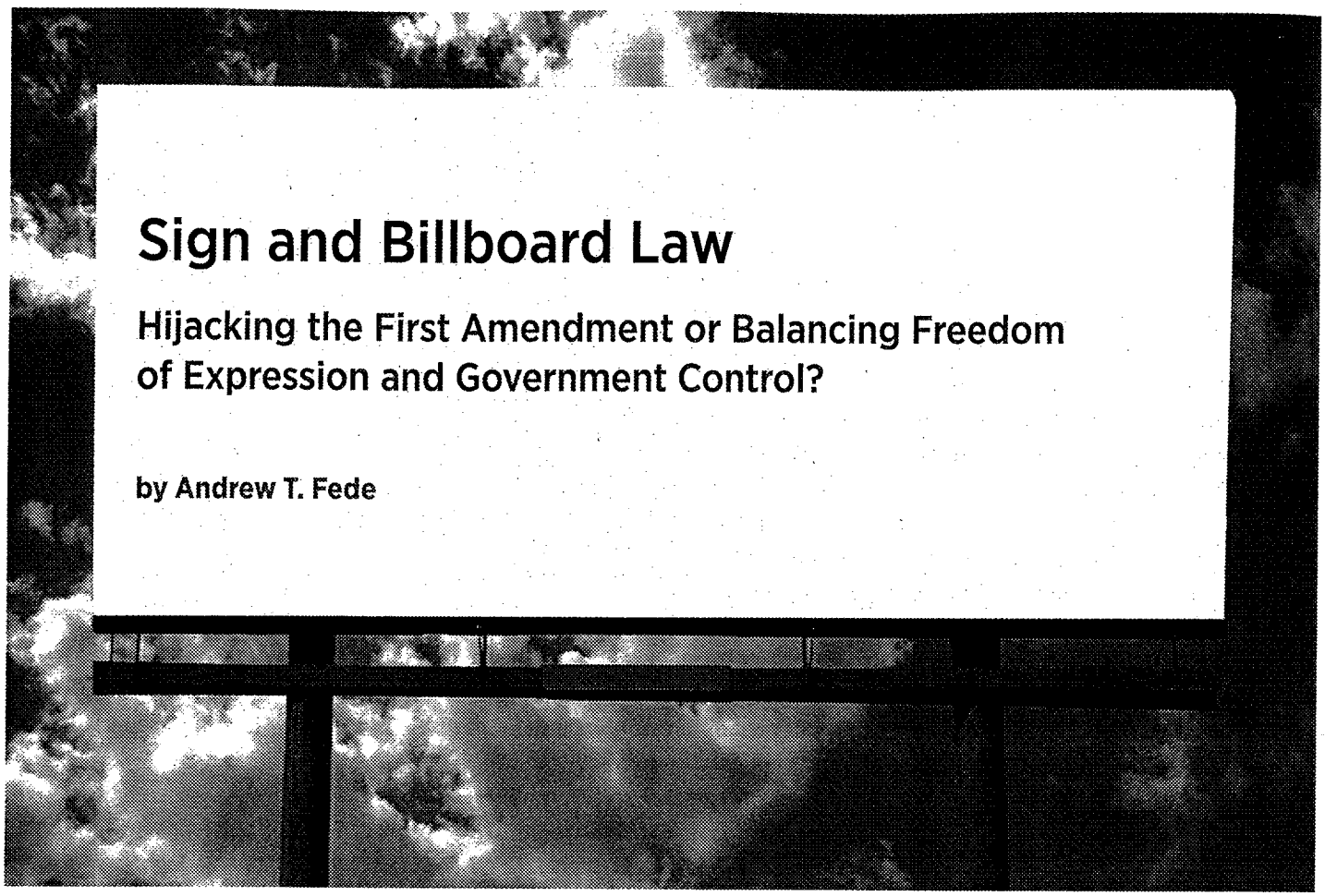

Sign and Billboard Law

Hijacking the First Amendment or Balancing Freedom of Expression and Government Control?

by Andrew T. Fede

Property owners and advertisers have won recent free speech challenges to sign and billboard regulations. These decisions are examples of "the First Amendment's expansive deregulatory potential[,]" and they illustrate a trend that some commentators have critiqued as the "hijacking" of free speech protections by commercial and business interests.[1] This article discusses cases decided under the United States and the New Jersey constitutions because New Jersey's courts have interpreted the state constitution's free speech guaranty to be no more restrictive than the First Amendment when applied to sign and billboard regulations.[2]

Types of Speech and Standards of Review

Although the First Amendment declares that "Congress shall make no law...abridging the freedom of speech," the U.S. Supreme Court permits regulations that abridge and even, at times, prohibit speech.[3] All speech is not of equal social value, according to the Court, which applies different standards of review to regulations abridging different types of speech. The Court affords the most protection to speech and expressive conduct relating to public issues, to permit an "uninhibited, robust and wide open" debate.[4] On the other hand, the Court excludes some speech from the First Amendment's protection, including defamation, obscenity, child pornography, fighting words, and deceptive commercial advertising. The "slight social value" of these expressions "is clearly outweighed by the social interest in order and morality."[5]

The courts also apply different standards of review to content-based and content-neutral speech regulations. Governmental units defending content-neutral ordinances, often called time, place, and manner regulations, must establish that the regulations: 1) are justified without reference to the regulated matter's content; 2) further substantial governmental interests unrelated to the suppression of speech; 3) are narrowly tailored to advance their goals; and 4) leave reasonable alternative channels for message communication.[6] In contrast, the courts apply strict scrutiny to content-specific speech regulations. These are sustained only if the government can establish that the regulations: 1) are necessary to serve a compelling state interest, and 2) are narrowly tailored to advance that interest.[7] Thus, for example, both the United States and New Jersey Supreme Courts have invalidated content-specific municipal ordinances banning public issue signs on private property in residential districts.[8]

After initially excluding commercial speech from the First

Amendment's protections, the U.S. Supreme Court applied greater scrutiny to regulations abridging this form of speech than is required by the rational basis test that otherwise applies to commercial regulations. If the commercial speech concerns a lawful activity and is not misleading, the governmental unit must establish that the restriction: 1) seeks to further a substantial government interest, 2) directly advances that interest, and 3) is no more extensive than necessary to serve that interest.[9]

The U.S. Supreme Court applied these standards when it invalidated a San Diego ordinance that permitted onsite commercial advertising but prohibited offsite "outdoor advertising display signs," with 12 exceptions.[10] The plaintiffs were outdoor advertising businesses. Their billboards in the city's commercial and industrial zones were used primarily for commercial advertising, but they also communicated noncommercial social and political messages. The California courts held that traffic safety and aesthetics were legitimate interests that supported the restrictions.[11]

Justice Byron White's four-justice plurality opinion explained that if the ordinance regulated only commercial speech its purposes would have satisfied the commercial speech test. But he found the ordinance was unconstitutional because its numerous exceptions distinguished between different kinds of protected speech by reference to the signs' content or messages. He also stated that the ordinance could not be sustained as a reasonable "time, place and manner" restriction because adequate inexpensive alternative channels were not available to parties wishing to express their social or ideological views.[12]

New Jersey's Supreme Court similarly invalidated a Stafford Township zoning ordinance that prohibited billboards and other off-premises advertising signs in all of the zoning districts. The ban applied to both commercial and noncommercial speech, including political expression. The Court held that "[b]ecause noncommercial speech is implicated, the burden of overcoming the charge of constitutional invalidity is particularly strenuous. [citations omitted]."[13] Stafford, the Court held, did not "justify the passage of such a broad and encompassing ordinance that substantially curtails freedom of speech and expression[.]"[14]

In contrast, the Third Circuit Court of Appeals sustained a Mount Laurel Township ordinance banning all "[o]utdoor advertising signs (i.e., billboards)." A 2008 amendment added a substitution clause that permitted business sign owners and operators to replace commercial messages with other commercial messages and with noncommercial messages, in whole or in part. The amendment also added a content neutrality clause, stating that no sign or sign structure may "be subject to any limitation based upon the content (viewpoint) of the message contained on such sign or displayed on such sign structure."[15] The Court held that traffic safety and aesthetics were governmental interests that supported the ordinance, and that its impact on non-commercial speech did "not require much discussion[,]" citing the ordinance's content-neutral provisions.[16]

With these tests, New Jersey's Supreme Court invalidated a Lawrence Township sign ordinance as applied to an inflated rat balloon a union placed on a sidewalk in front of a Gold's Gym to express the union's point of view in a labor dispute. The ordinance generally prohibited "balloon signs or other inflated signs," while permitting "grand opening" balloon signs.[17] The Court held that the township's "salutary goals" of maintaining an aesthetic environment, improving pedestrian and vehicular safety, and minimizing the adverse effects on property "do not justify a content-based restriction of non-commercial speech." The Court applied "the most exacting scrutiny" because "[t]here is no evidence to suggest that a rat balloon is significantly more harmful to aesthetics or safety than a similar item being displayed as an advertisement or commercial logo used in a seven-day grand opening promotion."[18]

The Court also stated that the ordinance was overbroad because it foreclosed—with minor exceptions—an entire medium of expression in balloons. But the Court noted that this "does not leave the Township without adequate means to address its concerns. As long as any future sign ordinance 'leave[s] open ample alternative channels for communication,'" the township may regulate the time, place, or manner of sign use if the ordinance is "narrowly tailored" to further a government interest.[19]

The U.S. Supreme Court "review[s] with special care regulations that entirely suppress commercial speech in order to pursue a nonspeech-related policy," unless the expression is "deceptive or related to unlawful activity."[20] Thus the Court invalidated a public utility commission regulation banning all electric utility promotional advertising. Five justices recognized the state's substantial interest in energy conservation and the "immediate connection between advertising and demand for electricity[,]" but they found the commission failed to establish that a more limited speech regulation would not have adequately served the state's interest.[21]

Content-Based Speech Regulations after *Reed v. Town of Gilbert*

The U.S. Supreme Court, in *Reed v. Town of Gilbert*,[22] affirmed the content-based test while invalidating provisions of a Gilbert, Arizona, sign ordinance requiring those wishing to erect signs to obtain permits, but with exemptions for 23 types of signs, which were required to

comply with varying requirements. The plaintiffs were Pastor Clyde Gilbert and his church, which had no fixed location for its services. They posted temporary signs, typically in 15 or 20 locations, stating the church's name and the time and location of upcoming services. The plaintiffs challenged the ordinance after officials repeatedly cited them for failing to comply with the requirements for exempt temporary directional signs relating to qualifying events. These regulations were more restrictive than those imposed on ideological signs or political signs.[23]

The Supreme Court voted nine to zero to reverse the court of appeals judgment that sustained the ordinance. Justice Clarence Thomas, joined by five other justices, found that the ordinance "on its face" was content-based because it "applies to particular speech because of the topic discussed or the idea or message expressed. [citations omitted]." Facial distinctions "defining regulated speech by particular subject matter," and "more subtle" provisions "defining regulated speech by its function or purpose," draw distinctions "based on the message a speaker conveys, and, therefore, are subject to strict scrutiny." He also noted that "a separate and additional category" of facially content-neutral laws are content based if they "cannot be 'justified without reference to the content of the regulated speech,' or... were adopted by the government 'because of disagreement with the message [the speech] conveys,'...."[24]

Justice Thomas then invalidated the ordinance under the strict scrutiny test. He rejected the two governmental interests asserted—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." He found that the church's temporary signs presented "no greater eyesore" or traffic hazards than political and ideological signs. "If anything, a sharply worded ideological sign seems more likely to distract a driver than a sign directing the public to a church meeting."[25]

Justice Samuel Alito, joined by Justices Sonia Sotomayor and Anthony Kennedy, concurred in the majority opinion, but added a non-exhaustive list of sign regulations that he suggested would not trigger strict scrutiny. These included "[r]ules distinguishing between on-premises and off-premises signs[,]" and the following:

- 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.[26]

Unanswered Questions after *Reed*

The *Reed* opinions raise some unanswered questions.[27] One is whether the majority would sustain any content-based sign ordinances under strict scrutiny, although it suggested this was possible for "warning signs marking hazards on private property" and "signs directing traffic or street numbers associated with private houses[.]"[28] A study of 459 reported federal cases decided between 1990 and 2003 revealed a 30 percent "survival rate" for regulations reviewed under this standard. But among the regulations affecting speech, only sign ordinances evidenced a perfect score—none of the 18 survived strict scrutiny.[29] The study's author explained that the quality of life interest used to justify these regulations was not compelling as "one that the government absolutely must promote," and that even traffic safety and "visual clutter" justifications were "woefully underinclusive."[30]

It also is not clear whether the *Reed* decision will have any impact on commercial sign regulations. Because Justice Thomas does not discuss the commercial speech cases in *Reed*, the majority of courts have interpreted his opinion to not revise the intermediate commercial speech test.[31]

This issue's resolution will be crucial for the continued validity of two New Jersey Supreme Court decisions sustaining commercial sign regulations, including a decision affirming a statute stating: "No sexually oriented business shall display more than two exterior signs, consisting of one identification sign and one sign giving notice that the premises are off limits to minors. The identification sign shall be no more than 40 square feet in size."[32] The Court also rejected an adult entertainment business owner's challenge to an ordinance limiting the number, size, and height of signs a business could display, as well as the size of its temporary window signs.[33]

Content-Neutral Regulations Limiting Signs

Regulations may continue to include uniform and reasonable size, location, and duration limits. For example, the New Jersey Supreme Court suggested that regulations may limit sign sizes "if the allowable square footage is not deter-

mined in an arbitrary manner." Signs "must be large enough to permit viewing from the road, both by persons in vehicles and on foot. Inadequate sign dimension may strongly impair the free flow of protected speech."[34] The Court noted that the six-square-foot maximum sign permitted in a Milltown ordinance under review "is probably inadequate[,]" but that 16 or 18 square feet per sign limitations may be permissible.[35]

The Court also suggested commercial advertising signs may be excluded from residential zones, while cautioning that regulations may not prohibit specific types of speech or particular messages. The Court included "durational limitations, set-back restrictions and restrictions on the aggregate number of signs permissible on a given piece of property" among the possibly "reasonable restrictions" on the "time, place, and manner" of sign use.[36]

The U.S. Supreme Court has not decided whether sign regulations may impose any pre-election or post-election duration limitations on temporary political signs, but the *Reed* opinion suggests these are invalid content-specific regulations. Even before *Reed*, "the overwhelming majority" of courts found these provisions to be unconstitutional.[37]

The Appellate Division also invalidated an ordinance permitting signs for a "political, educational, charitable, civic, professional, religious, or like campaign or event for a consecutive period not to exceed sixty (60) days in any calendar year, providing they do not exceed fifty (50) feet in size."[38] The ordinance did not apply to commercial advertising signs and, thus, was not content neutral. The court failed "to discern the compelling governmental interest sought to be protected by the blanket restriction making temporary all forms of noncommercial signs."[39] Other courts, however, have upheld temporary sign duration limitations that do not discriminate against political signs.[40]

And an unreported Appellate Division decision invalidated provisions of a city of Englewood ordinance that made billboards a conditional use in only one of the city's industrial zoning districts, which was near Route 4. The plaintiff sought approval for a billboard that would be visible from I-95 and would be in one of the city's other industrial zoning districts. The court held that the city did not offer "a reasonable explanation" why it excluded billboards from all but one of its industrial zoning districts, and because it did not demonstrate that alternate means of expression were available at similar "cost and efficiency." The court also invalidated a condition requiring that billboards be 1,000 feet from residential areas, finding instead that a 600-foot separation was sufficient.[41]

Digital Billboards, Supergraphics, and Other Emerging Technologies

Signs and billboards recently have been developed using new technologies, including digital displays and supergraphics. These digital signs, which are visible along state and federal highways, raise issues under federal and state laws, and local ordinances. The 1965 Federal Highway Beautification Act conditions full federal highway aid to states upon the states' adoption of effective controls for the erection and maintenance of signs visible from federal highways.[42] The Federal Highway Administration published a 2007 *Guidance on Off-Premise Changeable Message Signs*, which permits states to allow digital billboards along interstate highways.[43] New Jersey's Roadside Sign Control and Outdoor Advertising Act[44] requires those maintaining advertising signs visible from some of New Jersey's roads obtain Department of Transportation (DOT) licenses and permits, subject to the act and the DOT's regulations.[45] The regulations include standards for off-premises multiple message signs that would be visible from highways.[46] Highway signs and billboards also are subject to local government zoning ordinances and approvals.[47]

The New Jersey Supreme Court, in a Sept. 2016 opinion, invalidated a Franklin Township ordinance banning all digital multiple message billboards.[48] The ordinance permitted static billboards as a conditional use in an area fronting on I-287 in the M-2 zoning district, but also stated:

> No billboard or billboard display area or portion thereof shall rotate, move, produce noise or smoke, give the illusion of movement, display video or other changing imagery, automatically change, or be animated or blinking, nor shall any billboard or portion thereof have any electronic, digital, tri-vision or other animated characteristics resulting in an automatically changing depiction.[49]

The plaintiff obtained a DOT permit for an electronic billboard in the M-2 zoning district on the north side of I-287. The billboard would have two 48-foot by 14-foot V-shaped panels displaying to both highway lanes static images in eight-second intervals without scrolling, flashing, or animation. The plaintiff requested a variance pursuant to N.J.S.A. 40:55D-70(d)(3), which the zoning board denied.[50]

The Supreme Court applied the content-neutral time, place, and manner analysis because the ban applied to commercial and noncommercial messages. The Court stated the ordinance was presumptively valid but required the township to demonstrate the ordinance was "narrowly tailored to serve a recognized and identified governmental interest," while leaving open "reasonable alternative channels for communication" of the information.[51] Although the Court found the township asserted substantial government interests in aesthetics and public safety, it held the township did not advance a factual record to support its decision to ban electronic billboards

while permitting static billboards in the same zoning district.[52]

The courts also scrutinize regulations of illuminated signs. For example, a superior court judge invalidated an ordinance forbidding all neon signs in the municipality because the municipality did not present a sufficient factual record that this total ban, instead of a less restrictive regulation, served a sufficiently significant governmental interest in aesthetics.[53]

Conclusion

Billboard and sign regulations are part of an evolving area of constitutional law. Property owners and advertisers may be able to assert successful free speech challenges to these regulations if they can persuade courts not to apply the rational basis test. ⚖

***Andrew T. Fede** is a partner with Archer & Greiner, PC in Hackensack, and is an adjunct professor in the Department of Political Science and Law at Montclair State University. He is the author of three books and many articles on legal topics.*

ENDNOTES

1. *See*, Note, Free Speech Doctrine After *Reed v. Town of Gilbert*, 129 *Harv. L. Rev.* 1981, 1981 (2016); *see also*, Jeremy K. Kessler, The Early Years of First Amendment Lochnerism, 116 *Colum. L. Rev.* 1915, 1917-1925 (2016); Amanda Shanor, The New Lochner, 2016 *Wis. L. Rev.* 133, 134-135; Tim Wu, The Right to Evade Regulation, *The New Republic* (June 3, 2013).
2. U.S. Const. amend. 1; N.J. Const. art. 1, ¶6; *see*, *Hamilton Amuse. Center v. Verniero*, 156 N.J. 254, 264-265 (1998), *compare*, *Outdoor Media Dimensions Inc. v. Department of Transportation*, 132 P. 3d 5 (Or. 2006)(state constitution prohibits different regulations for on and off premises signs and billboards).
3. *See, e.g., Konigsberg v. State Bar of California*, 366 U.S. 36, 46-53 (1961) and *Id.* at 62-65 (Black, J., dissenting).
4. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964); *see*, *Texas v. Johnson*, 491 U.S. 397 (1989)(First Amendment may extend to expressive conduct such as flag burning).
5. *See*, *Chaplinski v. New Hampshire*, 315 U.S. 568, 571-572 (1942); *see, also*, *Brandenburg v. Ohio*, 395 U.S. 444 (1969).
6. *See*, *Ward v. Rock Against Racism*, 491 U. S. 781, 791 (1989); *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293-294 (1984).
7. *See*, *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983); *Consolidated Edison Co. v. Public Serv. Comm'n*, 447 U.S. 530, 535-536 (1980).
8. *See*, *City of Ladue v. Gilleo*, 512 U.S. 43 (1994); *State v. Miller*, 83 N.J. 402 (1980).
9. *See*, *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 563-566, (1980); *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 763-764 (1976); *Valentine v. Chrestensen*, 316 U.S. 62 (1942); *State, Tp. of Pennsauken v. Schad*, 160 N.J. 156, 176-179 (1999); *Hamilton Amuse. Center v. Verniero*, 156 N.J. at 265-279. On the rational basis test, *see, e.g., Quick Chek Food Stores v. Springfield Tp.*, 83 N.J. 438, 447 (1980).
10. *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 513 (1981).
11. *Id.* at 494-507.
12. *Id.* at 509-517.
13. *Bell v. Stafford Tp.*, 110 N.J. 384, 395-396 (1988).
14. *Id.* at 398. The court noted with approval Stafford's amended ordinance prohibiting signs or billboards obstructing "driving vision, traffic signals, sight triangles, traffic direction, identification signs, or the sight obstruction of the travelling public to another sign or billboard on the same property or on a nearby property." *Id.* at 397, n. 7.
15. *See*, *Interstate Outdoor Advertising, L.P. v. Zoning Bd. of the Twp. of Mount Laurel*, 706 F. 3d 527, 528-529 (3d Cir. 2013).
16. *Id.* at 528-535.
17. *See*, *State v. DeAngelo*, 197 N.J. 478, 484 (2009).
18. *Id.* at 488-489.
19. *Id.* at 491-492; *see*, *Tucker v. City of Fairfield*, 398 F. 3d 457, 464 (6th Cir 2005)(City could not bar rat balloon without "objective evidence" suggesting its temporary placement in a right of way "could have been significantly more harmful to traffic, safety or aesthetics than a large balloon with an eye-catching ad or commercial logo.")
20. *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. at 566, n. 9.
21. *Id.* at 569, 571; *see*, *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85, 96 (1977)(invalidating ordinance banning "for sale" signs on residential property).
22. 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015).
23. *Id.*, 135 S. Ct. at 2225.
24. *Id.*, 135 S. Ct. at 2226-2227, *quoting Ward v. Rock Against Racism*, 491 U. S. at 791.
25. *Id.* at 2231-2232.
26. *Id.* at 2233. Justices Ginsburg, Breyer, and Kagan concurred in the judgment, while contending that content-based regulations would not necessarily trigger strict scrutiny. *Id.* at 2234-2239. The Court also vacated three other judgments, two of which upheld municipal sign ordinances, and remanded those cases for consideration in light of *Reed*. *See*, *Wagner v. City of Garfield Heights*, 135 S. Ct. 2888, 2015 U.S. LEXIS 4376 (2015)(*vacating and remanding Wagner v. City of Garfield Heights*, 577 Fed. Appx. 488, 2014 U.S. LEXIS 15984 (6th Cir. 2014)); *Central Radio Co. v. City of Norfolk*, 135 S. Ct. 2893, 2015 U.S. LEXIS 4366 (2015)(vacating and remanding *Central Radio Co. v. City of Norfolk*, 776 F. 3d 229 (4th Cir. 2015)).
27. *See*, Brian J. Connolly and Alan C. Weinstein, "Sign Regulation After *Reed*: Suggestions for Coping with Legal Uncertainty," 47 *The Urban Lawyer* 569, 587-605 (2015).
28. *See*, *Reed v. Town of Gilbert*, 135 S. Ct. at 2232.
29. *See*, Adam Winkler, Fatal in Theory and Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts. 59 *Vanderbilt L. Rev.* 793, 812-813, 845 (2006).
30. *Id.* at 852; *see*, Connolly and Weinstein, Sign Regulation After *Reed*: Suggestions for Coping with Legal Uncertainty, 47 *The Urban Lawyer* at 605-610.
31. *See*, *Contest Promotions, LLC v. City of San Francisco*, 2015 U.S. Dist. LEXIS 98520, at *11 (N.D. Cal. July 28, 2015)(sustaining ordinance permitting on-site business signs while prohibiting off-site commercial advertising signs); *see, also*, *GEFT Outdoor, LLC v. Indianapolis*, 2016 U.S. Dist. LEXIS 66517, at *33-*44 (S.D. In. May 20, 2016); *California Out-*

door Equity Partners v. City of Corona, 2015 U.S. Dist. LEXIS 89454 (C.D. Cal. July 9, 2015); Citizens for Free Speech, LLC v. Cnty. of Alameda, 2015 U.S. Dist. LEXIS 92998 (N.D. Cal. July 16, 2015); Note, Free Speech Doctrine After *Reed v. Town of Gilbert*, 129 *Harv. L. Rev.* at 1990-1992.

32. *See, Hamilton Amuse. Center v. Verniero*, 156 N.J. at 263-279.

33. *See, State, Tp. of Pennsauken v. Schad*, 160 N.J. at 166-179.

34. *State v. Miller*, 83 N.J. at 416, *citing Schoen v. Township of Hillside*, 155 N.J. Super. 286 (Law Div. 1977); *see, Intervine Outdoor Ad. v. Gloucester City Zoning Bd.*, 290 N.J. Super. 78, 86-87 (App. Div.)(not deciding whether ordinance limiting signs to 50 square feet was permissible because the plaintiff did not challenge that provision), *certif. denied*, 146 N.J. 68 (1996).

35. *State v. Miller*, 83 N.J. at 416, *citing Baldwin v. Redwood City*, 540 F. 2d 1360 (9th Cir. 1976) (16-square-foot limitation does not offend First Amendment), *cert. denied, sub. nom., Leipzig v. Baldwin*, 431 U.S. 913 (1977); *Ross v. Goshi*, 351 F. Supp. 949 (D. Haw. 1972)(18-square-foot limitation upheld).

36. *State v. Miller*, 83 N.J. at 416.

37. *See, e.g., City of Painesville v. Dworken & Bernstein, Co.*, 733 N.E. 2d 1152, 1157 (Ohio 2000)(invalidating ordinance permitting political signs only 17 days before and until 48 hours after any primary, general, or special election); *Whitton v. City of Gladstone*, 54 F. 3d 1400, 1403-1409 (8th Cir. 1995)(invalidating ordinance limiting political signs to 30 days before and seven days after elections because commercial speech was given an advantage over political speech); *Curry v. Prince George's County*, 33 F. Supp. 2d 447, 454-455 (D. Md. 1999) (enjoining enforcement of ordinance limiting political election signs to 45 days before and 10 days after an election); *Orazio v. North Hempstead*, 426 F. Supp. 1144, 1149 (E.D.N.Y. 1977)(invalidating ordinance allowing political signs only during the six weeks before an election and holding "no time limit on the display of pre-election political signs is constitutionally permissible under the First Amendment.").

38. *Intervine Outdoor Ad. v. Gloucester City Zoning Bd.*, 290 N.J. Super. at 84.

39. *Id.* at 86.

40. *See, e.g., State v. Weinkselbaum*, 753 N.Y.S. 2d 284 (App. Div. 2002)(upholding sign ordinance with 30-day limit); *but see, e.g., Sugarman v. Village of Chester*, 192 F. Supp. 2d 282 (S.D. N.Y. 2002)(upholding and striking down ordinances with durational limitations because some singled out political signs and others did not); *McCormack v. Twp. of Clinton*, 872 F. Supp. 1320 (D. N.J. 1994)(enjoining enforcement of ordinance subjecting pre-election signs, but not other temporary signs, to 10-day limitation).

41. *See, Elray Outdoor Advertising Corp. v. Board of Adjustment*, 2009 N.J. Super. Unpub. LEXIS 2378, at *20-*23 (App. Div. 2009), *certif. denied*, 210 N.J. 156 (2010).

42. *See*, 23 U.S.C.A. § 131(b) to (t). The act does not preempt state or local sign regulations that are consistent with its purposes and provisions. *See*, 23 U.S.C.A. § 131(k); *Lamar-Orlando Outdoor Advertising v. City of Ormond Beach*, 415 So. 2d 1312, 1320 (Fla. App. 5th Dist. 1982).

43. *See, Scenic America, Inc. v. U. S. Department of Transportation*, 2016 U.S. App. LEXIS 16330 (D. C. Cir. 2016)(guidance did not violate the procedural and substantive provisions of the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*); *but see*, Susan C. Sharpe, Between Beauty and Beer Signs: Why Digital Billboards Violate the Letter and Spirit of the Highway Beautification Act of 1965, 64 *Rutgers L. Rev.* 515 (2007).

44. N.J.S.A. 27:5-5 to -26.

45. N.J.S.A. 27:5-8 and -9.

46. N.J.A.C. 16:41C-11.1(a).

47. N.J.S.A. 27:5-9.1, -11, and -26; *see*, N.J.S.A. 40:55D-39(g); James G. Gardner, A Primer on Outdoor Advertising Signs, 237 *New Jersey Lawyer Magazine* 54, 237-DEC NJLAW 54 (Dec. 2005).

48. *E & J Equities, LLC v. Board of Adjustment*, 226 N.J. 549, 2016 N.J. LEXIS 890 (2016), *reversing* 437 N.J. Super. 490 (App. Div. 2014).

49. *Id.*, 2016 N.J. LEXIS 890 at *11-*20.

50. *Id.*, 437 N.J. Super. at 501.

51. See, *Id.*, 2016 N.J. LEXIS 890, at *44-*48.

52. *Id.*, at *48-*53; *compare, GEFT Outdoor, LLC v. Indianapolis*, 2016 U.S. Dist. LEXIS 66517, at *41-*44 (affirming ordinance prohibiting off-premises digital commercial advertising signs).

53. *State v. Calabria, Gillette Liquors*, 301 N.J. Super. 96, 108 (Law Div. 1997), *citing Asselin v. Town of Conway*, 628 A.2d 247, 251 (N.H. 1993)(sustaining zoning ordinance banning all internally lit signs).