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Supreme Court Wades Into Battle Between Billboard Advertisers and City Officials.

Industry seeks to lift limits on 'off-premises' signs

WASHINGTON—Supreme Court justices Wednesday stepped into an advertising industry battle that could reduce restrictions on billboards across the country.

At issue is a long-recognized difference between on-premises signs that flag a business or activity taking place at a specific location, and off-premises advertising to which most billboards are dedicated.

A billboard company in Austin, Texas, is challenging a local ordinance that makes such a distinction to restrict the proliferation of digital signs, arguing that the First Amendment precludes government from distinguishing between on- and off-premises locations.

The Austin municipal code prohibits converting conventional billboards to digital unless they are on the premises of the business or activity being advertised. Local billboard companies complain that the regulations amount to discrimination based on the content of the message, something government generally is forbidden to do. The city counters that the rules are based on where the signs are located and not what they say.

Justice Brett Kavanaugh said that adopting the advertisers' view could disrupt sign regulations around the country.

"Unlike some of our decisions, this decision is going to affect every state and local official around America," he said. "They spend a lot of money and a lot of time trying to figure out how to comply with the First Amendment implications of sign ordinances."

According to a brief filed by the National League of Cities, the U.S. Conference of Mayors and other organizations representing local government, laws in at least 30 states and in thousands of jurisdictions distinguish between on- and off-premises signs "out of legitimate concerns regarding public safety and local aesthetics."

A decision in the case, *City of Austin v. Reagan National Advertising of Austin LLC*, is expected before July.

Reagan National Advertising argues that the premises distinction is unconstitutional in light of the court's 2015 decision striking down a Gilbert, Ariz., ordinance that restricted noncommercial temporary signs, with an exemption for political messages but not religious ones. A federal appeals court in New Orleans agreed, siding last year with advertisers.

In its brief, Reagan National Advertising said that digital billboards are superior to the conventional variety. "Digital billboards offer more opportunities to communicate with the public, because multiple messages can be displayed at a given time and updated instantly without the physical labor

required to change a traditional billboard,” the company said.

The city said in its brief that “signs can cause esthetic harms by their size, number, and placement. They can also pose traffic dangers by distracting drivers and obscuring views. Billboards, because of their size, prominence, and attention-getting designs, amplify those concerns. And digital billboards take those concerns to new levels.”

At Wednesday arguments, justices expressed doubts that distinguishing between on- and off-premises businesses raised First Amendment concerns akin to discrimination regarding political, religious or artistic speech.

Chief Justice John Roberts said that treating the premises distinction as a content regulation could imperil the Highway Beautification Act of 1965, a cornerstone of the America the Beautiful program that limits outdoor advertising.

The highway law, a legacy of the late first lady Lady Bird Johnson, makes several distinctions among messages, permitting those from nonprofit groups advertising free coffee for weary motorists, and signs indicating lodging, gas stations, restaurants and other information useful to travelers.

The beautification act includes “five sign provisions, and under your theory, I suppose they would be unconstitutional,” the chief justice told Kannon Shanmugam, the lawyer representing Reagan National Advertising.

Mr. Shanmugam said that it was possible the government could justify Highway Beautification Act distinctions enough to survive First Amendment scrutiny.

Several justices asked how the rule could apply to different messages.

“Let’s say a sign just says ‘Black Lives Matter,’” said Justice Neil Gorsuch. That wouldn’t be off-premises because it doesn’t mention a location. “But what if Black Lives Matter has a local office and it isn’t there?” he continued. “How about if it says ‘Black Lives Matter, Do Something About It,’ anticipating an upcoming rally, but no information is provided?” he said. Alternatively, he posited, what if it did include the location?

“Somebody’s going to have to read this and decide which side of the line these four examples fall on,” Justice Gorsuch said.

Justice Elena Kagan said that it was “formally true” that city officials would need to examine a sign’s content to determine whether it referenced an on-premises activity. On the other hand, she said, “there are some laws that sort of scream out not to worry in terms of any First Amendment values.”

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By Jess Bravin

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