NOT YET SCHEDULED FOR ORAL ARGUMENT

Nos. 12-7139 & 12-7140

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ACT NOW TO STOP WAR AND END RACISM, *et al.*,
APPELLEES & CROSS-APPELLANTS,

V.

DISTRICT OF COLUMBIA,
APPELLANT & CROSS-APPELLEE.

ON APPEALS FROM A JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SUPPLEMENTAL BRIEF FOR THE DISTRICT OF COLUMBIA

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* Authorities upon which we chiefly rely are marked with asterisks.

Regulations

GLOSSARY

MASF	Muslim American Society Freedom Foundation

SUMMARY OF ARGUMENT

The Supreme Court's decision in *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015), supports the District of Columbia's position that its sign regulation is content-neutral and, therefore, constitutional. Of course, this Court need not reach this issue because, as the District's prior briefing argued, the Muslim American Society Freedom Foundation ("MASF") has no standing and its claims are moot. But if the Court does reach the issue, then, at the very least, *Reed* provides no basis to hold that the District's regulation—requiring event-related signs posted on public lampposts to be removed 30 days after the event—is content-based for First Amendment purposes.

Reed differs critically from the present case because the District's regulation does not distinguish among signs based on topic or subject matter. In multiple opinions, the Supreme Court unanimously held that the Town of Gilbert's sign code violated the First Amendment. Gilbert's code was content-based, and thus subject to strict scrutiny, because it expressly drew distinctions based on a sign's topic: for example, political event signs were treated more favorably than religious event signs. The District's sign regulation neither makes facial distinctions among types of events nor favors certain messages over others; accordingly, it is content-neutral. Moreover, Justice Alito's concurrence (for three of the six Justices who joined the majority opinion) expressly declared that time limitations on signs advertising one-time events are content-neutral, and the opinions in *Reed* indicate that a majority of the Justices

would apply intermediate scrutiny to such a regulation. This Court should follow the view that a majority of the Supreme Court has adopted, and so apply intermediate scrutiny.

Moreover, *Reed* does not overturn other precedent, including *Hill v. Colorado*, 530 U.S. 703 (2000), and *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), which show the content-neutrality of the District's regulation. The District's regulation applies to a very broad and general category of speech, like the statute in *Hill*, and is concerned not with the communicative impact of the speech but with its secondary effects on the surrounding community, like the ordinance in *Renton*.

Finally, even assuming that *Reed* establishes a new standard and would invalidate the District's regulation on this record, this Court should remand to permit the District to show the regulation's constitutionality under *Reed*'s new standard.

ARGUMENT

I. If This Court Finds That MASF's Claims Are Not Moot, Then The Court Should Find That *Reed* Reinforces The Conclusion That Strict Scrutiny Does Not Apply To The District's Content-Neutral Regulation.

A. The District's sign regulation differs critically from the sign code *Reed* invalidated, which expressly made distinctions based on a sign's topic or subject matter.

In assessing whether a regulation is content-based, *Reed* distinguishes between the Town of Gilbert's sign code and laws like the District's regulation here. The dispositive difference is that, unlike the District's regulation, Gilbert's code treated

signs differently based on the topic of the sign. In fact, Gilbert established 23 topical categories of signs; each category had its own durational limits, size restrictions, and locational requirements. 135 S. Ct. at 2224-25. Three particular categories on which the Court focused were: "ideological signs," which could be posted for an unlimited time; "political signs," which could be posted up to 60 days before a primary election and up to 15 days following a general election; and "temporary directional signs relating to a qualifying event," which could be displayed no more than 12 hours before the event and no more than one hour afterward. *Id.* A "qualifying event" included an activity of a religious organization. *Id.* In *Reed*, the petitioner, a church, challenged Gilbert's code when its signs, which invited persons to attend its church services, were cited for exceeding the durational restrictions on "temporary directional signs relating to a qualifying event." *Id.* at 2225-26.

Justice Thomas wrote the majority opinion, which five other Justices joined, unsurprisingly holding that Gilbert's sign code was content-based—and thus subject to strict scrutiny. The majority stated that "[c]ontent-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Id.* at 2226. The majority wrote that a law is content-based if it "applies to particular speech because of the topic discussed or the idea or message expressed." *Id.* at 2227. As the majority explained, a law that "'on its face'

draws distinctions based on the message a speaker conveys" meets this test. *Id.* The majority held that Gilbert's code was such a law because it "subjects each of these categories"—*i.e.*, ideological, political, and "qualifying event"—"to different restrictions" that "depend entirely on the communicative content of the sign." *Id.* The church's signs "inviting people to attend its worship services are treated differently than signs communicating other types of ideas." *Id.*

The majority rejected an argument that a law expressly making distinctions based on a sign's communicative content is nevertheless content-neutral if those distinctions can be justified without reference to content. *Id.* at 2228-29. As the majority explained, "[i]nnocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech." *Id.* at 2229. The majority recognized that Gilbert's sign code posed such a danger: "[O]ne could easily imagine a Sign Code compliance manager who disliked the Church's substantive teachings deploying the Sign Code to make it more difficult for the Church to inform the public of the location of its services." *Id.*

Unlike Gilbert's code, the District's sign regulation does not target speech based on topic or subject matter. Several years before the *Reed* decision—and before the district court decision here—the District recognized the First Amendment concerns in establishing different durational limits like those that the Town of Gilbert had

established. Prior to 2009, for signs privately posted on public lampposts, the District had a different durational limit for political campaign signs than other non-commercial signs. Political campaign signs could be posted for any amount of time as long as they were removed within 30 days following the general election, but other non-commercial signs could be posted for only 60 days. 24 D.C.M.R. § 108.5 -.6 (1996). The District eliminated this differential treatment so that, by the time of the district court decision here, all non-commercial signs could be posted for up to 180 days, provided also that signs "related to a specific event" had to be removed within 30 days after the event. 59 D.C. Reg. 273 (2012).

Reed did not deal with a sign regulation like the District's present regulation. *Reed* involved sign regulations, like the District's *former* sign regulation, that had different durational limits for different types of event-related signs. In *Reed*, signs related to a political event, specifically an election, could be posted much longer than a sign related to a religious event, like a church service. 135 S. Ct. at 2224-25. The District's present sign regulation is thus distinguishable from Gilbert's regulations. It merely considers whether the sign relates to an event; it does not matter, unlike for Gilbert's regulations, what kind of event or its topic—whether political, religious, ideological, or something else. 24 D.C.M.R. § 108.6. Under the District's regulation, no such topic is treated more favorably than another. Moreover, the only requirement for an event-related sign is that it be removed 30 days after the event it advertises has

concluded. 24 D.C.M.R. § 108.6. This means that the regulation applies only long after the communicative content of the sign has expired. The District's regulation thus poses no danger that the government may "wield [it] to suppress disfavored speech." *Reed*, 135 S. Ct. at 2224-25. Absent this rationale, there is no reason to subject the District's regulation to strict scrutiny because it is content-neutral, not content-based.

B. Justice Alito's concurrence expressly approved the content-neutrality of time limits for signs advertising one-time events; and the opinions in *Reed*, fairly read, show that a majority of Justices would apply intermediate scrutiny to the regulation at issue here.

Even if the majority opinion might be read to declare that any regulation turning on whether a sign advertises an "event" is content-based, a concurrence for three Justices who joined the six-Justice majority opinion proves otherwise. Consistent with the majority opinion, Justice Alito's concurrence directly states that durational limits for "signs advertising a one-time event" are not content-based for purposes of First Amendment scrutiny. *Id.* at 2223. As the concurrence stated, Gilbert's regulations were subject to strict scrutiny because they were "replete with content-based distinctions." *Id.* Justice Alito assured, however, that the Court's decision did not mean that "municipalities are powerless to enact and enforce reasonable sign regulations." *Id.* "Properly understood, today's decision will not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate esthetic objectives." *Id.* at 2223-24. Justice Alito gave nine examples—not intended as a comprehensive list—of "rules that would not be content based." *Id.* at 2223.

One of Justice Alito's examples of a content-neutral rule is the exact type at issue here: "time restrictions on signs advertising a one-time event. " *Id.* "Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed." *Id.* Justice Alito continued: "Of course, content-neutral restrictions on speech are not necessarily consistent with the First Amendment [because t]ime, place, and manner restrictions 'must be narrowly tailored to serve the government's legitimate, content-neutral interests.'" *Id.* (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 798 (1989)). But, as Justice Alito explained, "they need not meet the high standard imposed on viewpoint- and content-based restrictions." *Id.*

Justice Alito's explanation for why time restrictions on event-related signs are content-neutral is sound. Such restrictions do not discriminate based on "topic or subject" because the topic or subject of the event is irrelevant. They apply to all events, regardless of the ideas or messages communicated. Additionally, time limitations on event-related signs are also properly analogized to time limitations on event-related oral speech or music. Governments routinely permit on public property a demonstration, concert, or other type of event subject to limits on the duration of the event. *See, e.g.*, *Thomas v. Chi. Park Dist.*, 534 U.S. 316, 318-19 (2002). Such time restrictions apply, by definition, only to speech or expression tied to a specific event; other speech or expression, not related to an event but occurring within the same

forum, is not so restricted. But such time restrictions on event-related speech are plainly content-neutral. *See id.* at 322; *Boardley v. U.S. Dep't of Interior*, 615 F.3d 508, 516 (D.C. Cir. 2010). Time restrictions on event-related signs posted on public property are similar, and thus similarly content-neutral.

There is further reason that three of the six Justices in the majority opinion specifically identified time restrictions on signs for one-time events as content-neutral: the petitioner in *Reed* acknowledged that such restrictions were content-neutral. At oral argument, the petitioner faulted Gilbert's code for allowing signs related to an election to be posted for up to five months but signs for the church's event to be posted only overnight. (Tr. 14-15 (attached).) Contending that such a distinction was impermissibly content-based, the petitioner contrasted Gilbert's code with a regulation like the District's. (Tr. 14-17.) The petitioner agreed that a municipality could still enact a law requiring that "signs relating to a one-time event, an election or anything else that occurs on a particular date, have to be taken down within a period of time after the event." (Tr. 16.) As the petitioner acknowledged, such a law would be content-neutral since it treated all events the same. (Tr. 16-17.) In fact, the petitioner specifically cited and "recommend[ed] to the Court" the District's regulation and its specific time limits as a reasonable—and content-neutral—law. (Tr. 16-17.)[1]

[1] The petitioner cited a proposed recodification of the regulation at 13 D.C.M.R. § 605. *See* 62 D.C. Reg. 2015, 2036-37 (2015).

With all of the Justices' opinions, *Reed* indicates that a regulation like the District's—though not at issue in *Reed*—would be content-neutral for purposes of First Amendment scrutiny. Three of the Justices in the majority expressly stated so in Justice Alito's concurrence. Meanwhile, Justice Kagan's concurring opinion, which Justices Ginsberg and Breyer joined, disagreed with the majority's broad application of strict scrutiny to all sign regulations "based on subject matter." *Id*. at 2236-39. It is implicit from their opinion that they too would decline to apply strict scrutiny to a time restriction on signs advertising a one-time event. *See id*. at 2237-38 ("We apply strict scrutiny to facially content-based regulations of speech, in keeping with the rationales just described, when there is any 'realistic possibility that official suppression of ideas is afoot.' . . . But when that is not realistically possible, we may do well to relax our guard so that 'entirely reasonable' laws imperiled by strict scrutiny can survive."). That would make a total of at least six Justices—concurring in the judgment—who would reject application of strict scrutiny to a regulation like the District's.

"When a majority of the Supreme Court agrees on a result, but no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds[.]" *Miss. Comm'n on Envtl. Quality v. EPA*, 790

F.3d 138, 176 n.22 (D.C. Cir. 2015) (internal quotation marks omitted). *Reed* should be so interpreted.

C. *Reed* does not overrule existing law rejecting the overly formal and broad definition of "content-based" that MASF seeks to apply here.

Furthermore, *Reed* does not overturn other precedent supporting the content-neutrality of the District's sign regulation. MASF's argument that the District's regulation is content-based, merely because it requires event-related signs to be removed 30 days after the event, seeks to apply the concept of "content-based" in a formalistic and abstract sense that is divorced from the reason for applying strict scrutiny: the danger that content-based laws will be used to suppress disfavored speech. (*See* District Reply Br. 20-22.) Not only do a majority of Justices in *Reed* reject such formalism, but so do earlier Supreme Court cases that *Reed* did not overturn and are directly applicable here.

One such case is *Hill*, 530 U.S. 703. There, the Court found content-neutral a statute prohibiting a person from approaching another in certain locations for the purpose of engaging in "oral protest, education, or counseling." *Id.* at 720-25. The Court recognized that "cases may arise in which it is necessary to review the content of the statement made by a person . . . to determine whether the approach is covered by the statute." *Id*. at 721. In other words, a determination must be made whether the speech constitutes, for example, "counseling" rather than social conversation. "But that review [of the speech's content] need be no more extensive than a determination

of whether a general prohibition of 'picketing' or 'demonstrating' applies to innocuous speech." *Id*. As the Court held, laws applying specifically to "picketing" or "demonstrating" are content-neutral even though "[t]he regulation of such expressive activities, by definition, does not cover social, random, or other everyday communications." *Id*. at 721-22 & n.30 (citing, *e.g*., *United States v. Grace*, 461 U.S. 171 (1983) (finding it "clear" that a prohibition on picketing but not on other expressive conduct "is facially content neutral")). The Court explained that the statute "applies to all 'protest,' to all 'counseling,' and to all demonstrators" and "[t]hat is the level of neutrality that the Constitution demands." *Id.* at 725.

Hill remains binding and has direct application here. MASF's argument that the District's regulation is content-based because it distinguishes between events and non-events is equivalent to the argument, rejected in *Hill*, that a statute is content-based because it distinguishes among highly general categories of speech. The District's sign regulation, requiring signs to be removed 30 days after the event to which it relates, applies to *all* events. That is the level of neutrality which is required. *Id.* It may be necessary to review the content of a sign to determine whether it relates to an event, but so too must the content of speech be reviewed to determine whether it involves "oral protest," "counseling," or "picketing" as opposed to, for example, fictional storytelling, social gossip, or personal greetings. At least at some level of abstraction, such regulations of speech or expression can be described as content-

based. But for First Amendment purposes, the Court has rejected such formalism. As in *Reed*, distinctions between political speech and religious speech are content-based, but, as in *Hill* and the present case, distinctions that apply to much broader categories of speech, such as "oral protests" or events, are not.

Reed also did not overrule *Renton*, 475 U.S. 41, and its "secondary effects" doctrine. In *Renton*, the Supreme Court applied intermediate scrutiny, instead of strict scrutiny, to review a zoning ordinance that imposed specific limitations on the location of adult movie theaters. *Id*. at 46-50. The Court concluded that the ordinance was content-neutral even though it applied only to theaters showing films of a particular content. *Id*. at 47-48; *see id*. at 44 (describing the ordinance's definition of an adult movie theater as a theater emphasizing "matter depicting, describing or relating to 'specified sexual activities' or 'specified anatomical areas'"). In finding the ordinance content-neutral, the Court explained that the ordinance "is not aimed at the content of the films shown at adult motion picture theaters, but rather at the *secondary effects* of such theaters on the surrounding community," such as increased crime, lower property values, and diminished quality of urban life. *Id.* at 47-48 (internal quotation marks omitted); *accord Am. Library Ass'n v. Reno*, 33 F.3d 78, 87 (D.C. Cir. 1994) (describing the *Renton* ordinance as "address[ing] collateral harms unrelated to whatever thoughts the theaters' films might communicate to their viewers"). The

Supreme Court thus reviewed the ordinance "under the standards applicable to 'content-neutral' time, place, and manner regulations." 475 U.S. at 49.

Renton is directly applicable here. The District's sign regulation is not aimed at the thoughts or messages that the signs on public lampposts convey. Instead, the District's regulation, establishing durational limits on such signs, addresses the secondary effects of such signs on the surrounding community. It is well recognized that visual blight—"the substantive evil" that the District's regulation addresses—"is not merely a possible byproduct of the activity [of posting signs], but is created by the medium of expression itself." *Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 810 (1984). Moreover, the visual blight of signs on public lampposts, and the likelihood that those signs will become litter, increases as those signs, exposed to the elements, deteriorate over time. As the district court found, "[a] poster for an event that has already occurred is more likely to constitute litter and blight than a poster for a future event or a general political message." (JA 80.) These concerns about the secondary effects of litter and blight on the surrounding community are unrelated to the communicative impact of a sign's message on the reader. Indeed, because the communicative content of a sign advertising an event dissipates after the event concludes, all that really remains of such a sign, when the District's regulation applies to it, is its physical medium and secondary effects.

Because *Reed* does not expressly overrule—or even address—*Hill* and *Renton*, these two cases, which have direct application here, should be followed. As previously discussed, *Reed* is readily distinguishable from the present case, if not fully supportive of the content-neutrality of the District's regulation (*see supra* at 6-9). Even assuming that *Reed* might nevertheless call into question any reasons upon which *Hill* and *Renton* might rest, this Court leaves to the Supreme Court "the prerogative of overruling its own decisions." *Sierra Club v. EPA*, 322 F.3d 718, 725 (D.C. Cir. 2003). By rejecting an overly formal and inflexible application of content-neutrality, *Hill* and *Renton* show that the District's regulation is content-neutral and thus subject to intermediate scrutiny.

II. Alternatively, If *Reed* Does Not Permit Upholding The District's Regulation On The Current Record, This Court Should Remand To Allow The District To Offer Additional Evidence.

Assuming arguendo *Reed* establishes a new standard that the District's regulation cannot meet on the present record, a remand is appropriate for further evidence. Prior to *Reed* and the decision in this case, the law of this Circuit had established that a regulation like the District's was content-neutral. In *BellSouth Corp. v. FCC*, 144 F.3d 58 (D.C. Cir. 1998), this Court held that a statute was content-neutral even though its restrictions applied to information services including "news" and "entertainment," *id*. at 69. This Court reasoned, in part, "to a large extent neutrality is now gauged by reference to a statute's justifications." *Id*. Similarly, in *Cablevision*

Systems Corp. v. FCC, 649 F.3d 695 (D.C. Cir. 2011), this Court likewise found video programming regulations content-neutral though triggered by whether the programming involved sports. *Id.* at 717. This Court explained that there was no evidence that the government "issued its regulations to disfavor certain messages or ideas." *Id.*

The District submits that the holdings of *BellSouth* and *Cablevision* are correct, even if *Reed* has undercut their reasoning, because they can still be sustained under the alternative reasoning of other authority, including *Hill*. If, however, this Court were to conclude that *Reed* has negated this prior precedent, the District requests the opportunity to defend the constitutionality of its law under the new, higher standard *Reed* imposes. Assuming that the District now has a greater burden of defending its law against First Amendment challenge, whether due to the need to further show "secondary effects" or to meet the test for strict scrutiny, fairness warrants that the District have the opportunity to present such evidence through a remand. *See Hatim v. Gates*, 632 F.3d 720, 721 (D.C. Cir. 2011); *Ford v. Mabus*, 629 F.3d 198, 206-07 (D.C. Cir. 2010); *Hatch v. FERC*, 654 F.2d 825, 835 (D.C. Cir. 1981).

CONCLUSION

This Court should vacate the judgment and award of sanctions against the District and remand for dismissal of MASF's claims due to mootness, or alternatively, the Court should direct the entry of judgment for the District on MASF's claims and reverse the award of sanctions.

Respectfully submitted,

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December 2015

CERTIFICATE OF SERVICE

I certify that on December 7, 2015, electronic copies of this brief were served through the Court's ECF system, to:

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CERTIFICATE OF COMPLIANCE

I further certify that this brief complies with the word limitation in the Court's Order of October 30, 2015, because the brief contains 3,744 words, excluding exempted parts. This brief complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14 point.

/s/ Carl J. Schifferle
CARL J. SCHIFFERLE

ATTACHMENT

IN THE SUPREME COURT OF THE UNITED STATES

- x

CLYDE REED, ET AL., :

Petitioners :

v. : No. 13-502.

TOWN OF GILBERT, ARIZONA, :

ET AL. :

- x

Washington, D.C.

Monday, January 12, 2015

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:04 a.m.

APPEARANCES:

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C O N T E N T S

P R O C E E D I N G S

(10:04 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument first this morning in Case 13-502, Reed v. Town of Gilbert.

Mr. Cortman.

ORAL ARGUMENT OF DAVID CORTMAN

ON BEHALF OF THE PETITIONERS

MR. CORTMAN: Mr. Chief Justice, and may it please the Court:

The town's code discriminates on its face by treating certain signs differently based solely on what they say. For example, political signs may be 32 square feet, may be unlimited in number, and may be placed in the right-of-way of the entire town for five months before the election; but the church's signs can only be one-fifth of that side -- size, only placed in the dark of night, the night before the church service.

While the church's signs with directional content are only allowed up for 14 hours, other signs with directional content are allowed up for much longer. For example, builders' directional signs to home sales events are allowed up to be the entire -- are allowed up the entire weekend, and homeowners' association event signs are allowed to be up for 30 days.

CHIEF JUSTICE ROBERTS: -- then it can be treated one way, but if it's in concrete -- but --

MR. CORTMAN: That's right.

CHIEF JUSTICE ROBERTS: It seems to me that you are trying to find a, I don't know, a difficult way to deal with an issue that could be readily addressed just by seeing if the sign is for a limited event. In other words, what if somebody -- every time -- you know, the stake in the ground at least could last for three weeks, so every three weeks, they come along and stick the stake back in the ground. You are saying the only way they can distinguish is by looking at whether it has a stake in the ground or whether it's in concrete, and yet that seems to me that doesn't help the -- that doesn't answer the city's legitimate concern.

MR. CORTMAN: But I think what is important here is the fact if the city, the town has already agreed that an election is an event, and so we have an election that's an event, but yet that single event sign can be up for five months, and yet we have an event where that single event can only be up overnight. And so it's already made that determination that it would allow those types of signs for what I think is a comparable use, a single event to a single event.

The other thing I would say is if you allow

signs to be up for one single event for five months, certainly there should be some way to say, well, if we have a recurring event as we do here, certainly the sign should be allowed up at least equal to the same time, and --

JUSTICE KENNEDY: Well, I mean, to say that an election is a single event in the same way as a football game, a cookout, a basketball championship, it's -- it seems to me is a very difficult thing for this Court to have to decide. It's just not -- a political campaign is a dynamic that goes on for some weeks that the signs initiate a discussion. I can see where you can say the religious sign does or at least should initiate the same discussion of -- on issues that are certainly of the same importance, if not more.

MR. CORTMAN: Certainly --

JUSTICE KENNEDY: But it seems to me you are forcing us into making a very wooden distinction that could result in a proliferation of signs for birthday parties or for every conceivable event that could be up for five months.

MR. CORTMAN: But I think the problem is there -- there already is that here, because we have an unlimited number of political signs. And so if the streets are already littered in an unlimited number of

political signs, which they are, then how serious is the town's interest to reduce clutter? And I think that's the problem. The way to reduce clutter is to say, for example, many different ways, you can only have one sign per block, five signs total. It could only be a certain size.

But it's hard to take the interests seriously of reducing clutter when it allows political signs to clutter the entire town in an unlimited number for the entire year. The church's signs or an event signs are not the problem. What we have here is -- is carte blanche authority for political signs to clutter the landscape, unlimited in number for the entire year, and yet the concern is for maybe a few more signs that may be placed.

JUSTICE ALITO: Can the town say that signs relating to a one-time event, an election or anything else that occurs on a particular date, have to be taken down within a period of time after that event? And if can say that, isn't that content-based, the way you define that concept?

MR. CORTMAN: I don't believe it is. In fact, the Washington, D.C., municipal regulations have that exact code, and -- and it's one that we would recommend to the Court. I believe it's 13605.

And what it says is all temporary signs should be treated the same, period. You can put -- you have to put your date on the sign for when you put it up. Every temporary sign can be up for 180 days. If it's tied to an event, after the event is over, it needs to be down 30 days after the event.

I think -- our opinion is the reason that is content-neutral is whenever something is over, if your store is closed, the event is done, then the sign can be removed. But the important part is every sign can be up for the same amount of time, even if it is that event that's over now. And I think that's the way you deal with these -- these single event --

JUSTICE ALITO: I thought you said the way you distinguish between temporary signs and permanent signs is based on the -- the nature of the sign, not what it says.

MR. CORTMAN: Right.

JUSTICE ALITO: So that gets you over the problem Justice Sotomayor mentioned about having to read the sign.

MR. CORTMAN: Right.

JUSTICE ALITO: But if this -- if there's a rule that says the sign has to be down within a certain period of time after the date of the event, which is on