

THE AFTER EFFECTS OF *REED*



What has happened since Reed?

- Several district courts have begun applying Reed to every conceivable type of speech
 - (except *usually* commercial speech, it remains easy to regulate)
- The Seventh Circuit took up an important solicitation case in light of Reed, and ruled against the municipality.

Norton v. City of Springfield, Ill. – Anti-Panhandling / Solicitation Laws

- The ordinance in question applied only to panhandling through an “oral request for an immediate donation of money.”
- The ordinance expressly did not regulate: signs requesting donation, and oral pleas to send money later.
- The distinction between requests for money immediately and money later was facial speech discrimination under Reed, and as such the ordinance was required to meet strict scrutiny.

Norton v. City of Springfield, Ill.

- This case turned solely on the outcome in Reed v. Town of Gilbert.
- Prior to striking down the ordinance the Seventh Circuit had already held that the ordinance was content neutral.
- However, the Seventh Circuit waited until after Reed to rule on the rehearing.
- Then, in light of Reed, the Seventh Circuit found the ordinance a form of content based discrimination and unconstitutional.

District Court Cases

What has happened since *Reed*?

- ▶ *Reed* has been applied to a variety of speech cases, and any time that speech is at issue cities should think of *Reed*.
- ▶ Some of the situations where *Reed* has been applied to invalidate laws include:
 - ▶ Election sign restrictions
 - ▶ Robocalling laws
 - ▶ Anti-panhandling ordinances
 - ▶ Licensing of solicitor's by ordinance
 - ▶ Laws preventing sharing election ballot photos
 - ▶ State's regulation of an advice column from a purported psychologist

Solicitation laws

- ▶ In *Working Am., Inc. v. City of Bloomington*, Working America, an advocacy organization focusing on labor issues, challenged Bloomington's ordinance that requires certain door-to-door solicitors to obtain a “solicitor's license” prior to soliciting.
- ▶ The Bloomington ordinance only regulated certain types of solicitors, in particular those seeking to raise funds, whereas it exempt many others, this ensured that it would be treated as content based under *Reed*, and accordingly held unconstitutional. *Id.*
- ▶ *Working Am., Inc. v. City of Bloomington*, No. CV 14-1758 ADM/SER, 2015 WL 6756089, at *1 (D. Minn. Nov. 4, 2015).

This maybe litigation coming to your neighborhood:

- ▶ The League has already seen litigation like this throughout the state.
- ▶ Much like issues with signs you are likely going to need to overhaul your current ordinances if you have any.
- ▶ Things to think about:
 - ▶ Discretion,
 - ▶ Appeals,
 - ▶ Time restrictions,
 - ▶ And Classification.

Election Signs

- ▶ One court ruled that restrictions against temporary signs, including elections signs, are content based discrimination where those signs are treated differently than other types of temporary signs.
- ▶ *Marin v. Town of Se.*, No. 14-CV-2094 KMK, 2015 WL 5732061, at *15 (S.D.N.Y. Sept. 30, 2015).

Certain Robocalling laws

- ▶ The Fourth Circuit relying on *Reed* declared a South Carolina law prohibiting “robocalls” unconstitutional in *Cahaly v. Larosa*, 796 F.3d 399, 402 (4th Cir. 2015).
- ▶ The statute placed different restrictions on robocalls depending on whether they were (1) unsolicited and (2) made for consumer, political, or other purposes. *Id.*

Rosemond v. Markham

- ▶ Enforcement of Kentucky's Psychological Practice Act provision, which banned individuals from using the term "psychologist" in a deceptive way, violated First Amendment free speech provision.
- ▶ As applied to parenting advice newspaper column provided by author, who was not Kentucky-licensed psychologist, and to author's description of himself as a family psychologist.
- ▶ Author wrote column providing parenting advice to audience of newspaper subscribers, did not represent himself to be a Kentucky-licensed psychologist, and did not enter into client-patient relationships in Kentucky. 135 F. Supp. 3d 574 (E.D. Ky. 2015).

Advise:

- ▶ Slow down, take a deep breath, and get ready to review your ordinances.
- ▶ Find any ordinances that deal with speech, whether it is written, spoke, symbolic, or in any other form. If a message could be conveyed review the ordinance.
- ▶ If you have concerns about the ordinance you should not enforce it until you have resolved any uncertainty about it.
- ▶ We're dealing with fee generating litigation, so the stakes can be high even if they don't seem that way.

Questions

