

# Legal Sign Regulations for the 21<sup>st</sup> Century

Planning for Sign Code Success

Mark White, *White & Smith, LLC*

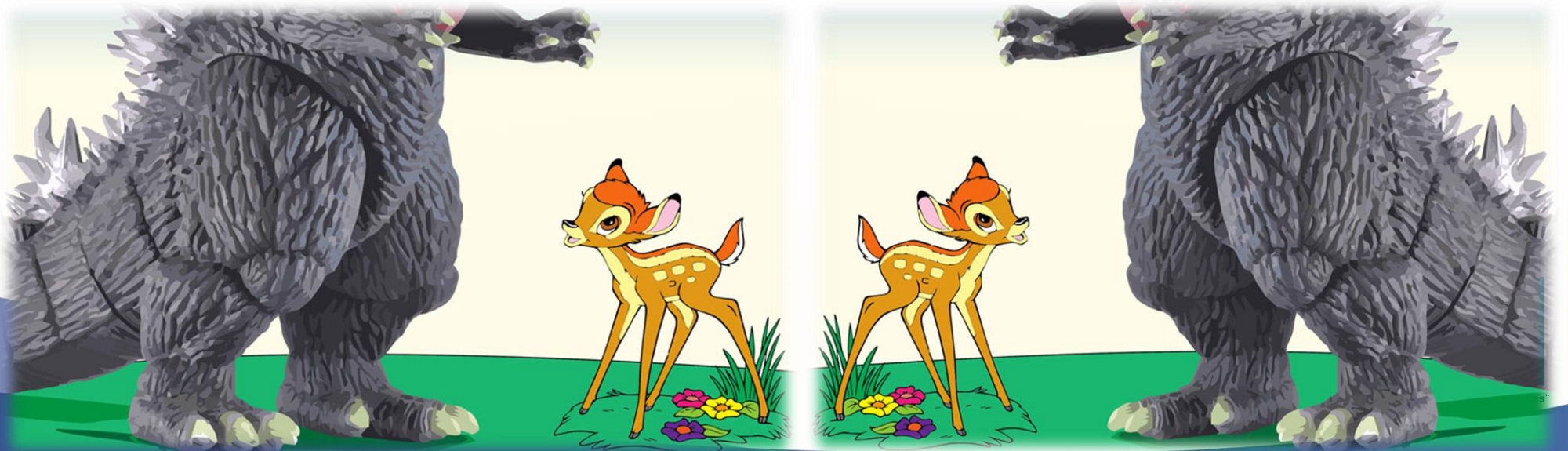
Kansas City, MO | Charleston, SC

[mwhite@planningandlaw.com](mailto:mwhite@planningandlaw.com) |  
[www.planningandlaw.com](http://www.planningandlaw.com)

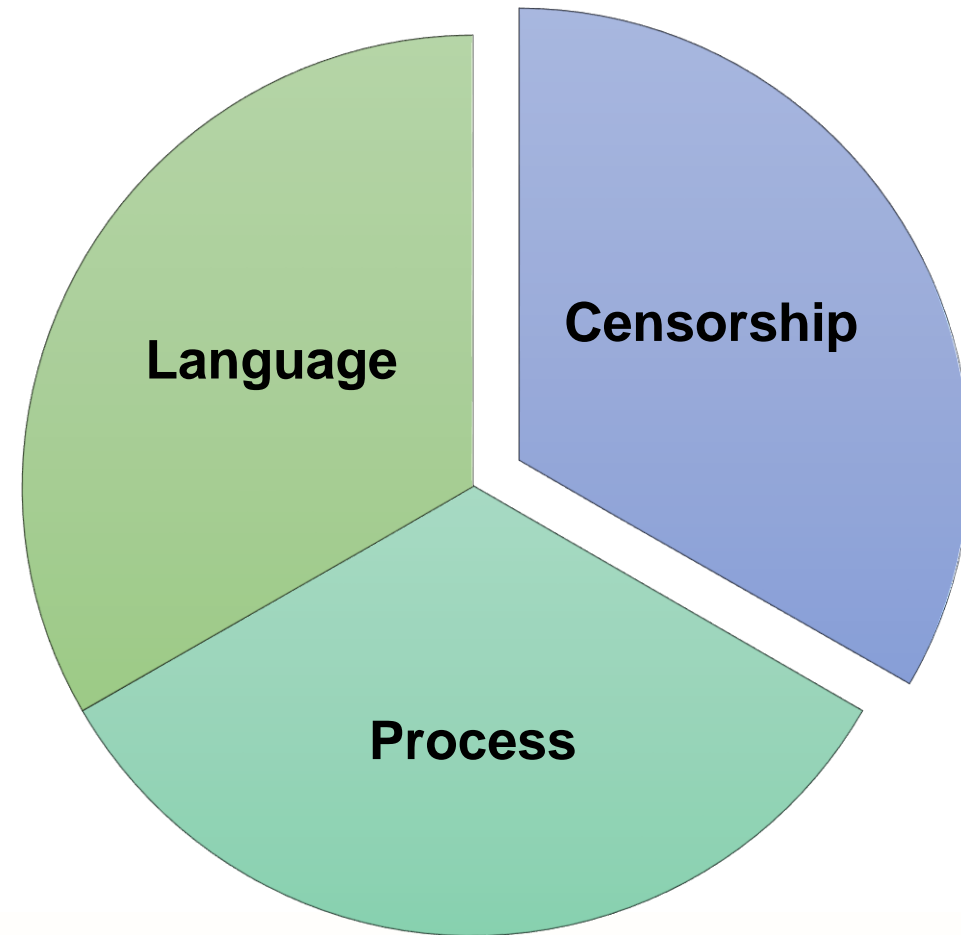


# Use v. Sign Regulations

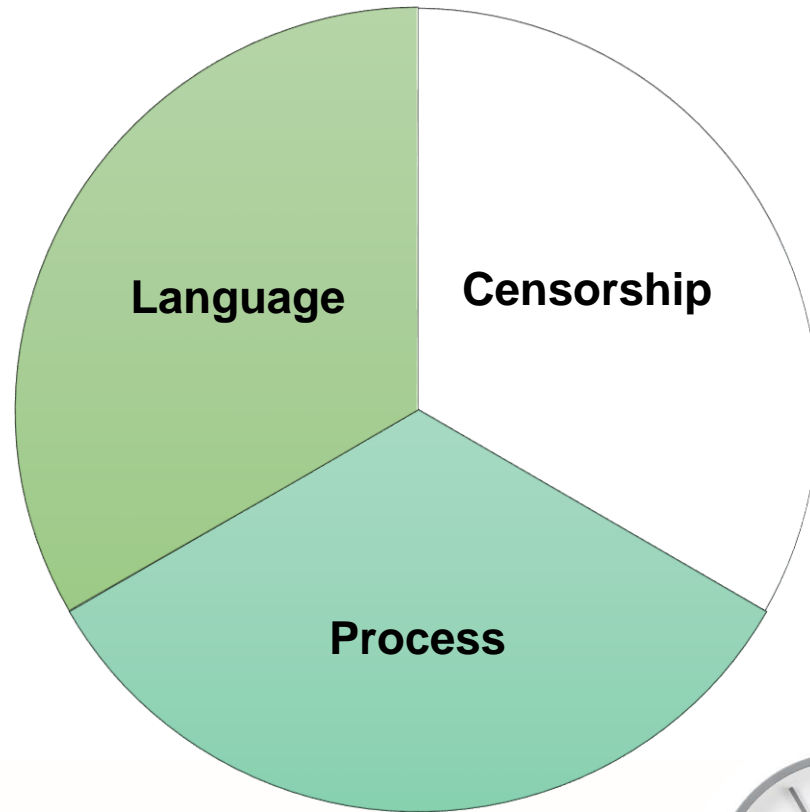
<b>Constitutional issues</b>	Due process, equal protection, takings (property rights)	First Amendment (free speech) ... <i>and the others</i>
<b>Government interest</b>	Legitimate	Substantial / Compelling
<b>Nexus</b>	Rational basis	Intermediate “with bite” / strict
<b>Scope</b>	Reasonable (legislator’s choice)	Directly advance / no further than necessary Narrowly tailored
<b>Scrutiny</b>	Deferential	Intermediate / Strict



# First Amendment Framework



# How to Get into Trouble



Bans



Exemptions

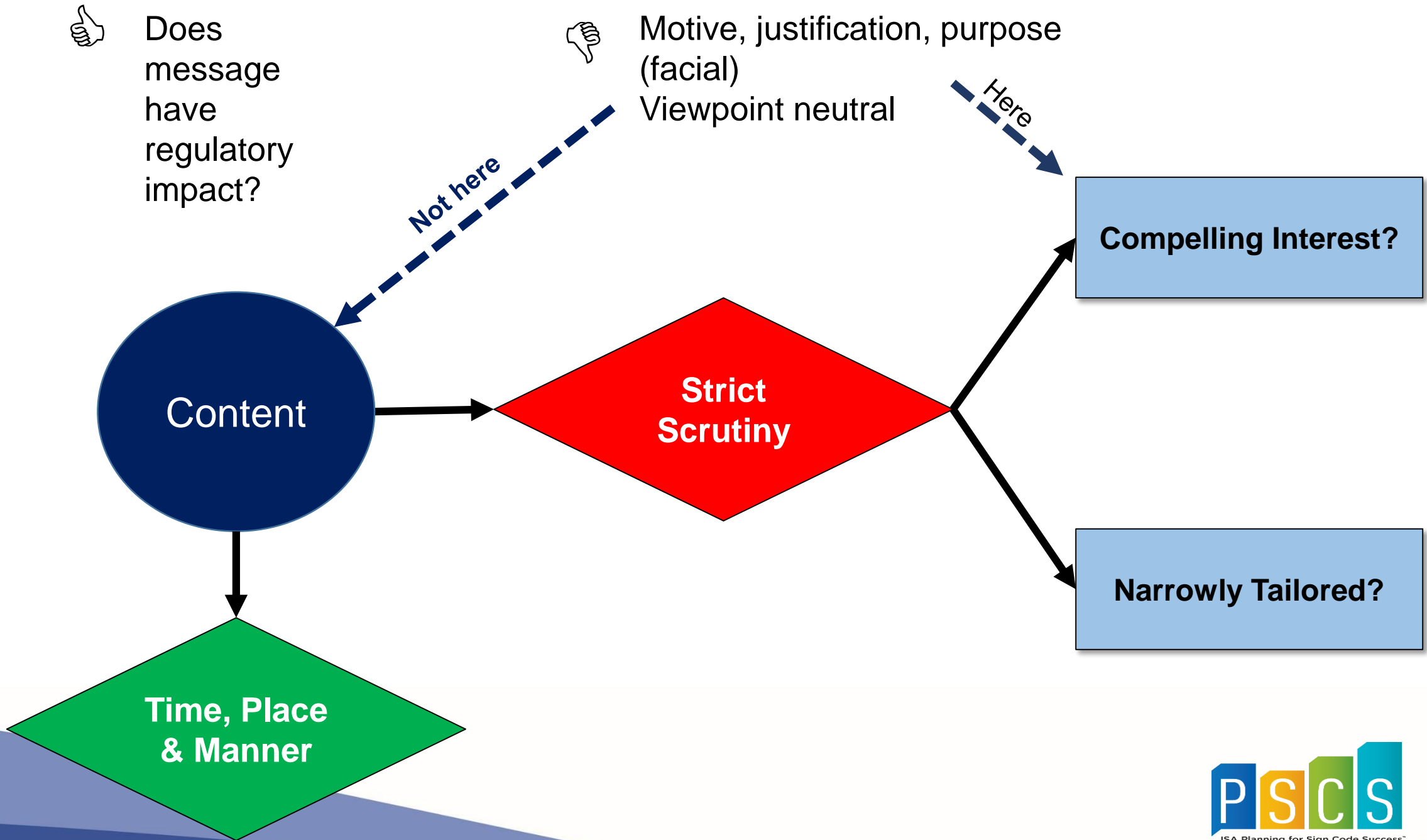


Categories



Time (Prior Restraint)

# Content Based





# *Reed v. Town of Gilbert* (US 2015)



"Temporary  
Directional  
Signs Relating  
to a Qualifying  
Event"

Source: <http://www.nytimes.com/2015/06/19/us/justices-side-with-arizona-church-in-dispute-over-sign-limits.html>

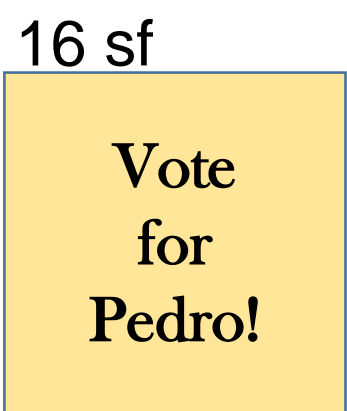
**Ideological**



20 sf

Where?	How long?
Anywhere	As long as you want

**Political**



16 sf



32 sf

Where?	How long?
Residential (16 sf) NR / public / ROW (32)	60 before primary 15 after general

**Temporary  
Directional  
Relating to  
Qualifying  
Event**



6 sf

Where?	How long?
Private or public land 4 at a time	12 hours before 1 hour after

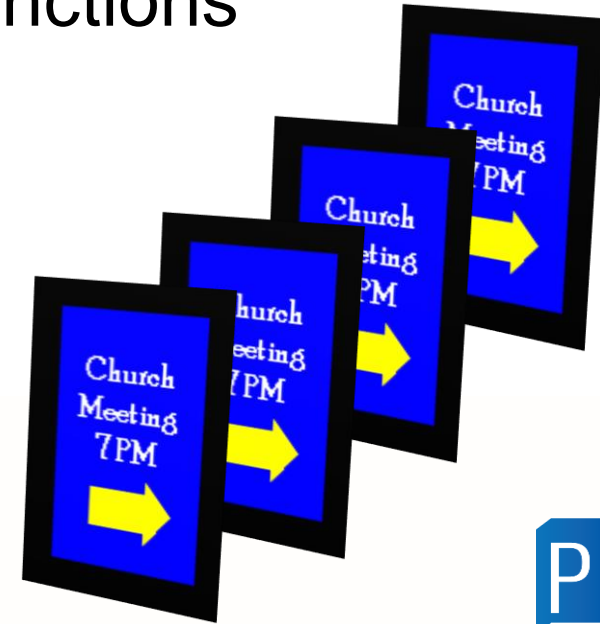
# Underinclusive

Compelling? – Yes

- Aesthetics
- Traffic safety

Narrow - No

- Visual impacts do not justify distinctions
- Traffic impacts do not justify distinctions





# What can we regulate?

## Majority

- Size
- Materials
- Lighting
- Moving parts
- Portability
- Public property (ban)
- Warning / hazards
- Traffic direction
- Street numbers



## Concurring

- Locations
- Freestanding v. Attached
- Lighting
- Fixed v. changeable electronic signs
- Public property (distinction)
- Commercial v. residential
- On-premises v. Off-premises
- Total number of signs allowed per frontage or area
- Time restrictions on advertising a one-time event
- Governmental signs

# Thomas v. Schroer (WD Tenn. 2017)

## Over-Inclusive



## Under-Inclusive









## Least Restrictive Means

Alternative	Response
Commercial only	CN - IS
Size only	Less restrictive
Spacing only (500')	Not effective (2000-1000-200)
Any sign	Seriously?
Public ROW v. Private property	Overinclusive (but could exempt MUTCD)
Substitution clause	As restrictive
Content-neutral spacing	Less restrictive
Presentation (size, lights, colors, font size, electronic messages, or moving parts)	Less restrictive

# *Geft Outdoor LLC v. Consolidated City of Indianapolis (S.D. Ind. 2016)*

- Sign Ordinance amended per *Reed*

On- v. Off-premise distinction		Same	
Noncommercial opinion signs ( <i>number, area, height, setback, no time limits</i> )*		Folded into “yard sign”	
Digital component ( <i>C / I only, 40% limit, 15 second hold, not on off-premise</i> )		Same	

\* No substitution clause



# Responses to *Reed*

- Regulate Sign Design



# Substitution Clause

- Non-Commercial ⇔ Commercial
- Non-Commercial ⇔ Non-Commercial



# Responses to *Reed*



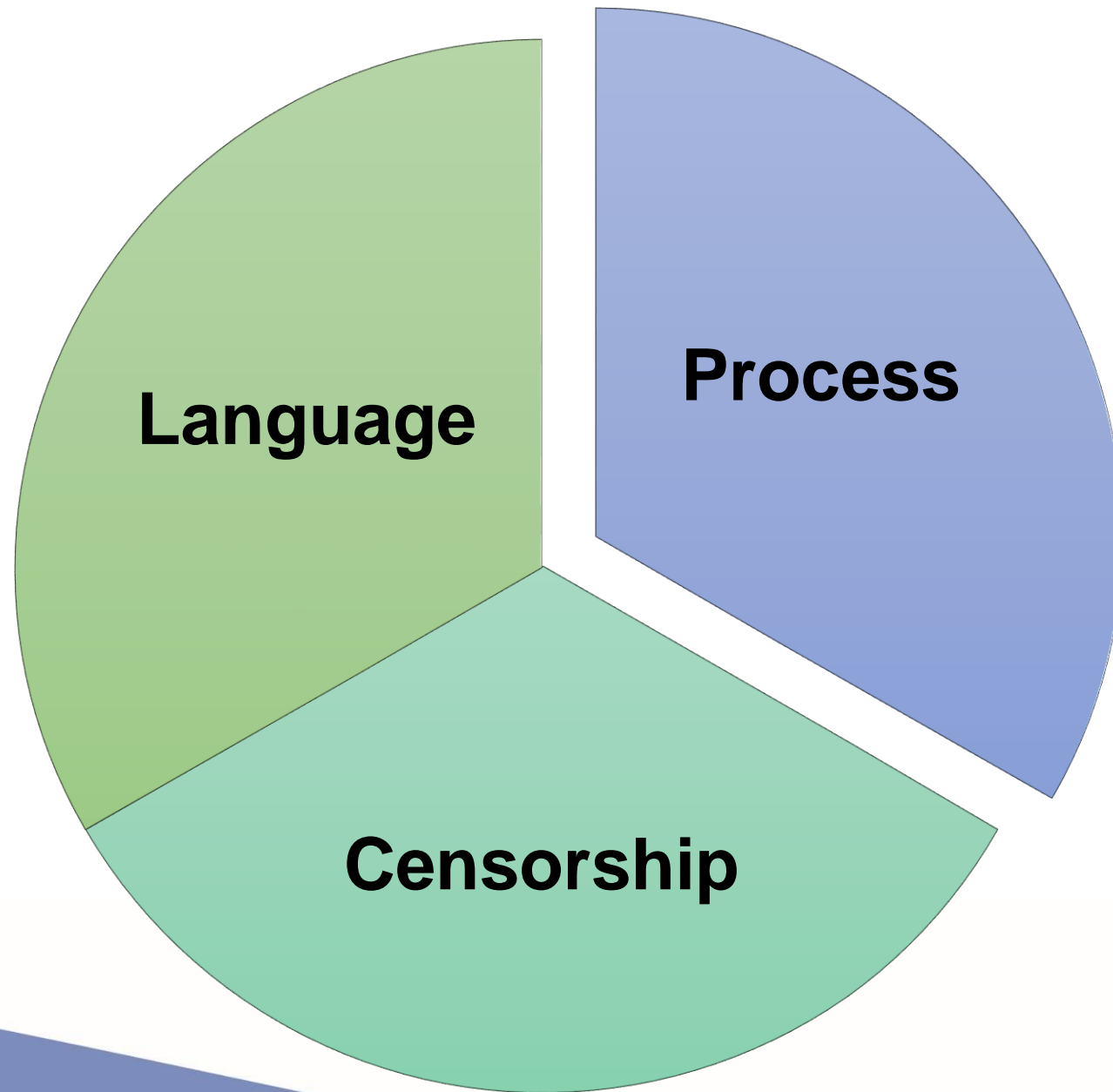
**Table 3 Pole or Pylon Sign Requirements**

↓ Requirements	Zoning Districts→					
	1F-1, IF-2, IF-3, IF-4*	GR, MF-1, MF-2, P, O	B, PD, REC, RES, NS, R, WA	PD, R, C, LI, HI	CB, CP	Neighborhood Historic districts*
1. Permitted?	No	Yes	Yes	Yes	Yes	Yes
2. Number per site (businesses having a street frontage)	--	1	1	1	1	1
<b>Dimensions</b>						
3. Area per sign	--	20	100	200	200	20
4. Height (feet)	--	15	50	50	50	5
<b>Location</b>						
5. Street Setback	--	10	10	10	10	10
6. Intersection Setback (ft)	--	25	25	25	25	25
<b>Design Characteristics</b>						
7. Digital	--	No	No	No	No	No
8. Illumination, Internal	--	No	No	No	No	No
9. Illumination, External	--	No	Yes	Yes	Yes	Yes
10. Illumination, Halo Lit	--	No	Yes	Yes	Yes	No
11. Changeable copy	--	No	No	No	No	No

\* Permitted non-residential uses only.

# 10 things to remember about *Reed*:

1. This case is not about **temporary** signs. It's about **content**.
2. **Topic** or **message** = content
3. There are 2 ways you get into trouble: (1) **exemptions** (2) **categories**
4. Identify **temporary** signs by **structure** type and **uniform event** triggers.
5. Identify all signs (permanent or temporary) by **structure** or **design** (structure, design, location)
6. Distinctions between **on-** and **off-site** signs are **probably** sufficient
7. So far, **intermediate** scrutiny for distinctions between **commercial** signs is intact.
8. It **doesn't help sign** industry.
9. Use **allocation** based systems that allow the property owner to allocate messages.
10. Remember other First Amendment caselaw requirements (overbreadth, vagueness, secondary effects [i.e., adult uses])



# Prior Restraints

- Sign permits
- Conditional / special use permits
- Design review
- Waiver / modification
- Variances

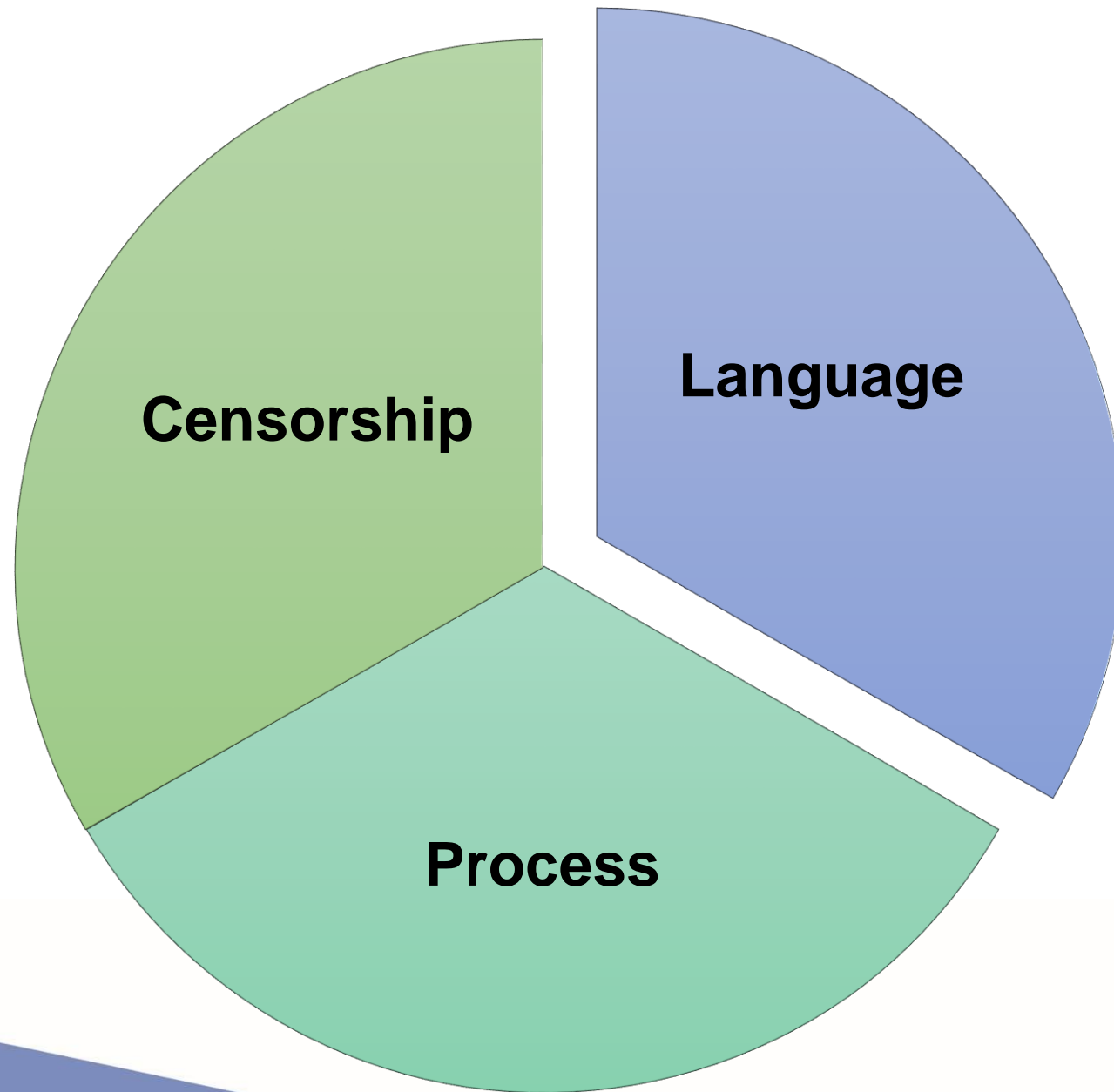


# *Mahaney v. Englewood* (Colo.App. 2009)

- Murals require “signage” plan approved by City Manager
  - No standards
  - No time period
- Held: **nope**



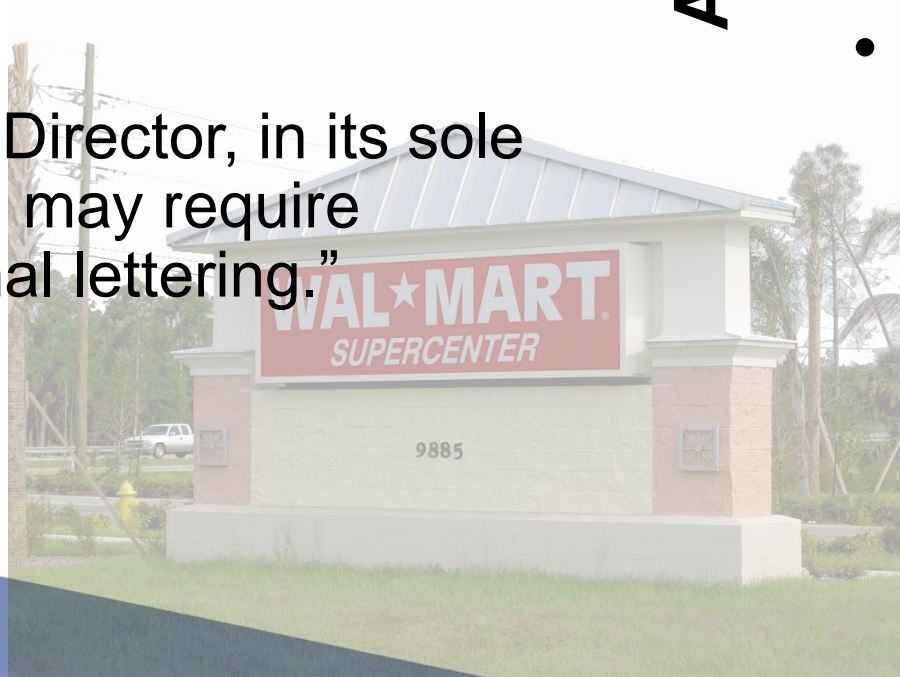




# Adequate Standards

## Inadequate

- Vague
  - Sign cannot “be detrimental to the aesthetic quality of the neighborhood”
- Overbroad
  - “Planning Director, in its sole discretion, may require dimensional lettering.”



## Adequate

- Objective
  - “Monument signs shall have changeable letters. Internal illumination is prohibited.”
- Ministerial
  - “The Planning Director shall issue the permit if the sign complies with all applicable setback, dimensional, and lighting standards.”



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