At I.A.S. Part 11 of the Supreme Court of the State of New York, held in and for the County of Erie, in Part 11 located at 25 Delaware Avenue, Buffalo, N.Y., on the 9th day of October, 2015

PRESENT: Hon. SHIRLEY TROUTMAN
Justice of the Supreme Court

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OCT 08 2015
ERIE COUNTY
CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

JAMES T. MALONEY
110 Pin Oak Circle
Grand Island, New York 14072 Petitioner,

-against-

Index No. : 2015-167

ORDER TO SHOW CAUSE

TOWN OF GRAND ISLAND
2255 Baseline Road
Grand Island, New York 14072

TOWN BOARD OF THE TOWN OF GRAND ISLAND
2255 Baseline Road
Grand Island, New York 14072

MARY S. COOKE, individually and as Town Supervisor
775 North Colony Road
Grand Island, New York 14072

GARY G. ROESCH, individually and as Councilman and Deputy Town Supervisor
4068 East River Road
Grand Island, New York 14072

Respondents.

Upon reading and filing the Verified Petition of James T. Maloney sworn to on October 7, 2015, and the exhibits attached to the Petition:

EXHIBIT A – Affidavit of James T. Maloney

EXHIBIT B – Affidavit of James Sharp

EXHIBIT C – U.S. Supreme Court, Reed v. Town of Gilbert

EXHIBIT D – Grand Island Town Code Section 295-4 (G)

EXHIBIT E – Sign take-down *Notice*

EXHIBIT F – Grand Island Town Code Section 295-5 (K)

EXHIBIT G – New York State Penal Law §195.00

EXHIBIT H – New York State Penal Law §195.05 *(Obstruction of Governmental Administration in the second degree)*

EXHIBIT I – Paragraph (a) of 9 CRR-NY 6201.1NY-CRR

Let the all of the Respondents in person show cause at I.A.S. Part 11, of this Court, at 25 Delaware Ave, Buffalo, on the 23rd day of October, 2015, at 11:00 o'clock in the fore noon or as soon as the parties to this proceeding may be heard why an order should not be issued providing the following relief:

A Permanent Injunction restraining the Town of Grand Island and its officials from removing any political sign within the Town limits during the course and throughout the General Election to be held on November 3rd 2015.

A Judgment for costs and fees for filing and service of this Complaint.

And for such other and further relief that this court may seem just and proper;

Sufficient cause appearing therefor, let personal service of a copy of this Order, the Petition and all other papers upon which this order is granted, upon all parties to this proceeding, on or before the 13th day of Oct. ~~September~~, 2015. A copy of an affidavit or acknowledgement of service shall be filed with the County Clerk immediately after service and the original of such proof shall be presented to this court on the return date fixed above.

ENTER

J.S.C.
SHIRLEY TROUTMAN, J.S.C

GRANTED

OCT 09 2015

BY Mollie E. Redmond
MOLLIE E. REDMOND
COURT CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

In the Matter of the Application of

JAMES T. MALONEY
110 Pin Oak Circle
Grand Island, New York 14072 Petitioner,

-against- Index No. :

VERIFIED PETITION

TOWN OF GRAND ISLAND
2255 Baseline Road
Grand Island, New York 14072

TOWN BOARD OF THE TOWN OF GRAND ISLAND
2255 Baseline Road
Grand Island, New York 14072

MARY S. COOKE, individually and as Town Supervisor
775 North Colony Road
Grand Island, New York 14072

GARY G. ROESCH, individually and as Councilman and Deputy Town Supervisor
4068 East River Road
Grand Island, New York 14072

Respondents.

TO THE SUPREME COURT OF THE STATE OF NEW YORK, ERIE COUNTY

This Petition of James T. Maloney respectfully shows to this court as follows:

1. James T. Maloney resides at 110 Pin Oak Circle, Grand Island, New York 14072.

2. The Petitioner is requesting that this court issue the following relief:

A Permanent Injunction restraining the Town of Grand Island and its officials from removing any political sign within the Town limits during the course and throughout the General Election to be held on November 3rd 2015.

A Judgment for costs and fees for filing and service of this Petition.

And for such other and further relief that this court may seem just and proper;

3. Both of the individual Respondents, Mary S. Cooke, as Town Supervisor and Gary G. Roesch, as Councilman and Deputy Town Supervisor are incumbent political office candidates seeking re-election to their current Town of Grand Island positions.

4. The Court should issue this relief because through information and belief the Town of Grand Island Town Supervisor Mary S. Cooke and Councilman and Deputy Town Supervisor Gary G. Roesch are utilizing Town of Grand Island taxpayer resources (Town employees, vehicles and equipment) to selectively and incorrectly enforce Town of Grand Island Code in order to gain an unfair advantage in their re-election bids. They are abusing their positions as elected officials to commit political espionage and remove and/or steal challenging candidates' political signs from both residential and commercial properties in the Town of Grand Island. Their egregious conduct is severely undermining the local electoral process.

5. The Court should issue this relief because the Respondents' actions violate the Petitioner's and all other challenging candidates' right to Freedom of Speech; in this instance the right of the Petitioner and others to display political signs on public and private property. Further, political signs are exempted and not required to have a permit under Town of Grand Island Code and the Respondents' removal of challengers' political signs is selective and punitive. See EXHIBIT C, United State Supreme Court, Reed v. Town of Gilbert.

6. The Court should issue this relief because the Respondents are ineptly and improperly using Section 295-4 (G), see EXHIBIT D, of the Town of Grand Island Code that does not apply to political signs in order to force the removal of their opponents' signs from private property. Further, the Respondents are illegally enforcing provisions of code that do not exist. The Respondents refer to Section 295-4 (G) in the *Notice*, see EXHIBIT E, that they have attached to some of the signs left behind after their removal. Political signs are permitted under Section 295-5 (K), EXHIBIT F. Nowhere in either section of the code, 295-4 (G) or 295-5 (K), is there any reference to *"power poles", "sidewalks"* or *"open ditches"* as is referred to in their *Notice*. This blatant example of the Respondents creating and enforcing new regulations that they bring forth from thin air to suit their own personal agenda is reason enough for the relief sought herein to be granted by this Court.

7. Attached as exhibits are copies of all relevant documents:

   EXHIBIT A – Affidavit of James T. Maloney

   EXHIBIT B – Affidavit of James Sharp

EXHIBIT C – U.S. Supreme Court, Reed v. Town of Gilbert

EXHIBIT D – Grand Island Town Code Section 295-4 (G)

EXHIBIT E – Sign take-down *Notice*

EXHIBIT F – Grand Island Town Code Section 295-5 (K)

EXHIBIT G – New York State Penal Law §195.00

EXHIBIT H – New York State Penal Law §195.05 (Obstruction of Governmental Administration in the second degree)

EXHIBIT I – Paragraph (a) of 9 CRR-NY 6201.1NY-CRR

8. Prior application has not been made for the relief now requested.

9. Through information and belief, the Respondents have committed Official Misconduct and have violated New York State Penal Law §195.00, see EXHIBIT G, *by using their office in the role of a civil servant with the intent to deprive another of a benefit.* For a person to be guilty of this offense under this subsection that person must fulfill two prongs: (1) the act must be related to their office, and (2) the act must be an official function. *In this case the individual Respondents, being the Town Supervisor and Deputy Town Supervisor, have engaged in directing the Town's Code Enforcement Officers to remove the political signs of their challengers and further, to not remove the individual Respondents' own political signs. This denies another of the benefit and right to engage in the advertising of their candidacy in the upcoming election. This is also a violation of the New York State Election Law.* The Erie County District Attorney's Office should convene a Grand Jury to conduct an official proceeding to investigate and determine exactly the extent of the official misconduct that has occurred and what criminal charges

should be brought against Respondents Mary S. Cooke and Gary G. Roesch.

10. Through information and belief, the individual Respondents have *Obstructed Governmental Administration* and have violated New York State Penal Law §195.05, see EXHIBIT H, *by using their office in the role of a civil servant to influence the Town's Code Enforcement Officers to not remove the individual Respondents' own political signs otherwise claimed to be in violation of Section 295-4 (G) of the Town of Grand Island Code. This is also a violation of the New York State Election Law.* The Erie County District Attorney's Office should convene a Grand Jury to conduct official proceedings to investigate and determine exactly the extent of official misconduct that has occurred and what criminal charges should be brought against the Respondents Mary S. Cooke and Gary G. Roesch.

11. Through information and belief, the Respondents have violated Paragraph (a) of 9 CRR-NY 6201.1NY-CRR of the State of New York Election Law, see EXHIBIT I, by engaging in *(a) Practices of political espionage including, but not limited to, the theft of campaign materials or assets* by utilizing the personnel in the Code Enforcement Department of the Town of Grand Island to engage in the removal and/or theft of their opponents' political signs which are the assets of their opponent candidates. The Erie County District Attorney's Office should convene a Grand Jury to conduct official proceedings to investigate and determine exactly the extent of the official misconduct that has occurred and what Criminal Charges should be brought against the Respondents Mary S. Cooke and Gary G. Roesch.

12. Through information and belief, the individual Respondents have violated Paragraph (b) of 9 CRR-NY 6201.1NY-CRR of the State of New York Election Law by engaging in *(b) Political practices involving subversion or undermining of political parties or the electoral process* by utilizing the personnel in the Code Enforcement Department of the Town of Grand Island to engage in the removal and/or theft of their opponents' political signs which subverts and undermines the electoral process by denying the opposing candidates their right to campaign in the Town of Grand Island through the display of political campaign signs. They are engaged in this act to give themselves an unfair advantage in the upcoming General Election to be held on November 3rd 2015. This illegal act by the individual Respondents serves to significantly undermine the local electoral process. The Erie County District Attorney's Office should convene a Grand Jury to conduct official proceedings to investigate and determine exactly the extent of the official misconduct that has occurred and what Criminal Charges should be brought against the Respondents Mary S. Cooke and Gary G. Roesch.

WHEREFORE, your deponent respectfully requests that this Court grant this relief and further relief as may to the court seem just and proper.

October 7, 2015

_____
Petitioner

James T. Maloney, Pro Se
110 Pin Oak Circle
Grand Island, NY 14072
(716) 472-7101

VERIFICATION

STATE OF NEW YORK
COUNTY OF ERIE: ss:

JAMES T. MALONEY, being duly sworn, deposes and says that: I am the petitioner in this proceeding; I have read the foregoing petition and know the contents thereof; the same are true to my own knowledge, except as to matters therein stated to be alleged on information and belief; and as to those matters I believe them to be true.

Sworn to before me this
____ Day of October, 2015

_____
James T. Maloney

EXHIBIT A

EXHIBIT A

AFFIDAVIT

STATE OF NEW YORK)

COUNTY OF ERIE)

I, James T. Maloney, residing at 110 Pin Oak Circle, Grand Island, NY 14072, being duly sworn, deposes and says that the following statements are true and accurate:

1. I am a resident of the Town of Grand Island.

2. I am a member of the Republican Party.

3. I am a candidate for Town Councilman on the Grand Island Taxpayers line in the General Election to be held on November 3rd 2015.

4. Through information and belief, the Respondents removed my political signs throughout Grand Island.

5. Prior to their removal, I was not given any notice, verbal or written, that my signs were not in compliance with any code.

6. I am attaching a sign take-down *Notice* given out by the Town of Grand Island Building Department. The *Notice* states that my signs were removed because they were in front of telephone poles and in violation of Section 295-4 (G) of the Town Code. See EXHIBIT E.

7. Through information and belief, the Respondents who are also incumbents in the upcoming General Election on November 3rd, illegally influenced Town Code Enforcement Officers to leave their signs in place which were in violation of Section 295-4 (G) located in front of telephone poles. That act is *Obstructing Governmental Administration,* a violation of New York State Penal Law §195.05 *by using their office in the role of a civil servant to influence the Town's Code Enforcement Officers to not remove the Respondents' political signs that, according to the Respondents, are in violation of Section 295-4 (G) of the Town of Grand Island Code.* This is also a Violation of New York State Election Law 9 CRR-NY 6201.1NY-CRR by engaging in *(a) Practices of political espionage including, but not limited to, the theft of campaign materials or assets*, and further by engaging in *(b) Political practices involving subversion or undermining of political parties or the electoral process.*

8. See the numerous photographs that follow consisting of the Respondents political signs that are located in front of power poles which they claim is a violation of Section 295-4 (G) of the Grand Island Town Code and have been selectively overlooked and not removed by the Code Enforcement Department:

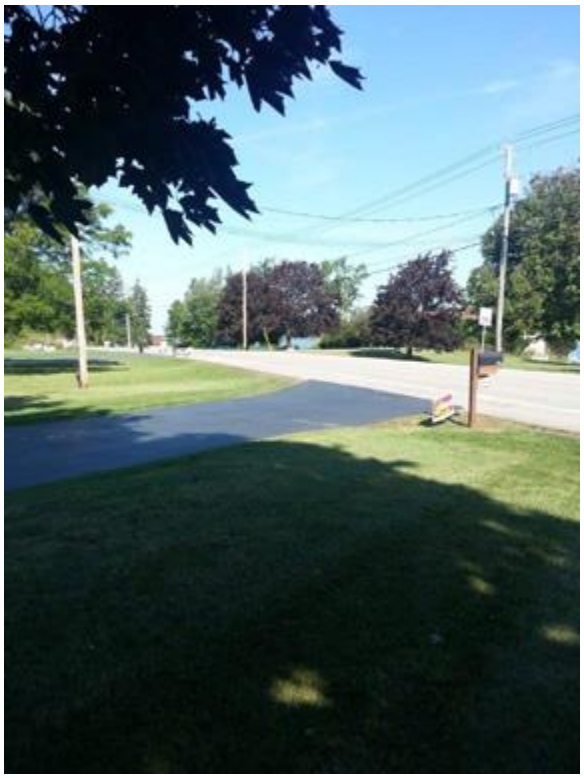

ROESCH


COOKE


COOKE


ROESCH


RE-ELECT
GARY
ROESCH
FOR COUNCIL



9. I wish to draw the Court attention to the sign pictured below. This is the crown jewel of the Respondents political signs. This is the Grand Island GOP Elephant located at the Chairman of the Grand Island Republican Committee's residence. This display should demonstrate to this Court the height of the Respondents arrogance and blatant disregard of every imaginable venue of decent and lawful conduct and sense of fair play. As can be seen, the huge GOP Elephant is clearly located between the power pole and the road as well as are all of the Respondents' and other GOP candidates' smaller signs. This display, coupled with the removal of the challenging political candidates' signs shows the citizens of Grand Island that the Respondents can act with impunity. This Court must intervene to level the playing field or the Respondents will have the advantage in the upcoming General Election as they continue to remove my signs as well as the other challenging candidates' political signs.

10. Through information and belief, the Respondents have committed Official Misconduct and have violated New York State Penal Law §195.00 *by using their office in the role of a civil servant with the intent to deprive another of a benefit. F*or a person to be guilty of this offense under this subsection that person must fulfill two prongs: (1) the act must be related to their office, and (2) the act must be an official function. *In this case the Respondents, being the Supervisor and Deputy Supervisor, have engaged in directing the Town's Code Enforcement Officers to remove the political signs of their challengers and further, to not remove their own signs. This denies another of the benefit and right to engage in the advertising of their candidacy in the upcoming election. This is also a violation of the New York State Election Law*. The Erie County District Attorney's Office should convene a Grand Jury to conduct an official proceeding to investigate and determine exactly the extent of the official misconduct that has occurred and what criminal charges should be brought against Respondents Mary S. Cooke and Gary G. Roesch.

11. Through information and belief, the Respondents have *Obstructed Governmental Administration* and have violated New York State Penal Law §195.05 *by using their office in the role of a civil servant to influence the Town's Code Enforcement Officers to not remove the Respondents political signs that they*

claim are in violation of Section 295-4 (G) of the Town of Grand Island Code. This is also a violation of the New York State Election Law. The Erie County District Attorney's Office should convene a Grand Jury to conduct official proceedings to investigate and determine exactly the extent of official misconduct that has occurred and what criminal charges should be brought against the Respondents Mary S. Cooke and Gary G. Roesch.

I have carefully read the foregoing statement and attest to its truth and accuracy.

_____
James T. Maloney

Sworn to before me this ____
day of October, 2015.

_____
Notary Public

EXHIBIT B

EXHIBIT B

AFFIDAVIT

State of New York)

County of Erie)

James R. Sharpe, residing at 3138 East River Road, Grand Island, NY 14072, being duly sworn, depose and say that the following is an accurate statement.

1. I am a resident of the Town of Grand Island, New York
2. From 1990 to 1997 I served on the Town of Grand Island as a Councilman.
3. I am the Chairman of the Grand Island Democratic Party.
4. Through information and belief, during the 2015 Political season the candidates endorsed by Democratic Party had many of their political signed removed throughout Grand Island by the Town of Grand Island Building Department.
5. During the eight (8) years I served as a Councilman from 1990 to 1997 for the Town of Grand Island the Building Department never removed any political signs.
6. Through information and belief, Mary Cooke, the Incumbent Supervisor and Gary Roesch, Incumbent Deputy Supervisor and Councilman have been endorsed by the Republican Party and are in charge of the day to day business of the Town of Grand Island.
7. Through information and belief, Mary Cooke and Gary Roesch have violated the codes, rules and regulations of 9 CRR-NY 6201.1NY-CRR of the State of New York Election Law.
8. On September 23, 2015 I filed a complaint with the New York State Board of Elections. See attached complaint.

James R. Sharpe

Sworn to before me this 5th day of October, 2015.

Notary Public

LINDA M. STEWART
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01ST6195715
Qualified in Erie County
Commission Expires October 27, 2016

Erie County Board of Elections
134 W Eagle Street
Buffalo, NY 14202

Date:
September 23, 2015

To:
Leonard Lenihan, Commissioner
Ralph Mohr, Commissioner.

This is a formal complaint under the codes, rules, and regulations of the State of New York, Title 9. Executive Department, Subtitle V. State Board of Elections, Part 6201. (b) regarding political practices involving subversion or undermining of political parties or the electoral process.

Over the last week, agents of the elected town leadership, namely town employees, have spent each day targeting political signs for Town Supervisor candidate Nathan McMurray and Town Council candidates Beverly Kinney, Cyndy Montana (together the "**Candidates**"). Hundreds of signs have been removed and citations given.

The sign removal was aimed at deliberating subverting or undermining political parties and the electoral process for the following reasons:

1. The sign removal was broad, politically biased, and selective.
2. The town's legal justification for the sign removal has changed several times.
3. Never before were signs removed in this manner or from these places.
4. There was no adequate notice of the removal.
5. None of the incumbents (or anyone else) will take responsibility for ordering the sign removal, despite their defense of it.
6. The sign removal was done in a way that intimidated candidates and voters.

1. The sign removal was broad, politically biased, and selective.

All four town code enforcement officials devoted the better part of several days removing the signs. Yet, the sign removal did not appear systematic. Rather, it was selective.

Large patches of the Supervisor Mary Cooke's and Deputy Supervisor Gary Roesch's signs (the "**Incumbents**") were untouched on the same streets where hundreds of the

Opposition's signs were torn down, knocked down, or missing. In fact, other than a few token removals, the Incumbent's sings stood as they had for weeks until citizens and the Candidates began to complain. Even now the numbers or removed signs is largely imbalanced. We have made a freedom of information request to determine the number of citations for each side both this year and for years past. We have received no reply regarding that request as of the date of this letter.

Town Supervisor Mary Cooke attempted to explain the apparent unequal application of the code on a WKBW news broadcast. In particular, the Supervisor stated that the reason there seems to be no clear standard for sign placement is because to determine the right placement you would need to refer to the surveys for each intersection or in the Supervisor's words, "[Y]ou have to check a survey."

It is hard to imagine that town code enforcement officers are measuring and checking surveys given the number of removed signs. Further, it is unreasonable to expect that political candidates would be required to adhere to such a technical standard, especially when such standard was never applied before (see below).

Notably, the Incumbents have placed a giant elephant (clearly larger than the dimensions allowed for political signs) from late June (well before the black and white permitted sign placement period) until today. Their original justification for the early placement was that the trailer on which the elephant was attached had been vandalized. Therefore, they claimed that it could not be moved, which is really no justification at all And recently they pushed it back a few feet so that it no longer sits right on the street. But there it stands, a very powerful symbol of the selective enforcement of the law.

2. **The town's legal justification for the sign removal has changed several times.**

During sign removals, agents of the town were first handing out copies of the building code. That code had nothing to with signs and was entirely irrelevant. The actual paper citations given out also cited a section of the town code regarding permitted signs "on" (not near or under) telephone poles. None of the removed signs were "on" telephone poles and the town code regarding political signs expressly states that political signs do not require a permit. Thus, that section of the code was also irrelevant.

At a Town Board meeting on Monday September 21, 2015 (the "**Meeting**") the Town Board was unable to explain what section of the code was applicable at all. When candidate Beverly Kinney presented a copy of the building code that was handed to her during a sign removal, the Incumbents and the town leadership refused to look at it, until finally Town Board member Ray Billica briefly looked it over and said something to the effect, "We will figure it out and get back to you with the right code later."

3. **Never before were signs removed in this manner or from these places.**

Despite the Incumbent's cries to the contrary, the town code enforcement officials never before enforced the code in this manner. The Candidates' s signs were removed from intersections and corners where political signs have stood generation after generation for literally decades of political campaigns. This, and the rude and boisterous manner with which the signs were removed from private citizens homes (see below), led to an outcry at the Meeting from citizens otherwise not part of the political process other than to have a small election sign in their yard.

4. **There was no adequate notice of the removal.**

Neither the town nor the town's code enforcement officials provided adequate notice of the sign removal. In fact, despite numerous calls, to this moment none of the Candidates have been contacted by either code enforcement or the Incumbents. The only notification at the time of removal that was given were the citations given to property owners, which again referenced a seemingly irrelevant section of the town code. Further, the citations do not appear to have been given out uniformly.

Yes, the town did provide a letter dated August 14, 2015 (well over a month ago) to party leaders stating that political candidates should keep their signs out of the right of way. But that letter was neither timely (after alleged incidents of improper placement) or given directly to the Candidates. Further, it was very general. No specific section of the code was stated. Conversely, that letter stated "Our community is more liberal than other neighboring commutes in allowing political signs.

5. **None of the incumbents (or anyone else) will take responsibility for ordering the sign removal, despite their defense of it.**

At the Meeting, Town Supervisor candidate Nathan McMurray directly asked who ordered the sign removal. None of the Town leadership, including the Incumbents, would state who ordered the removal. They only stated that it was a code enforcement issue. Thus, on one hand the Incumbents blame the code enforcement officials, but on the other hand they defend their actions as legal and proper. The lack of ownership over the decision to remove the sings is extremely disconcerting.

6. **The sign removal was done in a way that intimidated candidates and voters.**

As the code enforcement officials removed signs, there are allegations that they literally kicked them down, pinned them to the ground with citations, and yelled threatening words at homeowners. I have met with more than one person that was visibly shaking after their encounter with these officials. Further, a few of the Candidates and I personally witnessed how the code enforcement officials

laughed as we tried to repair signs and how they aggressively tossed signs as they removed them. It was pure bullying.

I will close this complaint with a few words about free speech. In this country we protect free speech, even offensive speech. And we believe in the broadest protections for political speech and expression. It would be easy to write all of this off as politics as usual or just a few more lost political signs.

But that would be wrong. There is a real problem here, no matter how much the Incumbents try to wish it away. Those signs were having an impact in a much talked about and highly important election to this community. The sign removal appears to be part of a stratagem employed by people who have held political office in this community and are well known to stifle opposition voices and undermine the political process. And the sign removal was carried out in way that intimidated voters and candidates in a way seldom seen in our fine country.

Thus, I must kindly ask for your time and attention to investigate this complaint.

Very truly yours,

Jim Sharpe
Democratic Party Chairman
3138 East River Road
Grand Island, NY 14072
(716) 553-1100
jsharpe3138@me.com

EXHIBIT C

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

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

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.*

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[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-

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[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.

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*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.*

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*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*

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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.

EXHIBIT D

Town of Grand Island, NY
Tuesday, October 6, 2015

Chapter 295. Signs

§ 295-4. Prohibited signs.

All signs not expressly permitted or exempt from regulation under this chapter are prohibited in all districts. Such signs include, but are not limited to:

A. Signage on motor vehicles that:

(1) Are inoperable; or

(2) Do not display a current vehicle inspection sticker or license plate; or

(3) Are not principally used as a mode of transportation for business purposes; or

(4) Are conspicuously parked or located on a lot or public right-of-way for 24 hours.

B. A sign designed, intended or used to advertise, inform or attract the attention of the public as to:

(1) Goods, products or services which are not sold, manufactured or distributed on or from the premises on which the sign is located;

(2) Facilities not located on the premises on which the sign is located; or

(3) Activities not conducted on the premises on which the sign is located (i.e., signs advertising off-site commercial activity), except for churches, schools, charitable or nonprofit organizations or other noncommercial activities.

C. Signs advertising or identifying a business which is no longer operating. Any sign accessory or incidental to a business shall be removed within 30 days after the business ceases to operate.

D. Roof signs placed, inscribed or supported upon or above the highest part of the roofline except such directional devices as may be required by the FAA.

E. Signs that create a traffic hazard by obstructing the view at any street intersection or by design resemblance through color, shape or other characteristics common to traffic control devices.

F. Signs that encroach into the clear sight triangle as described in § **295-3B**.

G. Signs in the public right-of-way or on other public property including light poles, utility poles, and street signs.

H. Billboards, except for billboards in the cotton district areas along Interstate 190, to the extent allowed by the New York State Thruway Authority.

EXHIBIT E

BUILDING DEPARTMENT
DOUGLAS M. LEARMAN
Code Enforcement Official
WILLIAM SHAW
Code Enforcement Official
RONALD MILKS
Code Enforcement Official

THE TOWN OF GRAND ISLAND
2255 Baseline Road
Grand Island, New York 14072-1710
(716) 773-9600, Office ext. 646
(716) 773-9618 Fax
E-mail: building@grand-island.ny.us

NOTICE

This sign was removed because it was located in the public right-of-way, in violation of Section 295-4 (G) of the Town Code. If you wish to re-install it, please make sure it is:

☒ Located behind the power poles along the road.

☐ Located behind the sidewalk along the road.

☐ Located behind the open ditch along the road.

☐ Located as described: _____

_____

Please contact the Code Enforcement Department if you have any questions regarding this matter, as improperly located signs in the future may be removed.

EXHIBIT F

TOWN OF GRAND ISLAND CODE
295-5(K) Signs not requiring a permit.

(K) Political sign: a nonpermanent sign that supports or opposes any political candidate, political issue, political referendum or political party.

(1) Political signs shall be placed only on private property.

(2) Such signs shall not block any intersection clear sight triangle.

(3) Such signs, if they apply to an election, shall only be permitted for 45 days before the election to which they apply and shall be removed seven days after the election to which they apply, except that signs for primaries may be retained through the general election.

EXHIBIT G

New York State Penal Law §*195.00*

195.00 **Official misconduct.**

A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit:

1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or

2. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a class A misdemeanor.

EXHIBIT H

New York State Penal Law §*195.00*

S 195.05 **Obstructing governmental administration in the second degree.**

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor`s intent that the animal obstruct governmental administration.

Obstructing governmental administration is a class A misdemeanor.

EXHIBIT I

9 CRR-NY 6201.1NY-CRR
OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 9. EXECUTIVE DEPARTMENT
SUBTITLE V. STATE BOARD OF ELECTIONS
PART 6201. FAIR CAMPAIGN CODE

9 CRR-NY 6201.1
9 CRR-NY 6201.1

6201.1 Fair campaign code.

In order that all political campaigns be conducted under a climate promoting discussion of the issues and presentation of the records and policies of the various candidates, stimulating just debate with respect to the views and qualifications of the candidates and without inhibiting or interfering with the right of every qualified person and political party to full and equal participation in the electoral process, the following is hereby adopted by the New York State Board of Elections pursuant to section 3-106 of the Election Law as the fair campaign code for the State of New York. No person, political party or committee during the course of any campaign for nomination or election to public office or party position shall, directly or indirectly, whether by means of payment of money or any other consideration, or by means of campaign literature, media advertisements or broadcasts, public speeches, press releases, writings or otherwise, engage in or commit any of the following:

(a) Practices of political espionage including, but not limited to, the theft of campaign materials or assets, placing one's own employee or agent in the campaign organization of another candidate, bribery of members of another's campaign staff, electronic or other methods of eavesdropping or wiretapping.

(b) Political practices involving subversion or undermining of political parties or the electoral process including, but not limited to, the preparation or distribution of any fraudulent, forged or falsely identified writing or the use of any employees or agents who falsely represent themselves as supporters of a candidate, political party or committee.

(c) Deliberate misrepresentation of the contents or results of a poll relating to any candidate's election; also, failure to disclose such information relating to a poll published or otherwise publicly disclosed by a candidate, political party or committee as required to be disclosed by rule or regulation of the New York State Board of Elections.

(d) Any acts intended to hinder or prevent any eligible person from registering to vote, enrolling to vote or voting.

Current through August 31, 2015