2 TO REVISE THE DEFINITION OF "FRONT FAÇADE" TO ALSO DEFINE THE TERM "FRONT ELEVATION"; PROVIDING A REPEALING CLAUSE; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, in June 2015, the Supreme Court of the United States ("Court") addressed the First Amendment protections afforded to private speech in signage and elaborated upon the meaning of "content-neutral" as it relates to signage regulations in the *Reed v. Town of Gilbert* case ("the Gilbert case"); and,

WHEREAS, in the *Gilbert* case, the Court found that the Town of Gilbert, Arizona's sign code regulated speech based upon its content, and singled out different types of signs for special treatment by specifying different requirements for the size, locations, and times at which certain signs could be displayed based upon the content of the sign; and,

WHEREAS, a Text Amendment to the City's Land Development Regulations ("LDRs"), as described below, has been proposed ("Amendment") in order to amend the City's signage regulations to comply with the opinions rendered by the Court in the *Gilbert* case, as well as to address various sections of the City's signage regulations which warrant clarification or may not by fully contemplated by the existing regulations; and,

WHEREAS, the City advertised a public hearing to be held before the Planning and Zoning Board, sitting as the Local Planning Agency ("LPA"), on August 31, 2017; and

WHEREAS, the LPA conducted a quasi-judicial public hearing on the proposed Amendment on September 12, 2017, and the LPA reviewed and considered all comments received during the public hearing concerning the proposed Amendment and made its recommendation to the City Commission; and

WHEREAS, the City advertised public hearings to be held before the City Commission on _____, 2017, and on _____, 2017; and

WHEREAS, the City Commission conducted quasi-judicial public hearings on the proposed Amendment on _____, 2017, and _____, 2017, and provided for and received public participation at both public hearings; and

WHEREAS, the City Commission has determined and found said application for the Amendment to be consistent with the City's Comprehensive Plan and City's LDRs; and

WHEREAS, for reasons set forth in this ordinance that is hereby adopted and incorporated as findings of fact, that the Alachua City Commission finds and declares that the enactment of this Amendment is in the furtherance of the public health, safety, morals, order, comfort, convenience, appearance, prosperity, or general welfare;

NOW THEREFORE BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ALACHUA, FLORIDA:

Section 1. Interpretation of Recitals

The above recitals are true and correct and incorporated in this ordinance.

Section 2. Findings of Fact and Conclusions of Law

The authority for the enactment of this ordinance is Chapter 163, Part I, Florida Statutes; Sections 166.021 and 166.041; and the City's Comprehensive Plan.

Section 3. Amendment to the Land Development Regulations

The proposed Amendment to the City's Land Development Regulations are attached as Exhibit "A" and are hereby incorporated herein by reference.

Section 4. Codification of and Correction of Scrivener's Errors

The City Manager or designee, without public hearing, is authorized to correct any typographical errors which do not affect the intent of this ordinance. A corrected copy shall be posted in the public record.

Section 5. Ordinance to be Construed Liberally

This ordinance shall be liberally construed in order to effectively carry out the purposes hereof which are deemed to be in the best interest of the public health, safety, and welfare of the citizens and residents of the City of Alachua, Florida.

Section 5. Repealing Clause

All ordinances or parts of ordinances in conflict herewith are, to the extent of the conflict, hereby repealed.

Section 6. Severability

It is the declared intent of the City Commission of the City of Alachua that, if any section, sentence, clause, phrase, or provision of this ordinance is for any reason held or declared to be unconstitutional, void, or inoperative by any court or agency of competent jurisdiction, such holding of invalidity or unconstitutionality shall not affect the remaining provisions of this ordinance, and the remainder of the ordinance after the exclusions of such part or parts shall be deemed to be valid.

Section 7. Effective Date

This ordinance shall take effect immediately upon its adoption by the City Commission and the signature of the Mayor.

Passed on First Reading the ___ day of _____ 2017.

PASSED and ADOPTED, in regular session, with a quorum present and voting, by the City Commission, upon second and final reading this ___ day of _____ 2017.

CITY COMMISSION OF THE
CITY OF ALACHUA, FLORIDA

Gib Coerper, Mayor
SEAL

ATTEST:

Traci L. Gresham, City Manager/Clerk

APPROVED AS TO FORM

Marian B. Rush, City Attorney

EXHIBIT "A"

Section 2.4.11(A) of the City's LDRs is amended as follows (text that is underlined is to be added and text that is shown as ~~strikethrough~~ is to be removed). Except as amended herein, the remainder of Section 2.4.11(C) remains in full force and effect:

2.4.11(A) *Purpose and applicability*. Signs regulated by Section 6.5, Signage, but not covered by the provisions of general sign permits, shall be erected, installed, or created only in accordance with a duly ~~issues~~ issued and valid sign permit from the Land Development Regulations Administrator. Such a permit shall be issued only in accordance with the following requirements and procedures.

Section 2.4.11(C) of the City's LDRs is amended as follows (text that is underlined is to be added and text that is shown as ~~strikethrough~~ is to be removed). Except as amended herein, the remainder of Section 2.4.11(C) remains in full force and effect:

2.4.11(C) *General sign permit granted.* A general sign permit is granted for the following types of signs or activities in any district (unless expressly stated otherwise), provided the signs are erected and maintained in compliance with the standards of this section and the standards for the district in which the sign is located.

(1) Temporary signs allowed under Section 6.5.5, Temporary signs allowed, except for accessory signs for new development and temporary banners, shall be erected in conformance with this section.

(2) The changing of copy on any existing sign.

(3) Performing required or routine maintenance on a sign, except that this general sign permit shall not waive the requirement to obtain building or electrical permits when the nature of the work requires such permits under the Florida Building Code.

(4) Traffic signs, such as "Stop" and "Yield" signs, where such signs conform to the standards of the Federal Highway Administration's (FHWA) Manual on Uniform Traffic Control Devices (MUTCD) adopted by the State of Florida as Rule 14-15.010, F.A.C., and the Standard Highway Signs, English edition, 2004, and bear no commercial message.

(5) On-site ~~commercial~~ signs providing directions to distinct subareas or use areas of a large development or other ~~commercial~~ information, provided that such signs shall:

(a) Not have any ~~commercial~~ message that is legible from a public street or sidewalk; ~~for purposes of this subsection, words like "map," "directory," or "information" shall not be considered commercial messages;~~

(b) Not exceed six square feet in sign area, four feet in length, and ~~five~~ eight feet above grade; and

(c) Shall be located at least 150 feet from any other private directional sign on the same lot or site.

(6) Incidental signs, such as wall signs or freestanding signs of less than two square feet providing information or instructions, such as "Exit," "Restrooms," "Telephone," or "No Trespassing.," ~~and containing no commercial message.~~ If freestanding, such incidental signs shall not be more than three feet in height.

Section 3.7.2(C)(5)(h)(i) of the City's LDRs is amended as follows (text that is underlined is to be added and text that is shown as ~~strikethrough~~ is to be removed). Except as amended herein, the remainder of Section 3.7.2(C)(5)(h) remains in full force and effect:

3.7.2(C)(5)(h) *Signage.* Except as stated below, signs within the Gateway Overlay District shall comply and be subject to the standards in Section 6.5

(i) *Prohibited signs.*

a. Billboards.

b. Signs that display video or images ~~or changeable copy~~.

c. Balloons, streamers, and air- or gas-filled figures.

d. Promotional beacons, searchlights, and/or laser lights/images.

e. Signs that emit audible sounds, smoke, vapor, particles, or odor.

f. Signs on utility poles or trees.

g. Signs or advertising devices attached to any vehicle or trailer so as to be visible from public right-of-way, including vehicles with for sale signs and excluding vehicles used for daily transportation, deliveries, or parked while business is being conducted on-site.

h. Neon tubing used to line the windows, highlight architectural features on the building, or used as part of a sign, excluding incidental signs as provided for in Section 2.4.11.

Section 6.5.1 of the City's LDRs is amended as follows (text that is underlined is to be added and text that is shown as ~~strikethrough~~ is to be removed). Except as amended herein, the remainder of Section 6.5.1 remains in full force and effect:

6.5.1 *Findings and Purpose*

(A) *Findings.* As a basis for updating and readopting other parts of this sign ordinance in 2017, the City Commission finds that:

(1) As recognized by the U.S. Supreme Court in *City of LaDue v. Gilleo* (1994), signs provide an important and inexpensive medium through which citizens can express their opinions on matters of public interest;

(2) For all businesses, and for small businesses especially, signs provide an important tool for attracting customers;

(3) Signs are essential way-finding tools that help drivers and pedestrians find the businesses, houses of worship, residences or other locations that they may be seeking; as way-finding tools, signs limit the necessity of driving unnecessary extra miles and reduce the risk of accidents involving lost or confused drivers;

(4) In business districts, signs often contribute to the ambience, adding color and night-lighting to areas;

(5) In residential neighborhoods, inappropriate signage can detract from the quiet character that often attracts people to live in such areas;

(6) Signs of excessive size or in excessive numbers can create clutter and detract from the character of any area of the city, including business districts;

(7) Several studies have shown that signs distract drivers, sometimes to a dangerous extent;

(8) Rapidly changing message boards are particularly distracting to drivers as their eyes linger on the signs and away from the road;

(9) Signs in excessive numbers and of excessive sizes can contribute to reductions or stagnation in property values, particularly in or near residential areas;

(10) Temporary signs serve many purposes, allowing people to express their opinions on public issues or indicate that a place is for sale or rent or that they are selling family treasures or other goods at a yard or garage sale;

(11) Temporary signs can contribute substantially to clutter and it is important for the City to attempt to limit that clutter by limiting the number of temporary signs of commercial messages that can be displayed and by setting deadlines for the removal of all temporary signs;

(12) In attempting to balance the multiple interests outlined in the next section, the City Commission has concluded that it is not wise to limit the number of signs that people can post expressing their opinions on public issues; the City Commission also finds that the tendency to create clutter with signs is somewhat self-limiting in residential areas, as people try to be good neighbors, sometimes with the encouragement of neighborhood associations;

(13) Of all signs existing in the City and in surrounding areas, the City finds the least utility and public benefit in billboards or off-site signs, which often advertise products with no relation to the community and with multiple other media through which to communicate their message; for that reason, the City Commission has maintained greater restrictions on the locations of off-site signs than on other commercial signs; and

(14) Like signs, flags typically communicate messages, and, like signs, they can contribute to a busy or even cluttered skylines, factors that the City Commission has weighed in setting reasonable limits on the numbers of flags displayed and treating flags with commercial messages as commercial signs;

(B) Purpose. This section establishes standards for the area, location, and character of signs that are permitted as principal or accessory uses. No signs shall be permitted in any location except in conformity with this section and these LDRs. The purpose of this section is to achieve a balance among the following goals:

(1)~~(A)~~ *Communication.* To encourage the effective use of signs as a means of communication for businesses, organizations, and individuals in the City of Alachua;

(2)~~(B)~~ *Way-finding.* To provide a means of way-finding in the City, thus reducing traffic confusion and congestion;

(3)~~(C)~~ *Business identification and advertising.* To provide for adequate business identification and advertising;

(4)~~(D)~~ *Protect economic and social well-being.* To prohibit signs of excessive size and number that they obscure one another to the detriment of the economic and social well-being of the City;

(5)~~(E)~~ *Protect public safety and welfare.* To protect the safety and welfare of the public by minimizing the hazards to pedestrian and vehicular traffic;

(6)~~(F)~~ *Preserve property values.* To preserve property values by preventing unsightly and chaotic development that has a blighting influence upon the City;

(7)~~(G)~~ *Protecting public interest.* To prohibit most commercial signs in residential areas, while allowing residents to use signs to communicate their opinions on matters they deem to be of public interest;

(8)~~(H)~~ *Eliminate signs which have the potential to cause driver distraction.* To differentiate among those signs that, because of their location, may distract drivers on public streets and those that may provide information to pedestrians and to drivers in their cars by out of active traffic;

(9)~~(I)~~ *Minimize adverse impacts.* To minimize the possible adverse effects of signs on nearby public and private property; and

(10)~~(J)~~ *Consistency with the Comprehensive Plan.* To implement the following specific goals of the Comprehensive Plan:

(a)~~(1)~~ To maintain a high quality of life for all of its present and future citizens.

(b)~~(2)~~ To utilize innovative design standards to provide an attractive built environment; and

(c)~~(3)~~ To manage future growth and development.

Section 6.5.4(C)(2) of the City's LDRs is amended as follows(text that is underlined is to be added and text that is shown as ~~strikethrough~~ is to be removed). Except as amended herein, the remainder of Section 6.5.4(C) remains in full force and effect:

6.5.4(C)(2) *Freestanding signs for multi-tenant buildings or developments.* Except as otherwise provided within these LDRs, freestanding signs are permitted for multi-tenant buildings or developments, subject to the following standards:

(a) A multi-tenant building or development may have one freestanding sign per building/development, except when a building/development has more than 400 feet of frontage on a road, the building/development may have up to two freestanding signs along a road frontage, which must be separated from each other by at least 150 feet of road frontage. In the case of a multi-tenant buildings/development with frontage along more than one road, the building/development may have one additional freestanding sign along the secondary frontage, which must be separated from other freestanding signs by at least 150 feet of road frontage.

(b) Freestanding signs which are part of a multi-tenant development may be located on any lot or outparcel which is part of the development. For purposes of this section, a lot or outparcel shall be considered part of a multi-tenant development when:

(i) The lot/outparcel upon which a freestanding sign is located is in common ownership with other lots/outparcels which are part of the same multi-tenant development;

(ii) The lot/outparcel upon which a freestanding sign is located is subject to a master association with one or more lots/outparcels which are part of the same multi-tenant development; ~~or,~~

(iii) The lot/outparcel upon which a freestanding sign is located is afforded ingress and egress from a shared access drive connecting between a road, the lot/outparcel upon which the freestanding sign is located, and one or more lots/outparcels which are part of the same multi-tenant development~~.~~;

(iv) The freestanding sign is located on a lot or outparcel which is part of the development and is included within a master sign plan for a Planned Development that has been approved pursuant to Section 3.6.3(A)(5), Section 3.6.3(B)(5)(c), Section 3.6.3(C)(5), or Section 3.6.3(D)(5) of these LDRs; or,

(v) The freestanding sign is located on a lot or outparcel which is part of the development as shown on a Site Plan (Section 2.4.9) and is included within a sign plan approved as part of a Site Plan. A freestanding sign approved in accordance with this section shall have continuous foundation or other support under it in the style of what is commonly called a monument sign.

(c) Signage permitted in accordance with Section 6.5.4(C)(2)(b) shall not be considered off-site signage.

(d) For freestanding signs which are part of a multi-tenant building or development, the maximum sign area of a freestanding sign and its structure shall not exceed 150 square feet. The maximum area of an individual sign face shall not exceed 100 square feet.

~~(e) To assist in way-finding and to promote a sense of place, freestanding signs may include the name of the building or development. When a freestanding sign includes the name of the building or development, and such name contains no commercial message, the name of the building or development shall be considered one item of information as defined in Section 6.5.7(J).~~

(e)~~(f)~~ When a freestanding sign which is part of a multi-tenant building or development includes sign area for individual tenants within the building/development, the total sign area dedicated to individual tenants of the building/development shall not exceed 66 percent of the area of the sign and its structure.

(f)~~(g)~~ In addition to the freestanding signage permitted pursuant Sections 6.5.4(C)(2)(a) – (e)~~(f)~~, one freestanding sign may be permitted on a developed outparcel, subject to the following:

(i) The outparcel shall have a minimum lot area of 40,000 square feet;

(ii) The maximum area of the freestanding sign and its structure shall not exceed 50 square feet;

(iii) The maximum height of the freestanding sign shall not exceed ten (10) feet;

~~(iv) The freestanding sign shall be utilized to advertise tenants located on the outparcel upon which the freestanding sign is located; and,~~

(iv)~~(v)~~ Such signs shall be not be located within 100 feet of other freestanding signage.

Section 6.5.4(C)(3) of the City's LDRs is amended as follows (text that is underlined is to be added and text that is shown as ~~strikethrough~~ is to be removed). Except as amended herein, the remainder of Section 6.5.4(C) remains in full force and effect:

6.5.4(C)(3) *Wall signs*. Wall signs are permitted, subject to the following standards:

(a) Each wall sign shall be attached to the building and supported throughout its entire length by the facade of the building.

(b) The sign shall be located on the front elevation of the building, except as provided in Section 6.5.4(C)(3)(d).

(c)~~(b)~~ The sign area shall not be greater than ten percent of the square footage of the front elevation of the building on which they are located, with a maximum of 350 square feet in sign area. In the case of corner lots, wall signs shall be permitted along both road frontages. The sign area along each frontage shall not be greater than ten percent of the square footage of the front elevation upon which the signage is located, with a total maximum sign area on all building elevations of 350 square feet in sign area.

(d)~~(c)~~ In the case of multi-tenant buildings, each occupant of the multi-tenant building shall be permitted wall signage for the portion of the front elevation of the building elevation which is included as part of the occupant's premises. Such signage shall be subject to the maximum sign area provisions established in Section 6.5.4(C)(3)~~(b)~~(c).

(e)~~(d)~~ Wall signs shall not be erected above the roofline of the building, except that, where there is a parapet, a wall sign may extend to the top of the parapet. Such sign shall not be considered a roof sign.

Section 6.5.4(F) of the City's LDRs is amended as follows (text that is underlined is to be added and text that is shown as ~~strikethrough~~ is to be removed). Except as amended herein, the remainder of Section 6.5.4(F) remains in full force and effect:

(F) *Signs in the public rights-of-way*. The following permanent signs are allowed in the public rights-of-way:

(1) Public signs erected by or on behalf of a governmental body to post legal notices, identify public property, convey public information, and direct or regulate pedestrian or vehicular traffic.

(2) Bus stop signs erected by a public transit company authorized to operate in the City.

(3) Informational signs of a public utility regarding its poles, lines, pipes or other facilities.

(4) Other signs appurtenant to a use of public property permitted under a franchise or lease agreement with the City.

(5) Within the boundaries of an approved Planned Development zoning district (PD-R, PD-TND, PD-EC, PD-COMM, or PUD), one (1) directional sign shall be permitted at each ingress/egress to the Planned Development zoning district. Such signs shall be subject to all other applicable regulations for freestanding signs, as provided in Section 6.5.4, unless otherwise regulated by a Planned Development Agreement or a master sign plan approved pursuant to Section 3.6.3(A)(5), Section 3.6.3(B)(5)(c), Section 3.6.3(C)(5), or Section 3.6.3(D)(5) of these LDRs. Signs permitted in accordance with this section shall not be considered off-site signs.

Section 6.5.5(B)(1) of the City's LDRs is amended as follows (text that is underlined is to be added and text that is shown as ~~strikethrough~~ is to be removed). Except as amended herein, the remainder of Section 6.5.5(B) remains in full force and effect:

6.5.5(B)(1) *Generally*. One general temporary sign shall be allowed for each lot or parcel in a business district, subject to the following limitations:

(a) Such signs may be installed only by the property owner or occupant or with such person's permission.

(b) Such sign shall not exceed 32 square feet in area.

(c) Such sign shall not exceed six feet in height.

(d) Such sign may be used for the purpose of advertising the property, or a portion thereof, for sale, rent or lease, or for ~~expressing support for a candidate for office or a ballot issue or expressing an opinion on any other matter deemed by the person expressing the view to be of public interest; the sign may contain a message related to that purpose~~ any noncommercial message.

(e) If such sign relates to an election or other specific event, it shall be removed within ten days after the occurrence of the event. If the sign relates to the sale, rent, or lease of property, it shall be removed within five days of the execution of a lease or rental agreement, closing of a sale, or actual occupancy of the property by a new owner or tenant, whichever shall first occur.

Section 6.5.5(B)(4) of the City's LDRs is amended as follows (text that is underlined is to be added and text that is shown as ~~strikethrough~~ is to be removed). Except as amended herein, the remainder of Section 6.5.5(B) remains in full force and effect:

6.5.5(B)(4) *Sandwich board signs.* Sandwich board signs shall be permitted in the Central Business District and in any commercial sections of planned developments where the approved plan specifically allows such signs or incorporates by reference the standards applicable to signs in the Central Business District, subject to the following standards:

(a) There shall be no more than one such sign per business establishment;

(b) Such sign shall be located directly in front of such business establishment and within ten feet of the principal public entrance to such establishment;

(c) Such sign may contain commercial messages related to goods and services offered at the business establishment or ~~messages other than commercial messages~~ other noncommercial message;

(d) One side of the sign shall not exceed five square feet in area, and there shall not be more than two sides to such sign;

(e) The sign shall be taken inside the establishment when the business closes each night or at 9:00 p.m., whichever is earlier; and shall not be placed outside again until 7:00 a.m. or when the business opens each morning, whichever is later. Three or more violations of this provision during any 60-day period shall be grounds for the City to suspend or revoke the right of the violator to have a sandwich board sign; and

(f) The sign shall not block any required exit from a building and shall not impair movement on the sidewalk by persons on foot, with walkers, in wheelchairs, or with strollers.

Section 6.5.5(C)(1) of the City's LDRs is amended as follows (text that is underlined is to be added and text that is shown as ~~strikethrough~~ is to be removed). Except as amended herein, the remainder of Section 6.5.5(C) remains in full force and effect:

6.5.5(C) *Banners.*

(1) *On private property.*

(a) One temporary banner may be displayed on property no more than four times per year. The banner may be displayed for up to 14 days per occurrence, with a minimum of 45 days between each occurrence.

(b) The temporary banner shall not exceed ~~ten~~ 32 square feet in area or ten percent of the area of the wall to which the banner is fastened, whichever is smaller.

(c) The temporary banner shall be installed only on property, buildings, or structures owned or occupied by the permittee. The banner shall be firmly attached to a secure structure at all four corners.

(d) No temporary banner may be displayed without the issuance of a sign permit that is based upon the guidelines providing specific criteria and that are not based upon the content of the banner.

(2) *On public property or right-of-way*. Temporary banners shall not be permitted over public space or street rights-of-way, except that up to two temporary banners ~~of a temporary nature~~ may be permitted for an event which has been issued a Special Event Permit by the City of Alachua. If the event is exempt from obtaining a Special Event Permit pursuant to Section 4.6.2, the LDR Administrator may permit up to two temporary banners to be placed over a public space or street right-of-way. ~~under the following conditions:~~

~~(a) The message on the banner relates to an event meeting all of the following criteria:~~

~~(i) The primary sponsor of such event is a governmental entity in the State of Florida or a nonprofit organization with a current tax exemption under Section 501(c) of the Internal Revenue Code;~~

~~(ii) Such event has been conducted at least three times in the past five years and has attracted 250 or more visitors or other participants; and~~

~~(iii) The event is held in the City of Alachua or for the benefit of an organization based in the City.~~

(a)~~(b)~~ If the right-of-way is under the jurisdiction of the Florida Department of Transportation ~~and~~ the proposed banner ~~has met or can reasonably be expected to~~ shall meet the requirements of Chapter 14-43 of the Rules of Procedure of the department.

(b)~~(c)~~ If support of the banner or access to the location to erecting the banner requires entry onto or use of private property owned by a person other than the applicant, the applicant shall provide notarized written consent from each affected landowner.

(c)~~(d)~~ The temporary banner shall provide~~s~~ at least 20 feet of vertical clearance to the public space below, ~~is~~ be constructed of less than eight-ounce canvas, or similar material, and ~~is~~ be supported by not less than one-quarter-inch stranded cable sewn into its hem.

Section 6.5.6 of the City's LDRs is amended as follows (text that is underlined is to be added and text that is shown as ~~strikethrough~~ is to be removed). Except as amended herein, the remainder of Section 6.5.6 remains in full force and effect:

6.5.6 *Flags.*

(A) *Generally*. ~~One or more flags shall be permitted on a single lot or parcel, provided that a~~All flagpoles shall be set back from each property boundary a distance equal to the height of the flagpole.

(B) *Commercial messages.* Flags with commercial messages are permitted in the same locations and subject to the same restrictions as other signs with commercial messages.

(C) *Relationship to other limits.* The square footage of flags bearing a commercial message shall be counted against the maximum sign area allowed.

(D) *Numerical limits.* There shall be no more than two flags on each pole. Three flagpoles shall be allowed on each lot, plus one additional flagpole for each 200 feet of frontage on a street above the minimum lot frontage required in the zoning district or 100 feet, whichever is less.

Section 6.5.7 of the City's LDRs is amended as follows (text that is underlined is to be added and text that is shown as ~~strikethrough~~ is to be removed). Except as amended herein, the remainder of Section 6.5.7 remains in full force and effect:

6.5.7*Prohibited signs.* It is unlawful for any person to erect, place, or use within the City:

(A) Flashing signs, except for warning signs erected or placed temporarily by officials of the State of Florida, Alachua County or the City of Alachua, when the design and operation of such warning signs conforms to standards of the current Manual of Uniform Traffic Control Devices. Changeable copy signs meeting the standards of Section 6.5.4(E) shall not be considered flashing signs; changeable copy signs which change more frequently than allowed by that section, whether by scrolling, rolling, fading, flashing, or other means, shall be considered flashing signs and are subject to this prohibition.

(B) Revolving signs.

(C) Signs on public property, except signs erected by a public authority for a public purpose. Any sign installed or placed on public property, except in conformance with the requirements of this section, shall be deemed illegal and shall be forfeited to the public and subject to confiscation. In addition to the other remedies

herein, the City shall have the right to recover from the owner or person placing such sign the cost of removal and disposal of such sign.

(D) Roof signs.

(E) Signs more than 16 feet in height, except as otherwise provided for in these LDRs.

(F) Separate lighting for allowed temporary and permanent signs in residential districts, except that this prohibition shall not apply to allowed signs for institutional uses and residential neighborhood identification signs in residential districts.

(G) Signs that result in glare or reflection of light on residences in the surrounding area.

(H) Canopy, marquee, projecting, or hanging signs with less than an eight-foot clearance between the bottom of the sign and the ground surface.

(I) Portable signs, except sandwich board signs allowed in accordance with Subsection 6.5.5(B)(4) of this section.

(J) Signs legible from a public right-of-way containing more than 15 items of information on each sign face. An item of information is a word, an initial, a logo, an abbreviation, a number, a symbol or a geometric shape. This prohibition shall not apply to signs posted to conform to statutory requirements or judicial orders, where clear language of the statute or the order requires that such sign contain more than 15 items of information.

(K) Off-site signs, except as otherwise provided for within these LDRs in Section 6.5.4(C)(2) and Section 6.5.4(G). Wayfinding signage erected by a governmental entity and located within or along a right-of-way shall not be considered an off-site sign.

(L) Snipe signs, which consist of ~~off-site signage~~ signs other than temporary signs and banners permitted pursuant to Section 6.5.5 which ~~is~~ are tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, stakes, fences, or to other objects.

(M) Vehicle/trailer signs with a total sign area on any vehicle in excess of ten square feet, when the vehicle is parked in such a manner as to be visible from a street for more than two consecutive hours, excluding vehicles used for daily transportation, deliveries, or parked in a designated off-street parking space while business is being conducted on-site.

Section 6.5.9(D) of the City's LDRs is amended as follows (text that is underlined is to be added and text that is shown as ~~strikethrough~~ is to be removed). Except as amended herein, the remainder of Section 6.5.9 remains in full force and effect:

6.5.9(D) *Maintenance.* All signs and flagpoles shall be maintained in a good structural condition, in compliance with the Florida Building Code, and in conformance with this section, at all times. Specifically:

(1) A sign shall have no more than 20 percent of ~~it~~ its surface area covered with disfigured, cracked, ripped, or peeling paint, poster paper, or other material for a period of more than 30 successive days.

(2) A sign shall not stand with bent or broken sign facing, with broken supports, with loose appendages or struts, or more than 15 degrees from vertical for a period of no more than 30 successive days.

(3) Any sign which becomes or has become at least 50 percent destroyed shall be deemed a public nuisance and shall be removed by the owner of the sign or the owner of the premises upon which the same is situated.

(4) A sign shall not have weeds, trees, vines, or other vegetation growing upon it, or obscuring the view of the sign from the street or right-of-way from which it is to be viewed, for a period of more than 30 successive days.

(5) An internally illuminated sign shall not be allowed to stand with only partial illumination for a period of more than 30 successive days.

(6) The area around a lighted sign shall be maintained so that there are no weeds within a radius of ten feet of the sign, and no rubbish or debris shall be permitted so near to the sign that it creates a fire hazard.

Sections 8.5.2 through 8.5.5 of the City's LDRs are amended as follows (text that is underlined is to be added and text that is shown as ~~strikethrough~~ is to be removed). Except as amended herein, the remainder of Section 8.5.2 through 8.5.5 remain in full force and effect:

~~8.5.2 Any of the following types of signs which do not conform to this section shall be removed on or before July 1, 2006:~~

~~(A) Portable signs.~~

~~(B) Temporary signs.~~

~~(C) Banners.~~

~~(D) Flags.~~

~~(E) Pennants.~~

~~(F) Streamers.~~

~~(G) Balloons.~~

~~(H) Inflatable signs.~~

~~(I) Window signs.~~

~~(J) Any other similar sign made of flexible material (such as paper, cloth or flexible plastic) or not permanently fastened to a foundation or to a structural wall of a building.~~

~~8.5.3~~

8.5.2 Any lighting which does not conform to Section 6.5 and which is not an integral part of the sign that it lights shall be removed ~~or made conforming on or before July 1, 2006~~.

~~8.5.4~~

8.5.3 Any sign which does not conform to Section 6.5 because of a lack of required maintenance or deferred maintenance shall be removed ~~or made conforming on or before July 1, 2006~~.

~~8.5.5~~

8.5.4 Limitations on other nonconforming signs.

(A) Except as otherwise provided in Section 6.5, any on-premises sign which is located on property which becomes vacant and unoccupied for a period of at least three months, or any sign which pertains to a time, event, or purpose which is no longer imminent or pending shall be deemed to have been abandoned. Permanent signs applicable to a business temporarily suspended because of a change of ownership or management shall not be deemed abandoned unless the property remains vacant for a period of six months. Abandoned signs are prohibited and shall be removed by the owner of the sign or the owner of the premises.

(B) Any other nonconforming sign that shall cease being used or cease being leased for a continuous period of six months shall be considered abandoned.

(C) Any person obtaining a permit from the City for construction of a new building, for expansion of an existing building by more than 1,000 square feet or ten percent of its floor area, whichever is less, or for any improvements valued for permitting purposes at more than $25,000.00 shall, as part of the work or at the same time as the work is performed, remove all nonconforming signs from the property, which nonconforming signs shall be replaced only with signs fully conforming with the requirements of Section 6.5 and these LDRs. If the property affected is a multitenant property, then the person obtaining the permit shall be required only to remove the nonconforming signs directly appurtenant to the portion of the premises for which the permit is issued.

(D) Change of copy or the substitution of panels or faces on nonconforming signs shall be permitted without affecting the legal status of the sign as a nonconforming sign (subject to requirements for building and electrical permits). Repairs and maintenance of nonconforming signs, such as repainting, electrical repairs and neon tubing, shall be permitted.

~~(E) Nonconforming flagpoles shall be removed on or before January 1, 2007.~~

Section 10.2 of the City's LDRs is amended as follows (text that is underlined is to be added and text that is shown as ~~strikethrough~~ is to be removed). Except as amended herein, the remainder of Section 10.2 remains in full force and effect:

Front facade or *front elevation* means the exterior walls of a structure which are immediately adjacent to the street which the structure fronts.