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Norton Outdoor Advertising, Inc. v. Village of St. Bernard: Sixth Circuit Decides “Public Service” Exemption in Sign Ordinance is Unconstitutional

On April 19, 2024, the Sixth Circuit published its decision in *Norton Outdoor Advertising, Inc. v. Village of St. Bernard, Ohio* regarding a constitutional challenge to the Village of St. Bernard’s sign regulations. The Sixth Circuit held that exempting “public service” speech from sign regulations is an unconstitutional, content-based regulation. The court’s decision has an immediate impact on local sign ordinances that contain exemptions for signs relating to “public services.”

The Sixth Circuit’s decision builds off recent U.S. Supreme Court decisions involving constitutional challenges to municipal sign regulations, including *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155 (2015) and *City of Austin v. Reagan National Advertising of Austin, LLC*, 596 U.S. 61 (2022). Generally speaking, in *Reed*, the Supreme Court held that sign regulations based on the content of the sign are subject to strict scrutiny. However, in *City of Austin*, the Supreme Court carved out an exception to this general rule, holding that it is permissible to regulate signs based principally on whether what is being advertised is located on or off the premises of the sign. Even though making the on-premises/off-premises determination requires a government official to review the content of the sign, the Supreme Court held that this type of regulation is location-based and content-neutral. Therefore, the distinction is not subject to strict scrutiny. The Sixth Circuit’s recent decision in *Norton Outdoor Advertising*, however, is a stark warning that the exception in *City of Austin* is narrow, and that any regulation requiring review of the content of a sign, beyond the simple on- and off-premises dichotomy, is likely to be subject to strict scrutiny and found unconstitutional.

The Village of St. Bernard's Sign Ordinances and Norton's Permit

Norton Outdoor Advertising applied for and received a permit from the Village of St. Bernard to convert two static billboard faces to digital display faces. After Norton completed construction of the updated signs, St. Bernard revoked Norton's permit, citing the village's ban on multiple-message or variable-message outdoor advertising signs. Norton then sued the St. Bernard, alleging that the village's sign ordinance was unconstitutional.

St. Bernard's sign ordinance generally prohibited multiple-message or variable-message displays on outdoor advertising signs. However, the ordinance specifically exempted the following signs from this prohibition: (1) on-premise signs, (2) public traffic signs, (3) signs located on property for sale or rent, and (4) "public service signs which disclose information such as time or weather." The Sixth Circuit did not find any issue with the first three exemptions; however, the final exemption proved fatal to the village's sign ordinance.

The Sixth Circuit held that the threshold inquiry of determining "whether the content of a given sign serves a 'public service' is laden with the types of content-based and value judgment determinations that call for strict scrutiny under the First Amendment." For example, the court hypothesized that a billboard generally encouraging drivers to stay up to date on vaccines would be allowed to use a variable-message display, but a billboard encouraging drivers to get vaccinated at a specific pharmacy would not. Unsurprisingly, once the ordinance was subjected to strict scrutiny, it easily failed. The Sixth Circuit found that the ordinance was "hopelessly underinclusive" and not narrowly tailored to accomplish a compelling government interest.

What the Decision Means for Local Government Entities and How to Avoid Risk

This decision is another example of the legal risk that local governments must consider when enacting and enforcing sign and

billboard regulations. Local governments should review their current ordinances and ensure that there are no content-based restrictions or exemptions, including any exemption for signs regarding general “public interests.” If there are any regulations that are based on the content of the message, such regulations should be closely reviewed and likely removed.

If you have any questions about how this case applies to you, or the constitutionality of your local government’s sign regulations, please contact the authors or any attorney with Frost Brown Todd’s [Government Services Practice Group](#).

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