



FOR IMMEDIATE RELEASE

September 29, 2021

Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Urges Supreme Court To Reject Content-Based Speech Restrictions

(City of Austin v. Reagan National Advertising)

“The Constitution does not allow governments to restrict off-premises speech more than on-premises speech.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today filed an *amicus curiae* brief urging the U.S. Supreme Court to strike down an Austin ordinance that limits businesses’ free-speech rights. Although the Court’s 2015 *Reed* decision held that all content-based restrictions must pass strict scrutiny, Austin passed an ordinance that treats speech differently based on its content.

The appeal arises from Regan National Advertising’s lawsuit challenging the Austin ordinance. That ordinance allows on-premises signs to use digital technology but prohibits advertising off-premises goods or services with digital signs. Austin’s rationales for the digital-sign ban—traffic safety and aesthetics—make no sense because those same rationales apply to on-premises digital signs, which are allowed.

Regan National Advertising challenged the ordinance. It relied on *Reed*, which held that any ordinance that requires reading a sign to determine if it is legal must pass strict scrutiny. The District Court rejected this argument and upheld the ordinance after applying a lower level of scrutiny. The Fifth Circuit reversed that decision. In its view, the Supreme Court’s *Reed* decision requires application of strict scrutiny. And because the ordinance cannot withstand strict scrutiny, the Fifth Circuit found the ordinance unconstitutional.

As WLF’s brief shows, the Fifth Circuit’s ruling correctly applies *Reed*. The brief explains that *Reed*’s core holding is that any content-based speech restriction must pass strict scrutiny. The Court’s earlier case law applying laxer tests for medium-based restrictions were based on outdated views of the First Amendment. But to the extent such distinctions still exist, they must be based on technological reasons that are addressed in the context of strict scrutiny. Because there are no technological distinctions here, WLF urges the Supreme Court to affirm the Fifth Circuit’s decision. WLF’s brief was prepared with the pro bono assistance of Thomas M. Johnson, Jr. and Krystal B. Swendsboe of Wiley Rein LLP (Washington, DC).

Celebrating its 44th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

###