

## **City of Austin v Reagan & Lamar Outdoor Advertising Companies**

**Underlying case:** Two outdoor advertising companies, Reagan and Lamar (Reagan/Lamar), filed permit applications to allow approximately 80 non-digital billboards to be converted into digital billboards. The city denied, and Reagan/Lamar sued claiming the city was acting unconstitutionally by allowing digital on-premise business signs but denying digital off-premise billboards. The District Court agreed with the City. Reagan/Lamar appealed to the Fifth Circuit who agreed with Reagan/Lamar. The City appealed to SCOTUS who ultimately held FOR the City, and remanded the case back to the Fifth Circuit to determine whether Austin's sign code furthered an important governmental interest by a means that substantially related to that governmental interest, aka, "intermediate" scrutiny standard.

**SCOTUS:** Reversed and Remanded to Fifth Circuit, 6-3, in an opinion authored by Justice Sotomayor on April 21, 2022. Justice Thomas filed a dissenting opinion, in which Justices Gorsuch and Barrett joined. The majority found that the distinction between on-premises signs and off-premises signs in the city of Austin's sign code was facially content-neutral under the First Amendment, but the majority also remanded the case back to the Fifth Circuit in order to assure that the city ordinance passed the content-neutral test under intermediate scrutiny. In other words, the Fifth Circuit had to hear arguments and evidence to determine whether the city sign code furthered an important government interest via a means that substantially related to that governmental interest.

**Fifth Circuit Remand:** In March 2023, the Fifth Circuit finally held the city sign code passed constitutional muster under the intermediate scrutiny test, thus upholding the city's denial of the 80 city digital permit applications. It found the city's stated interests in traffic safety and aesthetics was undisputed, and then concluded there was enough evidence, including common sense, to support Austin's Sign Code distinctions. The Fifth Circuit noted that municipalities have traditionally been given wide discretion in the domain of sign regulations, thus allowing Austin that same latitude.

**SCOTUS Majority Opinion highlights:** Location-based regulations are not content-based. A majority of the Court, led by Justice Sotomayor, held that Austin's on/off premises distinction was content neutral on its face. Justice Sotomayor gave the history of outdoor-advertising regulation in the United States. "American jurisdictions," she explained, "have regulated outdoor advertisements for well over a century." And, "[a]s part of this regulatory tradition," governments "have long distinguished" between signs that promote things located elsewhere and those that promote things located onsite. Justice Sotomayor wrote that a sign-code provision is not content based simply because "it requires reading the sign at issue" as argued by Reagan/Lamar. Such a broad interpretation "would upend settled understandings of the law" — of "history, experience, and precedent" — while reaching a "bizarre result." Austin's sign code is not a facially content-based restriction as urged by Reagan/Lamar. Much like an "ordinary time, place, or manner restriction," Justice Sotomayor reasoned, the challenged ordinance "distinguish[es] based on location," not on topic or subject matter: "A given sign is treated differently based solely on whether it is located on the same premises as the thing being discussed . . ." And to the extent that the "distinction requires an examination of speech," it does so "only in service of drawing neutral, location-based lines."

## **AMICI Supporters of the City of Austin**

**(a) On-premise Sign Associations** 1) Texas Sign Association represents the on- premise sign industry in Texas; 2) Mid South Sign Association represents the on-premise sign industry in AL, AR, LA, MS, and TN. 3) International Sign Association is the leading trade association for the domestic on-premise sign industry from 50 states representing 200,000 American workers and millions of sign owners.

**(b) Chambers of Commerce** 1) Greater Houston Partnership is the principal business organization in the 12-county region surrounding Houston. 2) Fort Worth Chamber of Commerce is the premier business organization in the Fort Worth area. 3) West Houston Association was founded in 1979 by Houston's major land developers and corporations to bring order and rational planning to Greater West Houston, now home to 2 million people. 4) Central Houston is the leading business league representing Houston's central business district. 5) Houston Northwest Chamber of Commerce represents 700 businesses. 6) Uptown Houston Association represents Houston's second-largest business district. 7) East End Chamber of Commerce represents over 500 businesses with 96,000 employees. 8) Houston First Corporation operates convention and performing arts facilities and promotes Houston as a world- class destination.

**(c) Land Developers** 1) Crow Holdings, based in Dallas, is one of the largest developers in the United States with projects in 35 states in three subsidiaries: Trammel Crow Residential, Crow Holdings Office, and Crow Holdings Industrial. 2) Constructive Ventures is a real estate development firm based in Austin. 3) Transwestern Development Company, based in Houston, is a developer of office, industrial, multifamily, mixed-use and healthcare projects with 34 offices nationwide. 4) Hines, based in Houston, is a global real estate investment, development and management firm founded in 1957 with a presence in 240 cities.

**(d) Scenic Organizations** 1) The Garden Club of America, founded in 1913, includes 199 clubs and 18,000 club members. 2) Scenic America, along with its 30 nationwide chapters, is the only national organization dedicated to the preservation of the visual environment. 3) Scenic Texas is a Texas nonprofit corporation dedicated to the enhancement of the state's visual environment as seen by the traveling public and particularly with respect to the Texas Highway Beautification Act.