REED V. GILBERT:
A PRACTICAL UPDATE

Rocky Mountain Land Use Institute 2017

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Reed In a Nutshell

• Clearly requires code amendments
  1. No categories of signs
  2. No different sizes

• Simple test for problems
  1. Code enforcement official—blind or illiterate
A Survey of Case Law as of March 1, 2017

• 125 cases decided in the past 21 months
• 25 in state courts
• 100 in federal courts
Reed in State Courts

- Half are Criminal Cases
- Political Campaign Regulation (3)
- Billboards (3)
- Panhandling (2)
- Labor Relations
Reed in Federal Courts

- Panhandling (6)
- Elections / Campaigns (6)
- Abortion (5)
- Telemarketing (4)
- Billboards (2)
- Education (2)
- “True” Sign Code Cases (5)
What Are The Ripples?

• Land Use is a small slice of *Reed*

• *Reed* is not causing much new litigation at the margin

• More of a First Amendment case than a Land Use case
Other Considerations

• §1983 Actions
• Fee Exposure
• Level Up or Level Down?
Arizona: A Tale of Two Cities

Chandler: We Surrender Fast

Scottsdale: We Scream, Then Surrender
Municipal Exposure Requires Multiple Levels of Failure

1. Failure to Update Code
2. Failure to Change Enforcement
3. Failure to Capitulate
If You Hear Them Coming

• Bend but do not break
• Dismiss charges
• Settle
• Better off getting sued?
In Case of Surprise Attack

• Real risk may be from lawyers, not litigants

• No defense if code is truly bad

• Analogy to ADA shakedown lawsuits