



Outdoor Advertising Association of America

Reed v. Town of Gilbert – Two Years Later

Reed v. Town of Gilbert



Road to the Supreme Court



Maximum sign sizes in Town of Gilbert

Homeowners Assn signs (80 sq. ft.)

Political signs (nonresidential zone) (32 sq. ft.)

Ideological signs (20 sq. ft.)

Qualifying Event signs (6. sq. ft.)

Reed v. Town of Gilbert – a brief synopsis

Plaintiffs’
“qualifying event” signs



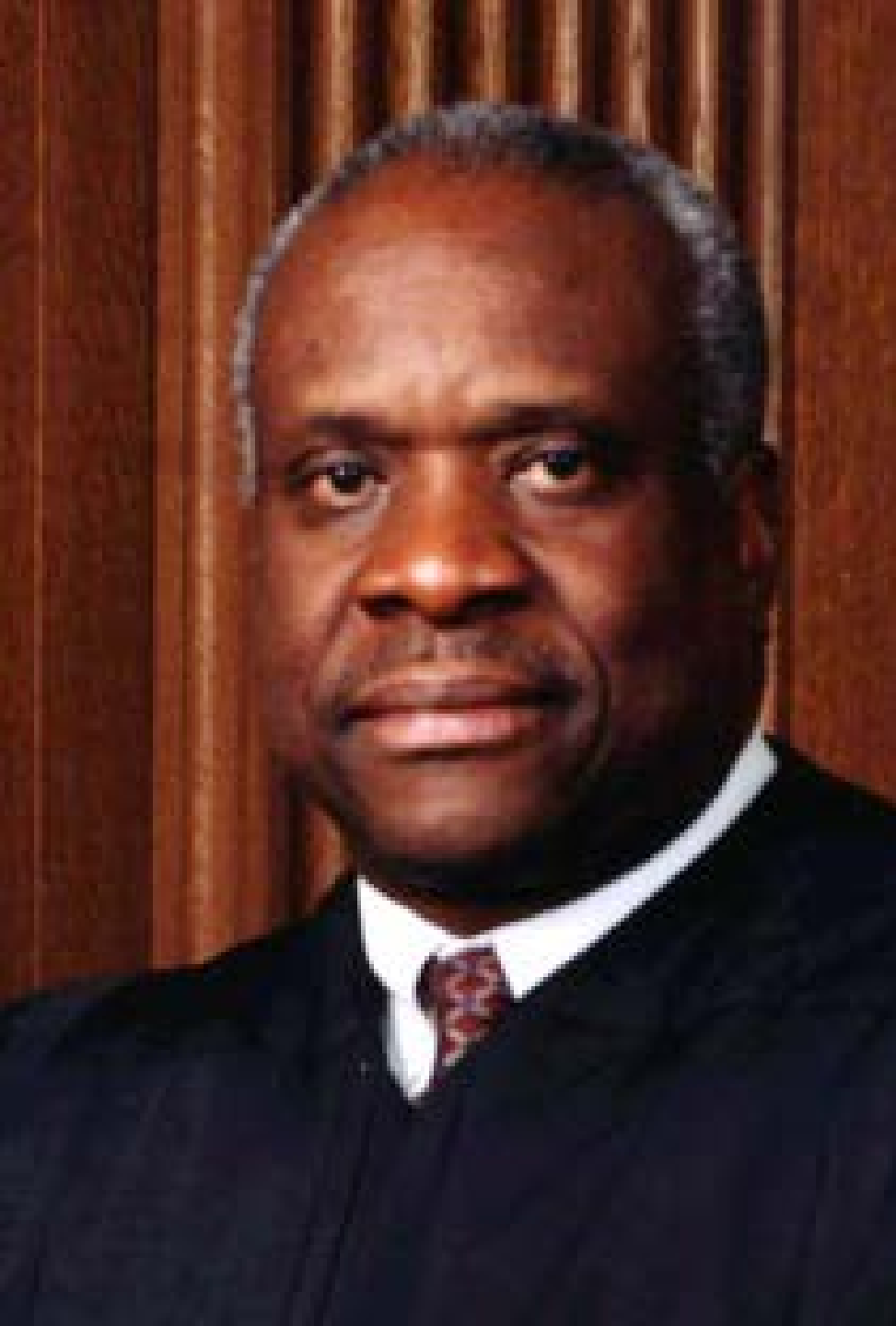
Candidates’ “political” signs



First Amendment

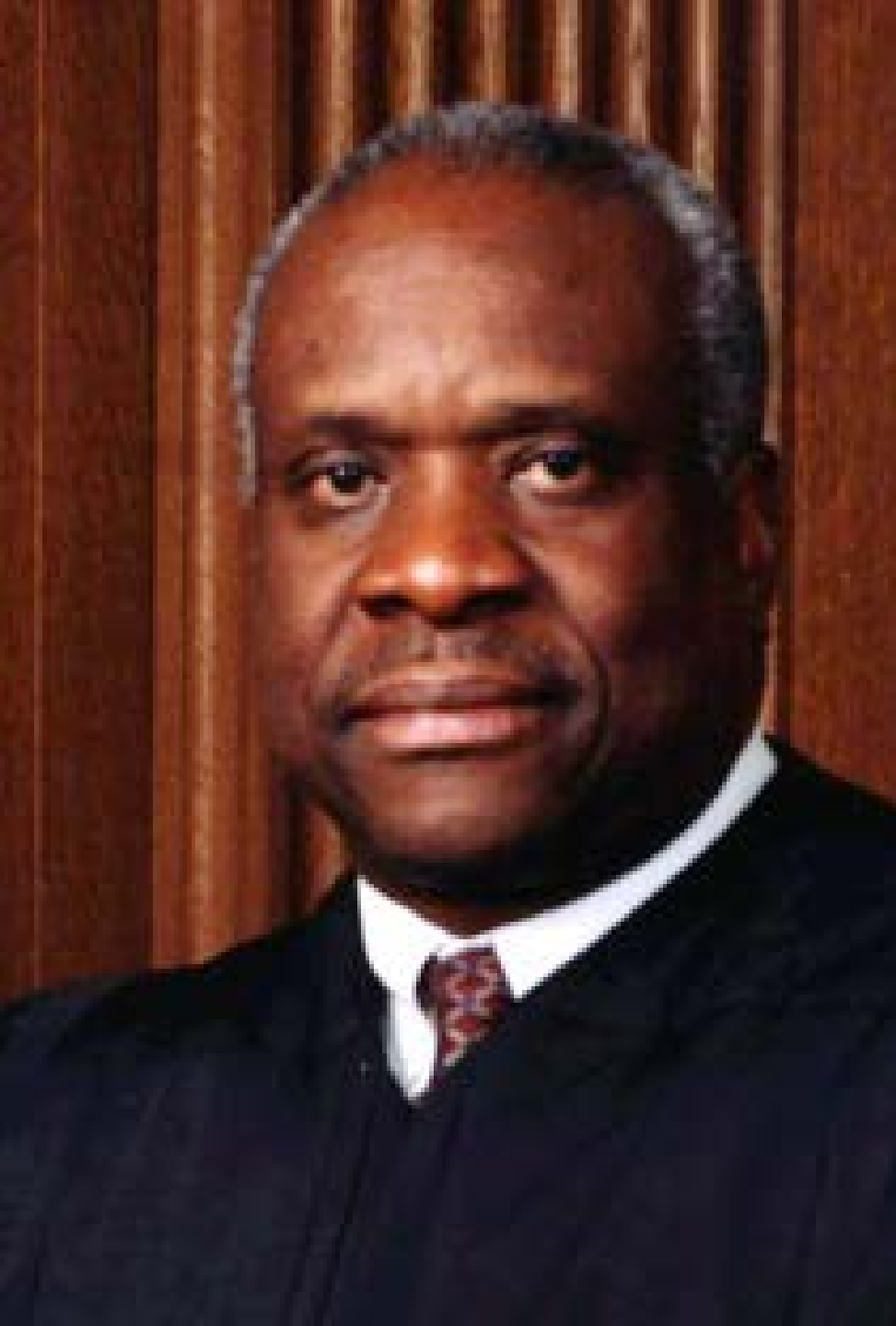
“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; ***or abridging the freedom of speech,*** or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Applied to states through the 14th Amendment



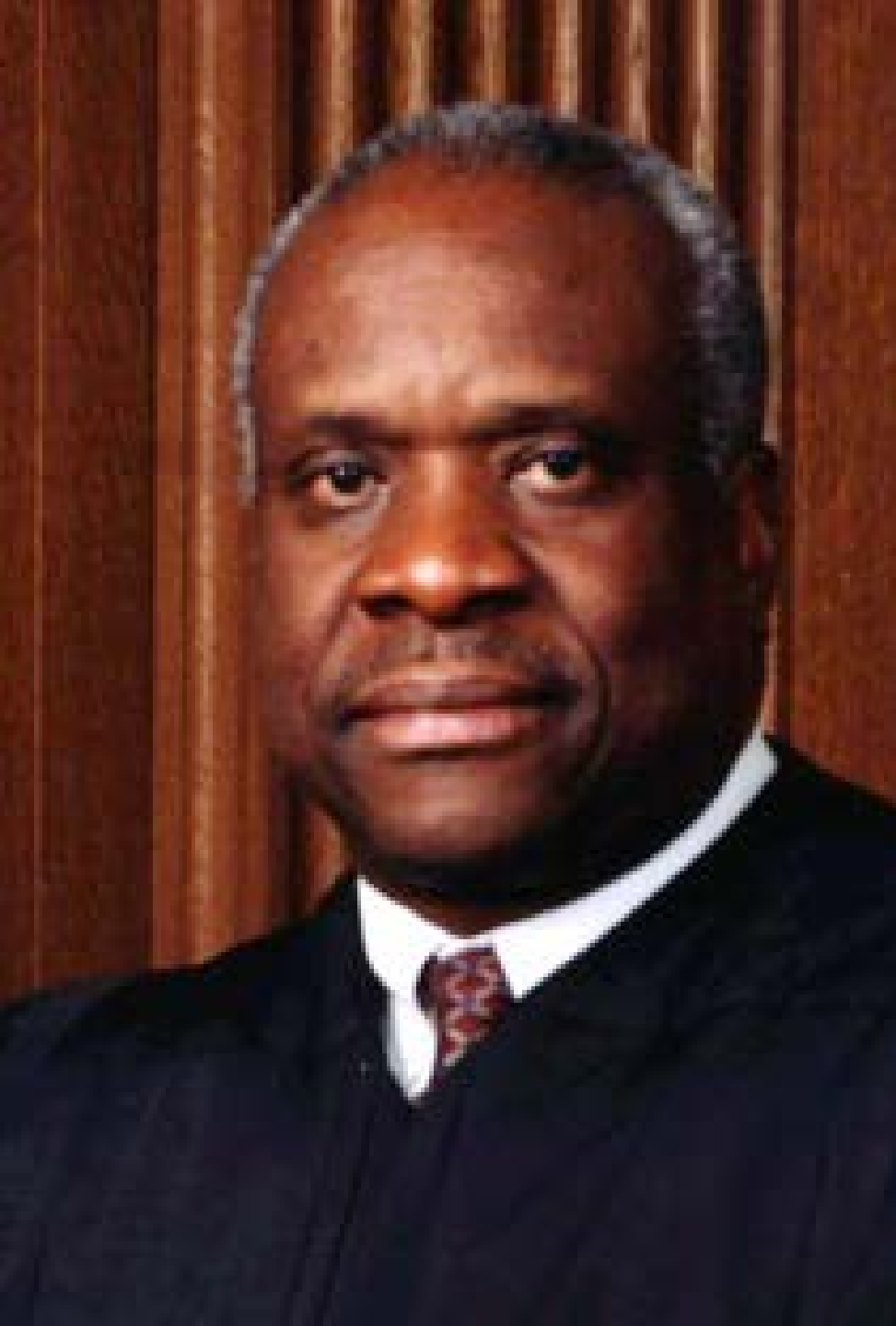
Majority Opinion Justice Clarence Thomas

“Government regulation of speech is content based if a law **applies to particular speech because of the topic discussed or the idea or message expressed.**”



Majority Opinion

Even a purely directional message, which merely gives “the time and location of a specific event,” is one that “conveys an idea about a specific event.”



Majority Opinion

If a sign regulation, on its face, is content-based, its purpose does not matter.

Reed in a Nutshell

- Adopting the literal view; writing in the style of royal edict
- Content-based regulation is **presumptively unconstitutional**, strict scrutiny applies, and **compelling governmental interest** is required.
- “Government regulation of speech is content based if a law **applies to particular speech because of the topic** discussed **or the idea or message** expressed.”
- Even a purely directional message, which merely gives “the time and location of a specific event,” is one that “conveys an idea about a specific event.” A category for directional signs is therefore content-based.



**What is the
Current
State of
Play?**



Reed Case:

AUSPRO ENTERPRISES v. TX DEPT. OF TRANSP., 506 SW 3d 688 - Tex: Court of Appeals, 3rd Dist. 2016



Reed Case:

Thomas v. Schroer, 127 F. Supp. 3d 864 - Dist. Court, WD Tennessee 2015





Welcome to **Indy**.gov

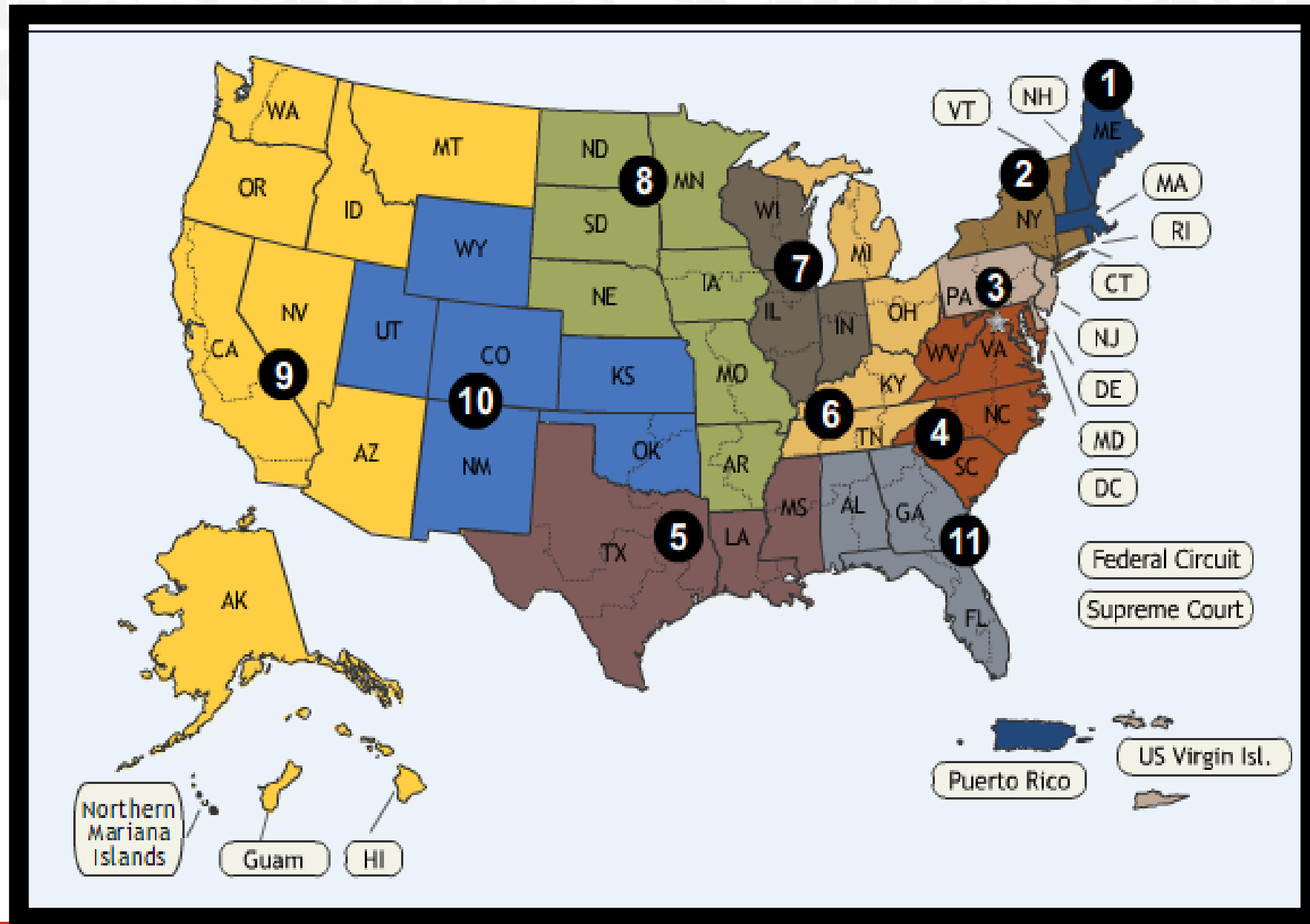
Local Ordinances Challenged

Geft Outdoor v. Consolidated City of Indianapolis,
187 F. Supp. 3d 1002 - Dist. Court, SD Indiana 2016

Contest Promotions, LLC v. City and Cnty. of San Francisco, ___ F.3d ___, 2017 WL 4773041 (9th Cir. Oct. 23, 2017).

- Last week, the Ninth Circuit Court of Appeals upheld San Francisco’s prohibition on new off-site commercial billboards, rejecting a First Amendment claim to the contrary made by a billboard company. The case reaffirms the distinction between commercial and noncommercial speech regulation under the First Amendment, and limits the scope of Reed v. Town of Gilbert.
- Contest Promotions argued that, because the ban applied to only a subset of the signs in San Francisco—off-site commercial billboards—it was unconstitutionally underinclusive, i.e. the ban prohibited some speech while allowing myriad other speech, and thus did not effectively further the government’s interest in traffic safety and aesthetics. The court was unconvinced, instead applying Central Hudson, the court found that the regulation passed constitutional muster using intermediate scrutiny.
- The Ninth Circuit’s decision in Contest Promotions is important because it clarifies that the Central Hudson test still applies to commercial speech regulations, and reaffirms the requirement that governments need only establish a reasonable fit between their regulatory interests and regulations of commercial speech. More narrowly, the Ninth Circuit’s decision means that local regulations of commercial billboards will be upheld if based on aesthetic and traffic safety concerns.

Reed Case:
U.S. Sixth
Circuit



Questions

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