

Appendix A

“Content-Neutrality Test” Circuit Split

<i>Circuit</i>	<i>First Amendment Approach</i>	<i>Primary SCOTUS Precedent</i>	<i>Type & Location of Communication</i>	<i>Prohibition or Regulation of Speech</i>	<i>Ordinance Content Neutral?</i>	<i>Case</i>
1 st	Formalistic (literal interpretation)	<i>Mosley (1972); Linmark (1977)</i>	Political signs on residential property	Prohibition	NO ^a	<i>Matthews v. Town of Needham</i> , 764 F.2d 58 (1985)
2 nd	Formalistic (literal interpretation)	<i>Metromedia (1981)</i>	Billboards in commercial & industrial zoned areas	Prohibition	NO ^b	<i>National Advertising Co. v. Town of Babylon</i> , 900 F.2d 551 (1990)
3 rd	Pragmatic (flexible interpretation)	<i>Metromedia (1981)</i>	Political signs near highways	Prohibition	NO ^c	<i>Rappa v. New Castle County</i> , 18 F.3d 1043 (1994)
4 th	Pragmatic (flexible interpretation)	<i>Ward (1989); Hill (2000)</i>	Signs on residential property	Regulation	YES ^d	<i>Brown v. Town of Cary</i> , 706 F.3d 294 (2013).
5 th	Formalistic (literal interpretation)	<i>Ark Writer’s Project (1987)</i>	Amplified oral communication in park or during parade	Prohibition	YES ^e	<i>Serv. Emp. Int’l Union, Local 5 v. City of Houston</i> , 595 F.3d 588, 596 (2010)
6 th	Pragmatic	<i>Ward (1989); Hill (2000);</i>	Temporary commercial			<i>H.D.V.-Geektown, LLC v.</i>

	(flexible interpretation)	<i>Thomas (2002)</i>	signs at business location requiring permit	Regulation	YES ^f	<i>City of Detroit</i> , 568 F.3d 609, 622 (2009)
7 th	Pragmatic (flexible interpretation)	<i>Ward (1989); Hill (2000)</i>	Audio recordings of police in public	Prohibition	YES ^g	<i>ACLU of Ill. V. Alvarez</i> , 679 F.3d 583, 603 (2012)
8 th	Formalistic (literal interpretation)	<i>Discovery Network (1993)</i>	Ideological sign/mural in residentially zone area	Regulation	NO ^h	<i>Neighborhood Enterprises, Inc. v. City of St. Louis</i> , 644 F.3d 728, 736 (2011)
9 th	Pragmatic (flexible interpretation)	<i>Ward (1989); Hill (2000)</i>	As-applied: signs on poles; Facial: permit exemptions, signs must be clear & readable	As-applied: Prohibition; Facial: Regulation	NO ⁱ	<i>G.K. Ltd. Travel v. City of Lake Oswego</i> , 436 F.3d 1064, 1070 (2006)
10 th	N/A					
11 th	Formalistic (literal interpretation)	<i>Metromedia (1981)</i>	Electronic sign at place of business requiring a permit	Regulation	NO ^j	<i>Solantic, LLC v. City of Neptune Beach</i> , 410 F.3d 1250, 1263-66 (2005)
DC	N/A					

		Purpose	
Face		Neutral	Discriminatory
	Neutral	Unconstitutional: No Circuits	Unconstitutional: 3rd, 4th, 6th, 7th, 9th
	Discriminatory	Unconstitutional: 1st, 2nd, 5th, 8th	Unconstitutional: All Circuits

^a “The defendants respond by asserting that the bylaw does not discriminate on the basis of ‘content,’ but rather on the basis of ‘function.’ This argument is unpersuasive. The ‘function’ of any sign is to communicate the information written on it. The defendants’ preference for the ‘functions’ of certain signs over those of other (e.g., political) signs is really nothing more than preference based on *content*.” *Matthews v. Town of Needham*, 764 F.2d 58, 60 (1985) (emphasis in original).

^b “The district court properly followed *Metromedia* in concluding that the exceptions to the ban for temporary political signs and for signs identifying a grand opening, parade, festival, fund drive or other similar occasion impermissibly discriminate between types of noncommercial speech based on content.” *National Advertising Co. v. Town of Babylon*, 900 F.2d 551, 557 (1990).

^c “[S]tatutes aimed at a legitimate end unrelated to the suppression of speech but which nonetheless restrict speech in a certain locality may constitutionally contain content-based exceptions as long as the content exempted from restriction is significantly related to the particular area in which the sign is viewed.” *Rappa v. New Castle County*, 18 F.3d 1043, 1047 (1994).

^d “[W]e reject any absolutist reading of content neutrality, and instead orient our inquiry toward why—not whether—the Town has distinguished content in its regulation.” *Brown v. Town of Cary*, 706 F.3d 294, 301 (2013).

^e “A regulatory scheme that requires the government to ‘examine the content of the message that is conveyed’ is content-based regardless of its motivating purpose.” *Serv. Emp. Int’l Union, Local 5 v. City of Houston*, 595 F.3d 588, 596 (2010) (citations omitted).

^f “An ordinance is not a content-based regulation of speech if (1) the regulation controls only the places where the speech may occur, (2) the regulation was not adopted because of disagreement with the message that the speech conveys, or (3) the government’s interests in the regulation are unrelated to the content of the affected speech . . . There is simply nothing in the record to indicate that the distinctions between the various types of signs reflect a

meaningful preference for one type of speech over another.” *H.D.V.-Geektown, LLC v. City of Detroit*, 568 F.3d 609, 621-22 (2009).

^g “Although the line between content-neutral and content-based laws is sometimes hard to draw, ‘the principal inquiry in determining content neutrality . . . is whether the government has adopted a regulation of speech because of [agreement or] disagreement with the message it conveys.’ . . . A law is not considered ‘content based simply because a court must ‘look at the content of an oral or written statement in order to determine whether a rule of law applies.’” *ACLU of Ill. V. Alvarez*, 679 F.3d 583, 603 (2012) (citations omitted).

^h “[The] zoning code’s definition of ‘sign’ is impermissibly content-based because ‘the message conveyed determines whether the speech is subject to the restriction.’ . . . Thus, an object of the same dimensions as Sanctuary’s ‘End Eminent Domain Abuse’ sign/mural would not be subject to regulation if it were a ‘[n]ational, state, religious, fraternal, professional and civic symbol[] or crest[], or on site ground based measure display device used to show time and subject matter of religious services.’” *Neighborhood Enterprises, Inc. v. City of St. Louis*, 644 F.3d 728, 736-37 (2011) (citations omitted).

ⁱ “Neither the speaker- nor event-based exemptions implicate [content discrimination] insofar as neither requires law enforcement officers to ‘read a sign’s message to determine if the sign is exempted from the ordinance.’ In the speaker category, officers decide whether an exemption applies by identifying the tentity speaking through the sign without regard for the actual substance of the message. In the case of event-based exemptions to the permitting process, the officer must determine only whether a specific triggering event has occurred and if the temporary sign has been erected within the specified time frame.” *G.K. Ltd. Travel v. City of Lake Oswego*, 436 F.3d 1064, 1078 (2006) (citations omitted).

^j “[M]any of the sign code’s exemptions are plainly content based...while a ‘Re-Elect Mayor Smith’ yard sign could be posted for a maximum of sixteen days, the illuminating parking sign may remain indefinitely . . . Moreover, electioneering signs are the only form of political expression spared from the sign code’s permit requirement. To express any political message not directly related to an upcoming election, a would-be speaker must comply with the sign code’s permitting rules and all of its other restrictions.” *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1264-65 (2005).