

Supreme Court: Govt Cannot Discriminate Against Church Speech

WASHINGTON – In a unanimous decision, the U.S. Supreme Court decisively affirmed Thursday that the government cannot play favorites when it comes to free speech. Alliance Defending Freedom attorneys represent an Arizona church in *Reed v. Town of Gilbert*, a case involving restrictions on temporary signs that provided the vehicle for the justices to reaffirm and clarify that the government cannot single out one form of speech over another based on how worthy the government thinks it is. “The Supreme Court’s unanimous ruling is a victory for everyone’s freedom of speech. Speech discrimination is wrong regardless of whether the government intended to violate the First Amendment or not, and it doesn’t matter if the government thinks its discrimination was well-intended,” said ADF Senior Counsel David Cortman, who argued before the court in January. “It’s still government playing favorites, and that’s unconstitutional.” “The government cannot target one form of speech with severe restrictions while allowing more speech for others in similar circumstances, which is what Gilbert’s ordinance did,” added ADF Senior Legal Counsel Jeremy Tedesco. “Furthermore, the courts cannot use a test that allows that discrimination to happen.” In its decision, the high court threw out a free speech test used by some courts that allowed the government to decide what speech is more valuable and thus entitled to greater protection under the First Amendment. The test improperly excused unlawful discrimination so long as the government said its motive was good. The U.S. Court of Appeals for the 9th Circuit used that test to determine that Good News Community Church’s religious signs expressed far less valuable speech than what the town called “political” and “ideological” signs, thereby justifying the town’s stricter limits on the church’s signs. The Supreme Court found that Gilbert’s temporary sign rules unconstitutionally discriminate against a particular kind of content and that the city did not have any legitimate

governmental interest that required such discrimination. In its opinion, the Supreme Court explained that “an innocuous justification cannot transform a facially content-based law into one that is content neutral... 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.” Under the ordinance the Supreme Court struck down, political signs can be up to 32 square feet, displayed for many months, and unlimited in number. An ideological sign can be up to 20 square feet, displayed indefinitely, and unlimited in number. The church’s signs and some other non-profit, event-related signs can only be six square feet, may be displayed for no more than 14 hours, and are limited to four per property.

- Fact sheet: *Reed v. Town of Gilbert*
- Case snapshot: *Reed v. Town of Gilbert*