No. 20-1029

IN THE

Supreme Court of the United States

CITY OF AUSTIN, TEXAS,

Petitioner,

v.

REAGAN NATIONAL ADVERTISING OF TEXAS, INC., *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF FOR PETITIONER

ANNE L. MORGAN,
City Attorney
MEGHAN L. RILEY,
Chief–Litigation
H. GRAY LAIRD III,
Asst. City Att'y
CITY OF AUSTIN
LAW DEPARTMENT
P.O. Box 1546
Austin, TX 78767
(512) 974-2268

MICHAEL R. DREEBEN
RACHEL A. CHUNG
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300

RENEA HICKS
Counsel of Record
LAW OFFICE OF MAX RENEA HICKS
P.O. Box 303187
Austin, TX 78703
(512) 480-8231
rhicks@renea-hicks.com

HEATHER WELLES
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, CA 90067
(213) 430-8025

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

STATUTES

RULES

INTRODUCTION

This case cleanly presents a nationally important and unresolved constitutional issue that has divided the circuits. The issue is whether *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), requires courts to use strict scrutiny to review sign ordinances that distinguish between on- and off-premises signs. That question implicates the constitutionality of a federal statute—the Highway Beautification Act—as well as laws implementing that statute in all fifty States and countless local sign laws across the country. The Fifth Circuit's holding—that laws treating on-premises signs differently from off-premises signs are necessarily content-based—misconstrues *Reed*, as Justice Alito recognized in his concurring opinion for three members of the Court. If allowed to stand, the Fifth Circuit's rule would create a maze of uncertainty that will stymie state and local officials seeking to regulate signs and produce endless litigation, with unpredictable results. This case presents an ideal vehicle for resolving the threshold First Amendment question: whether strict scrutiny applies to all on-premises/off-premises distinctions. This Court's review is particularly warranted because the Fifth Circuit's decision is wrong: As the federal government has argued in its post-*Reed* defense of the constitutionality of the Highway Beautification Act, the on/off-premises distinction is location-based, not content-based. None of respondents' arguments for avoiding review has merit. The petition should be granted.

ARGUMENT

I. *Reed* Does Not Mandate Strict Scrutiny Here.

Respondents devote the bulk of their brief to defending the Fifth Circuit's interpretation of *Reed*. Opp. 6-11, 19-26. Even if that claim had merit, review would be warranted to resolve the circuit conflict over *Reed*. *See infra* Section II. But respondents' submission is flawed. The ubiquitous distinction in American law between on-premises and off-premises signage is not a content-based standard.

Austin's ordinance distinguishes between on-premises and off-premises signs based on location. It does so through its definition of "off-premise sign," that is, a sign "advertising a business, person, activity, goods, products, or services *not located on the site* installed, or that directs persons to any *location not on that site*." App. 54a (§ 25-10-3(11)) (emphasis added). The ordinance then applies certain rules to preexisting off-premises signs, including Reagan's, which are termed "nonconforming signs." App. 54a-56a (§§ 25-10-3(10), 25-10-102(1), 25-10-152)). One of those rules is that these "grandfathered" signs cannot change the technology used to display the sign's message—that is, they cannot convert to more disruptive digital sign faces. App. 56a (§ 25-10-152(B)(2)(b)).[1]

The Fifth Circuit held this regime content based under *Reed* because it requires City officials to "read

[1] The ordinance has been amended, but contrary to respondents' argument, the same distinction exists under current law. *See infra* Section IV.

the sign" to determine whether it is off-premises. App. 14a, 19a. Respondents endorse this position, arguing that "[a] distinction between 'on-premise' and 'off-premise' messages, made in a regulation that does *not* exempt noncommercial speech, is subject to strict scrutiny under *Reed*." Opp. 15.

But *Reed* did not announce such a rule. Rather, *Reed* rejected a sign ordinance that applied different rules to "ideological," "political," and "temporary directional" signs based solely on their content. 576 U.S. at 159-60. The Court did not suggest that an on/off-premises distinction alone would be content-based. That distinction does not "depend *entirely* on the communicative content of the sign" or "appl[y] to particular speech *because of* the topic discussed or the idea or message expressed." *Id.* at 163-64 (emphasis added). Indeed, distinctions based on a sign's location do not prohibit anyone from saying anything. Instead, they regulate *where* and *how* the person may convey a message. As the Third Circuit has explained, on/off-premises distinctions are content-neutral because they "merely establish[] the appropriate relationship" between a sign and its location—an issue not addressed in *Reed*. *Rappa v. New Castle Cty.*, 18 F.3d 1043, 1067 (3d Cir. 1994); *see also id.* at 1079 (Alito, J., concurring). The only mention of on/off-premises rules in *Reed* appears in Justice Alito's concurrence, which recognized that *Reed* would *not* endanger such rules. 576 U.S. at 174-75 (Alito, J., joined by Kennedy & Sotomayor, JJ., concurring).

Respondents claim that Austin's ordinance favors "buildings in advantageous locations," Opp. 25, but

that claim only underscores that the ordinance favors types of locations, not types of content. And that form of "disparate treatment," based on location, simply accommodates property owners' deeply rooted interest in displaying signs relevant to their own property. *See Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 811 (1984). Respondents object that noncommercial speakers "with no permanent location . . . would have no place to post their signs." Opp. 25. But if so, that would be a function of their property status, not the content of their speech. And such persons can still attack the regulation under intermediate scrutiny by arguing that it fails to provide adequate "alternative channels for communication." *City of Ladue v. Gilleo*, 512 U.S. 43, 55-56 (1994) (internal quotation marks omitted).[2]

The United States has recognized this principle in defending a landmark law that embodies an on/off-premises distinction—for commercial and noncommercial signs alike. The Highway Beautification Act requires States to limit "outdoor advertising signs, displays, and devices" within 660 feet of certain federal highways (or lose federal funding)—with exceptions for "signs, displays, and devices advertising the sale or lease of property *upon which they are located*" and "signs displays, and devices . . . adver-

[2] Respondents are thus wrong to suggest that if *Reed* were inapplicable, local governments would have carte blanche to "prohibit" all off-premises signs. Opp. 2. Intermediate scrutiny for "content-neutral restrictions" requires (among other things) "ample alternative channels for communication." *Gilleo*, 512 U.S. at 55-56 & n.13 (quotation omitted); *see Reed*, 576 U.S. at 175 n.* (Alito, J., concurring).

tising activities conducted on the property *on which they are located*." 23 U.S.C. § 131(b), (c) (emphasis added). In *Reed,* the government defended the constitutionality of the Highway Beautification Act—including its on-premises exceptions.[3] And the government has continued to defend the Act under *Reed*, reasoning that "rules distinguishing between on-premises and off-premises signs are content neutral."[4]

The Fifth Circuit's decision repudiates that analysis and casts doubt on the constitutionality of the Highway Beautification Act and the laws implementing it in all fifty States. The on/off-premises distinction is also a nearly universal feature of state and local sign regulations throughout the country. *See* Joint Br. of Chambers of Commerce, *et al*. as Amici Curiae Supporting Petitioner 12-16 ("Joint Amicus Br.") (numerous state laws impose an on/off-premises distinction, reflecting decades of legal support); Brief of International Municipal Lawyers Ass'n, *et al*. as Amici Curiae Supporting Petitioner 6-7 ("IMLA Br.") (attesting to the ubiquitous nature of such distinctions). The Fifth Circuit would deem all of these laws content-based. *Reed* did not work such a dramatic upheaval in the law, as Justice Alito's concurring opinion confirms. 576 U.S. at 174-75 (Alito, J., concurring). This Court should grant re-

---

[3] Br. of United States as Amicus Curiae in Support of Petitioners 32-33, *Reed v. Town of Gilbert,* 576 U.S. 155 (2015) (No. 13-502), 2014 WL 4726504.

[4] Br. of United States as Amicus Curiae in Support of Appellant *7, *Thomas v. Bright*, 937 F.3d 721 (6th Cir. 2018) (No. 17-6238), 2018 WL 1314789.

view to lift the "constitutional pall" that the decision below creates. *Id.* at 185 (Kagan, J., concurring in the judgment).

II. The Courts of Appeals Are Irreconcilably Split Over *Reed*.

The courts of appeals are badly split over *Reed*'s application to regulations that favor on-premises signs. *See* IMLA Br. 6-11. Wide swaths of the country are now governed by divergent First Amendment rules.

In *Adams Outdoor Advertising Limited Partnership v. Pennsylvania Department of Transportation*, 930 F.3d 199 (3d Cir. 2019), the court held that *Reed* "did not establish a legal standard by which to evaluate laws that distinguish between on-premise and off-premise signs." *Id.* at 207 n.1. The court therefore adhered to its precedent applying intermediate scrutiny to exemptions for on-premises signs. *Id.* at 207. That holding is diametrically opposed to the Fifth Circuit's holding here, which joined the Sixth Circuit in requiring strict scrutiny under *Reed*. App. 14a-15a. *Adams* cannot be dismissed as a case addressing solely a commercial-speech distinction. *Contra* Opp. 18. Implementing the Highway Beautification Act, Pennsylvania law prohibited both commercial and noncommercial speech unrelated to "activities being conducted upon[] the real property where the signs are located." *Adams*, 930 F.3d at 205 (quoting 23 C.F.R. § 750.105(a), incorporated into Pennsylvania law). And the speech the billboard company sought to engage in included off-premises noncommercial speech. *Id.* at 204.

Although *Adams* invalidated the law at issue under intermediate scrutiny because the State failed to present evidence to support exempting on-premises signs, *id.* at 207-08—thus justifying the petition's circumspect description of the conflict's nature, Pet. 17, 21-22—respondents concede the analytical divide, Opp. 16 (acknowledging that the Third Circuit applies "intermediate scrutiny[] for on-premise signs concerning activities on the property"). Nothing justifies leaving in place one legal regime for ordinance drafters in Harrisburg and another for their counterparts in Austin.

The rift between the Third and Fifth Circuits reflects a wider disagreement about *Reed*: whether an official's need to read a sign to apply the local sign code makes the law content-based. Although the court below said yes, it acknowledged the "D.C. Circuit has interpreted *Reed* differently." App. 15a (citing *Act Now to Stop War & End Racism Coal. v. District of Columbia*, 846 F.3d 391 (D.C. Cir. 2017), *cert. denied*, 138 S. Ct. 334 (2017). The D.C. Circuit held that an ordinance regulating how long event signs could stay on public lampposts was content-neutral under *Reed*, even though officials would have to "look at what a poster says to determine whether it is 'event-related.'" 846 F.3d at 404. The court explained that this fact "does not render the District's lamppost rule content-based." *Id.* And contrary to respondents' suggestion, Opp. 16-17, the D.C. Circuit's analysis did not turn on the lampposts' character as government property. *See Act Now*, 846 F.3d at 403. The Ninth Circuit similarly recognized that *Reed* "did not adopt, or even discuss, the merits of the 'officer must read it' test as a proper content-

neutrality analysis." *Recycle for Change v. City of Oakland*, 856 F.3d 666, 671 & n.2 (9th Cir. 2017).

Reed only deepened confusion in an area long in need of clarification. *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981), settled that off-premises commercial signs could be prohibited while on-premises commercial signs were allowed. *See Gilleo*, 512 U.S. at 49 & nn.7-8 (describing *Metromedia*). But the Court fractured in ruling that the City's exceptions for on-premises noncommercial signs (and its favorable treatment of on-premises commercial speech over off-premises noncommercial speech) rendered the ordinance unconstitutional. *Id.* (citing *Metromedia*, 453 U.S. at 514-15 (plurality opinion), 525-27 (Brennan, J., concurring)). No opinion or rationale in *Metromedia* commanded a majority of the Court, and lower courts split on whether an on/off-premises distinction was content-neutral if it applied equally to commercial and noncommercial messages. Some courts said it was. *See, e.g.*, *Covenant Media of SC, LLC v. City of N. Charleston*, 493 F.3d 421, 433-34 & n.9 (4th Cir. 2007); *Rappa*, 18 F.3d at 1067, *see also id.* at 1079 (Alito, J., concurring); *Messer v. City of Douglasville*, 975 F.2d 1505, 1509-10 (11th Cir. 1992); *Wheeler v. Comm'r of Highways*, 822 F.2d 586, 591 (6th Cir. 1987), *overruled by Thomas v. Bright*, 937 F.3d 721, 724 (6th Cir. 2019), *cert. denied*, 141 S. Ct. 194 (2020); *Tex. Dep't of Transp. v. Barber*, 111 S.W.3d 86, 99-101 (Tex. 2003); *Burns v. Barrett*, 561 A.2d 1378, 1384-86 (Conn. 1989), *cert. denied*, 493 U.S. 1003 (1989); *State by Spannaus v. Hopf*, 323 N.W.2d 746, 754-55 (Minn. 1982). Others concluded that such restrictions were content-based. *See, e.g.*, *Outdoor Media Grp., Inc. v. City of Beaumont*, 506

F.3d 895, 906 (9th Cir. 2007); *Ackerley Comm'ns of Mass., Inc. v. City of Somerville*, 878 F.2d 513, 517-18 (1st Cir. 1989); *Fisher v. City of Charleston*, 425 S.E.2d 194, 197-99 (W.V. 1992); *Adams Outdoor Advert. v. City of Newport News*, 373 S.E.2d 917, 925-27 (Va. 1988). Even though some courts have revisited the issue since *Reed*, the division in the lower courts remains. Only this Court can authoritatively settle the proper legal approach and resolve the continuing disagreement.

III. This Case Presents a Recurring Question of Profound Nationwide Importance.

The constitutionality of on/off-premises distinctions in sign regulations is of paramount importance to governments at every level seeking to combat the aesthetic and safety concerns that billboards raise. *See Metromedia*, 453 U.S. at 502 (plurality opinion). Governments have long employed on/off-premises distinctions to regulate such signage while recognizing the heightened government interest in allowing property owners to speak about activities on their own property. *See* Joint Amicus Br. 12-17; IMLA Br. 6-7.

The Fifth Circuit's decision upsets those efforts. The practical concerns are grave: The decision calls into question the constitutionality of the Highway Beautification Act, which, as noted, relies on the same on/off-premises distinction found in Austin's sign code. *See* 23 U.S.C. § 131(c). The decision likewise threatens corresponding Highway Beautification Act laws in all fifty States, nearly all of which

distinguish between on- and off-premises signs.[5] And like Austin, countless local governments have embedded this distinction into their sign codes.[6] If left unreviewed, the opinion below would require an overhaul of these laws in the Fifth Circuit and would leave lingering uncertainty about their constitutionality from jurisdiction to jurisdiction.

Respondents' assertion that there is "no indication that local governments are having trouble adjusting," Opp. 2, is unfounded. Local governments have struggled to decipher *Reed* without success. Cities and counties have faced a barrage of litigation challenging local sign codes, producing divergent interpretations of *Reed* not only among the federal courts of appeals but also in federal district and state courts.[7] Local governments face the unenviable choice of defending challenges or undertaking the arduous process to amend their sign code to remove a critical regulatory tool. *See* IMLA Br. 21-22. Respondents claim that regulators can simply exempt noncommercial speech, Opp. 11-12, but the aesthetic and safety concerns furthered by such laws are not limited to commercial speech. Unless this Court clarifies the ground rules, sign code challenges will continue to proliferate nationwide, and regulators will be left in the dark when confronting a basic question that nearly every jurisdiction must address.

---

[5] State laws enacted to comply with the Highway Beautification Act are collected in Appendix A.

[6] Selected local laws reflecting this distinction are collected in Appendix B.

[7] Post-*Reed* state and federal cases challenging on/off-premises distinctions are collected in Appendix C.

IV. This Case Cleanly Presents the Question for Review.

This case affords the Court an ideal vehicle for review. No factual dispute clouds the case, and the Fifth Circuit unquestionably resolved the core issue.

Respondents' only response is that Austin amended its ordinance, purportedly to "exclude non-commercial speech" from the definition of "off-premise sign." Opp. 11. That characterization is wrong. While Austin updated its definition of "off-premise sign" in 2017, App. 39a, its code continues to consider signs "off-premise" if they "direct[] attention to" noncommercial activities, including any "activity, event, person, [or] institution" that is "generally conducted, sold, manufactured, produced, offered, or occurs elsewhere than on the premises where the sign is located." App. 39a; Austin Mun. Code § 25-10-4(9).[8] The amended definition includes a catchall to capture "other commercial speech," but that does not limit the terms "activity," "event," "person," and "institution," which clearly encompass commercial and noncommercial speech. *Cf. Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 226 (2008) (refusing to apply *noscitur a sociis* canon to limit catchall phrase). Under both the former and amended codes, the definition of "off-premise sign" determines whether a sign will be considered nonconforming, and therefore unable to digitize. *See* Opp. 12 (respondents' "claim arises from the code's general prohibition of 'off-premises' messages and related restrictions on

[8] https://library.municode.com/TX/Austin/codes/code_of_ordinances?nodeId=TIT25LADE_CH25-10SIRE.

grandfathered signs"); App. 55a (§ 25-10-102); Austin Mun. Code § 25-10-103.[9]

The 2017 code amendment therefore left nonconforming signs in precisely the same situation as before: They may not be digitized because of an on-premises/off-premises distinction that applies to commercial and noncommercial signs. It follows that the amended definition presents the same legal issue as the prior definition. The district court so concluded, App. 39a, and Austin agrees—and the City's interpretation is the one that counts. *See Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 131 (1992). Accordingly, because "the challenged conduct continues," *Ne. Fla. Chapter of Associated Gen. Contractors v. City of Jacksonville*, 508 U.S. 656, 662 & n.3 (1993), review remains appropriate.

Contrary to respondents' suggestion, Opp. 1, Austin's amendments differ entirely from Tennessee's statutory amendments, which effectively mooted the State's then-pending petition in *Bright v. Thomas*, 141 S. Ct. 194 (2020) (cert denied). Tennessee repealed the challenged provision of the State's Billboard Regulation and Control Act. *See* Pet'r Supp. Br. 1, *Bright v. Thomas* (No. 19-1201). Here, Austin

---

[9] The amended ordinance includes a provision authorizing all "[s]igns containing noncommercial speech . . . anywhere that signs regulated by this chapter are permitted, subject to the same regulations applicable to the type of sign used to display the noncommercial message." Austin Mun. Code § 25-10-2(A). This provision has no effect on the legal issue presented here because the "type of sign" at issue in this case is a nonconforming off-premises sign, which still may not be converted to a digital sign face. *See id.* § 25-10-152(B)(2)(b).

has amended the challenged ordinance in ways that continue to present the same legal issue as the previous ordinance. And Austin concedes that its new ordinance is in equal constitutional jeopardy if the court of appeals' decision is not reversed. This Court's review is necessary to resolve the circuit split, alleviate the uncertainty that sign regulators face, and clarify *Reed*'s reach.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

RENEA HICKS
Counsel of Record
LAW OFFICE OF MAX RENEA HICKS
P.O. Box 303187
Austin, TX 78703
(512) 480-8231
rhicks@renea-hicks.com

MICHAEL R. DREEBEN
RACHEL A. CHUNG
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300

HEATHER WELLES
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, CA 90067
(213) 430-8025

ANNE L. MORGAN, City Attorney
MEGHAN L. RILEY, Chief–Litigation
H. GRAY LAIRD III, Asst. City Att'y
CITY OF AUSTIN
LAW DEPARTMENT
P.O. Box 1546
Austin, TX 78767
(512) 974-2268

May 26, 2021

APPENDIX A

State Statutes Implementing the Highway Beautification Act Including an On-Premises Exception

Ala. Code § 23-1-273; Alaska Stat. §§ 19.25.090, 19.25.105; Ariz. Rev. Stat. § 28-7902; Ark. Code § 27-74-302; Cal. Bus. & Prof. Code §§ 5272(a), 5442.5; Colo. Rev. Stat. Ann. §§ 43-1-403, 43-1-404; Del. Code Ann. tit. 17, § 1121; Fla. Stat. § 479.16; Ga. Code Ann. § 32-6-72; Hawaii Rev. Stat. §§ 264-72, 445-112; Idaho Code Ann. §§ 40-1910A, 40-1911; 225 Ill. Comp. Stat. Ann. 440/3.17-3.19, 4, 4.02-4.04; Ind. Code Ann. § 8-23-20-7; Iowa Code Ann. § 306B.2; Kan. Stat. Ann. § 68-2233; Ky. Rev. Stat. § 177.841; La. Stat. Ann. § 48:461.2; Me. Rev. Stat. tit. 23, §§ 1903, 1908, 1914; Md. Code Ann., Transp. §§ 8-741, 8-744; Mass. Gen. Laws Ann. ch. 93D, § 2; Mich. Comp. Laws Ann. §§ 252.302, 252.313; Minn. Stat. Ann. § 173.08; Miss. Code § 49-23-5; N.J. Stat. Ann. § 27:5-11; Neb. Rev. Stat. § 39-218; N.H. Rev. Stat. Ann. § 238:24; Nev. Rev. Stat. § 410.320; N.C. Gen. Stat. Ann. § 136-129; Ohio Rev. Code Ann. §§ 5516.06, 5516.061; Okla. Stat. Ann. tit. 69, §§ 1273-1274; S.C. Code §§ 57-25-140, 57-25-150; S.D. Codified Laws §§ 31-29-63, 31-29-63.4; Utah Code Ann. § 72-7-504; Vt. Stat. Ann. tit. 10, §§ 488, 493; Va. Code § 33.2-1217; Wash. Code § 47.42.040; Wyo. Stat. § 24-10-104. Several States have amended their outdoor sign laws in response to *Reed* and related litigation. *See, e.g.*, Cal. Bus. & Prof. Code § 5275 (amend-

ed to exempt noncommercial speech); Or. Rev. Stat. §§ 377.700 *et seq*. (eliminating on/off-premises distinction); Tex. Transp. Code Ann. §§ 391.001 *et seq*. (same).

APPENDIX B

Selected Local Laws Reflecting an On-Premises/Off-Premises Distinction

Amarillo, Tex., Code of Ordinances tit. IV, ch. 4-2-2, 4-2-3(C)-(D) (2020); Bentonville, Ark., Mun. Code app'x A, art. 801 §§ 801.16(a)(6), 801.18 (2019); Bismarck, N.D., Code of Ordinances ch. 14-03.1-07, 14-03.1-09 (2021); Burlington, Iowa, Code of Ordinances ch. 170.75.103, 170.75.112 (2021); Cary, N.C., Land Dev. Ordinance ch. 9.1.3, 9.1.4(C)(9) (2020); Clinton Twp., Mich., Codified Ordinances part 14, tit. 6, ch. 1488.02 (2020); Colorado Springs, Colo., Code of Ordinances ch. 7.4.401, 7.4.414 (2021); Denver, Colo., Zoning Code art. 10 §§ 10.10.3.1, 10.10.3.2(K) (2018); Fargo, N.D., Code of Ordinances ch. 20, art. 20-13 §§ 20-1307, 20-1308 (2021); Germantown, Wis., Code of Ordinances ch. 17-46(15) (2020); Grand Rapids, Mich., Code of Ordinances art. 15 § 5.15.04(B)(3) (2020); Green Bay, Wis., Code of Ordinances ch. 13 § 13.2013(d) (2018); Grinnell, Iowa, Code of Ordinances ch. 157.04 (2020); Howell, Mich., Code of Ordinances part 12, tit. 6, art. 7 § 7.02 (2019); Kansas City, Mo., Zoning and Dev. Code 400 series 88-445-14-B (2021); Knoxville, Tenn., Code of Ordinances app'x B, art. 13.2 (2021); Lake Mary, Fla., Code of Ordinances tit. XV, ch. 155, app'x I §§ 3, 5(B)(18) (2021); Las Vegas, Nev., Unified Dev. Code § 19.12.120 (2021); Madison, Wis., Code of Ordinances ch. 31.02, 31.11, 31.14, 31.15 (2021); Manitowoc, Wis., Mun. Code ch. 15.450(4), 15.450(8), 15.450(14)(f) (2021); Monroe Cty., Fla., Land Dev.

Code ch. 142-4(1), 142-8(2) (2021); Montgomery County, Md., Zoning Ordinance ch. 59.1.4.2, 59.6.7.4.I (2021); Murfreesboro, Tenn., Code of Ordinances ch. 25, art. 2 § 25.2-25(D) (2021); Overland Park, Kan., Unified Dev. Ordinance tit. 18.440.020 (2021); Paynesville, Minn., Code of Ordinances ch. 36, art. I § 36-10 (2020); Pearland, Tx., Unified Dev. Code div. 5 §§ 4.2.5.1(c)(13), 4.2.5.2 (2019); Pendleton, Ore., Ordinance Code art. 2 § 2.02, art. 16 § 16.01 (2019); Plano, Tx., Code of Ordinances ch. 6 § 6-487(19) (2021); Rapid City, S.D., Code of Ordinances ch. 17.50.090, 17.50.100 (2021); St. Joseph, Mich., Code of Ordinances ch. 25 §§ 25-11, 25-18 (2020); Troy, Mich., Sign Ordinance ch. 85.01.03, 85.01.05(H) (2018); Tucson, Ariz., Unified Dev. Code §§ 7A.10.2, 11.4.16 (2021); Watertown, S.D., Revised Ordinances ch. 21.5415 (2021); Wauwatosa, Wis., Mun. Code ch. 15.14.140 (2021); West Jordan, Utah, Code of Ordinances tit. 12, ch. 1 § 12-1-4, ch. 3 § 12-3-6 (2021); Wyckoff, N.J., Twp. Laws & Code ch. 186, art. VI § 186-28(C)(1) (2020); Zumbrota, Minn., Zoning Ordinance § 20.3(B) (2020).

APPENDIX C

Post-*Reed* Cases Addressing First Amendment Challenges to On/Off-Premises Distinctions

Concluding that on/off-premises distinctions are content-neutral under *Reed*

Outdoor One Commc'ns, LLC. v. Charter Twp. of Canton, No. 20-10934, 2021 WL 807872, at *4 (E.D. Mich. Mar. 3, 2021); *Carminucci v. Pennelle*, No. 18 CV 2936 (LMS), 2020 WL 4735172, at *18 (S.D.N.Y. Aug. 14, 2020); *Adams Outdoor Advert. Ltd. P'ship v. City of Madison*, No. 17-CV-576-JDP, 2020 WL 1689705, at *3 (W.D. Wis. Apr. 7, 2020); *ArchitectureArt, LLC v. City of San Diego*, 231 F. Supp. 3d 828, 839 (S.D. Cal. 2017), *aff'd*, 745 F. App'x 37 (9th Cir. 2018); *Contest Promotions, LLC v. City & Cty. of San Francisco*, No. 16-CV-06539-SI, 2017 WL 1493277, at *4 (N.D. Cal. Apr. 26, 2017), *aff'd*, 867 F.3d 1171 (9th Cir. 2017), *withdrawn from bound volume, opinion amended and superseded on denial of reh'g*, 874 F.3d 597 (9th Cir. 2017), and *aff'd*, 874 F.3d 597 (9th Cir. 2017); *Geft Outdoor LLC v. Consol. City of Indianapolis & Cty. of Marion, Ind.*, 187 F. Supp. 3d 1002, 1017 & n.2 (S.D. Ind. 2016); *Citizens for Free Speech, LLC v. Cty. of Alameda*, 114 F. Supp. 3d 952, 969 (N.D. Cal. 2015); *Cal. Outdoor Equity Partners v. City of Corona*, No. CV 15-03172 MMM AGRX, 2015 WL 4163346, at *9-*10 (C.D. Cal. July 9, 2015); *Clear Channel Outdoor, Inc. v. Dir., Dep't of Fin. of Baltimore City*, 247 A.3d 740, 759 (Md. 2021); *Lamar Advantage GP v. City of Cincinnati*, 155 N.E.3d 245 (Ohio Ct. App. 2020); *Ex-*

pressview Dev., Inc. v. Town of Gates Zoning Bd. of Appeals, 46 N.Y.S.3d 725, 730 (App. Div. 2017); *Lamar Cent. Outdoor, LLC v. City of Los Angeles*, 199 Cal. Rptr. 3d 620, 631 (Ct. App. 2016).

Concluding that on/off-premises distinctions are content-based under *Reed*

GEFT Outdoor, L.L.C. v. City of Westfield, 491 F. Supp. 3d 387, 406 (S.D. Ind. 2020); *Reagan Nat'l Advert. of Austin, Inc. v. City of Cedar Park*, 387 F. Supp. 3d 703, 713 (W.D. Tex. 2019), *reconsideration denied*, No. AU-17-CA-00717-SS, 2019 WL 3845455 (W.D. Tex. Aug. 15, 2019), *appeal pending*, No. 20-50125 (5th Cir. filed Feb. 21, 2020).

Declining to reach the issue

L.D. Mgmt. Co. v. Thomas, 456 F. Supp. 3d 873, 876 (W.D. Ky. 2020), *aff'd sub nom. L.D. Mgmt. Co. v. Gray*, 988 F.3d 836 (6th Cir. 2021); *Nittany Outdoor Advert., LLC v. Coll. Twp.*, 179 F. Supp. 3d 436, 441 (M.D. Pa. 2016).