

# *REED V. GILBERT:* A PRACTICAL UPDATE

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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