

14 783

No. 14-__

Supreme Court, U.S.
FILED

JAN 2 - 2015

OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

FRANK WAGNER,

Petitioner,

v.

CITY OF GARFIELD HEIGHTS, OHIO;
AND WILLIAM WERVEY,

Respondents.

**On Petition for a Writ Of Certiorari
to the United States Court of Appeals
for The Sixth Circuit**

PETITION FOR A WRIT OF CERTIORARI

CURT C. HARTMAN
Counsel of Record
THE LAW FIRM OF CURT C.
HARTMAN
7394 Ridgpoint Drive #8
Cincinnati, OH 45230
(513) 379-2923
hartmanlawfirm@fuse.net

CHRISTOPHER P. FINNEY
FINNEY LAW FIRM, LLC
4270 Ivy Pointe Blvd.
Suite 225
Cincinnati, OH 45245
chris@finneylawfirm.com

Counsel for Petitioners

QUESTIONS PRESENTED

- I. Whether the mere assertion by a government that its sign regulations lack a discriminatory motive renders such regulations to be content-neutral sign regulations notwithstanding the facially content-based aspects of such sign regulations?
- II. In order to constitutionally justify a content-neutral sign regulation under intermediate scrutiny, must a government establish with evidence that the specific sign regulation at issue actually advances a significant governmental interest and leaves open alternative channels of communication or may a government rely simply upon *ipse dixit* and general pronouncements in case law concerning different forms or media of communication in order to satisfy the requirements of intermediate scrutiny?

PARTIES TO THE PROCEEDING

Petitioner, who was Plaintiff-Appellee below, is Frank Wagner.

Respondents, who were Defendants-Appellants below, are the City of Garfield Heights, Ohio, and William Wervey, the Building Commissioner for the City of Garfield Heights, Ohio, who is being sued in his individual and official capacities.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND CITY ORDINANCE PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	1
REASONS FOR GRANTING THE PETITION.....	4
1. The First Question Presented Is Already Before the Court Due to a Circuit Split	4
2. The Second Question Presented is raised as the decision of the Sixth Circuit conflicts with relevant decisions of this Court that have treated and analyzed governmental interests supposedly being advanced by sign regulations based upon the distinct medium and venue of the expression involved and not with a one-size-fits-all approach lacking in any supporting evidence	8
CONCLUSION	15
APPENDIX A: Opinion of the United States Court of Appeals for the Sixth Circuit (August 19, 2014).....	1a
APPENDIX B: Order of the United States Court of Appeals for the Sixth Circuit (October 3, 2014)	31a

TABLE OF CONTENTS
(continued)

	Page
APPENDIX C: Order of the United States District Court for the Northern District of Ohio (February 12, 2013).....	32a
APPENDIX D: U.S. Const., amend. I.....	58a
APPENDIX E: Codified Ordinances of the City of Garfield Heights, Ohio, § 1140.362	59a

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Arlington County Republican Committee v. Arlington County, Va.</i> , 983 F.2d 587 (4th Cir. 1993).....	8-9
<i>Brown v. Town of Cary</i> , 706 F.3d 294 (4th Cir. 2013).....	6
<i>City of Ladue v. Gilleo</i> , 512 U.S. 43 (1994).....	10-11
<i>City of Lakewood v. Plain Dealer Publ. Co.</i> , 486 U.S. 750 (1988).....	10-11
<i>Florida Bar v. Went For It, Inc.</i> , 515 U.S. 618 (1995).....	13
<i>H.D.V.-Greektown, LLC v. City of Detroit</i> , 568 F.3d 609 (6th Cir. 2009).....	4-5, 6-7
<i>Leverett v. City of Pinellas Park</i> , 775 F.2d 1536 (11th Cir. 1985).....	14
<i>Matthews v. Town of Needham</i> , 764 F.2d 58 (1st Cir. 1985).....	5
<i>Melrose, Inc. v. City of Pittsburgh</i> , 613 F.3d 380 (3d Cir. 2010).....	7-8
<i>Members of City Council of Los Angeles v. Taxpayers for Vincent</i> , 466 U.S. 789 (1984).....	10
<i>Metromedia v. City of San Diego</i> , 453 U.S. 490 (1981).....	9-11
<i>National Adver. Co. v. Town of Babylon</i> , 900 F.2d 551 (2d Cir. 1990).....	5-6
<i>Neighborhood Enterprises, Inc. v. City of St. Louis</i> , 644 F.3d 728 (8th Cir. 2011).....	6, 9
<i>Reed v. Town of Gilbert, Arizona</i> , 707 F.3d 1057 (9th Cir. 2013).....	7

TABLE OF AUTHORITIES
(continued)

Page(s)

<i>Reed v. Town of Gilbert, Arizona</i> , Case No. 13-502 (oral argument Jan. 12, 2015)..... <i>passim</i>	
<i>Southeastern Promotions, Ltd. v. Conrad</i> , 420 U.S. 546 (1975)	9
<i>Solantic, LLC v. City of Neptune Beach</i> , 410 F.3d 1250 (11th Cir. 2005)	6
<i>Watseka v. Illinois Public Action Council</i> , 796 F.2d 1547 (7th Cir. 1986) , <i>aff'd</i> , 479 U.S. 1048 (1987)	14

STATUTORY PROVISIONS

42 U.S.C. § 1983	3
------------------------	---

COURT RULES

Sup. Ct. R. 10(a)	15
Sup. Ct. R. 10(c)	15

OPINIONS BELOW

The Court of Appeals' opinion (Pet.App.1a) reversing the District Court's judgment is available at 2014 WL 4067171. The District Court's opinion (Pet.App.32a) finding the sign regulation at issue to be unconstitutional and enjoining its enforcement was not included in an unofficial report.

JURISDICTION

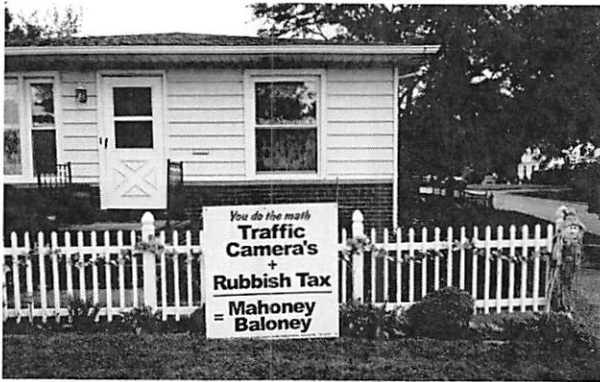
The Sixth Circuit entered judgment on August 19, 2014, and denied rehearing *en banc* on October 3, 2014. (Pet.App.22a.) This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND CITY ORDINANCE PROVISIONS INVOLVED

Appended are: the First Amendment (Pet.App.58a) and Codified Ordinances of the City of Garfield Heights, § 1140.362 (Pet.App.59a).

STATEMENT OF THE CASE

In September 2011, Frank Wagner posted a single, sixteen-square-foot sign at his residence in Garfield Heights which was critical of Tracy Mahoney, a member of the City Council of Garfield Heights. (R.1, Verified Complaint ¶¶20-25, PageID#5.) In particular, Mr. Wagner posted the following single sign in his yard:



(R.1, Verified Complaint ¶22, PageID#5; R.1-1, Exhibit A-2, PageID#14.)

Upon receiving a complaint concerning the sign from the councilmember who was the target of the criticism within Mr. Wagner's sign, officials with the City of Garfield Heights threatened Mr. Wagner with prosecution for violating the City's six-square-foot limitation on the size of any single political sign. However, as the City acknowledged, "[Mr. Wagner] may display up to thirty (30) political signs on his property as long as each individual sign is no larger than six (6) square feet." (R.6, City's Memo. in Opp. to Motion for Preliminary Injunction, at 7 & 12, PageID#86 & 91.) Thus, Mr. Wagner may legally post the following in his yard:





but he is *subject to prosecution* for having the following:



The City posited (though never established with evidence) the abstract concepts of traffic safety and aesthetic interests as to why the latter, *i.e.*, the single sign measuring sixteen-square feet, was made illegal, but that the former, *i.e.*, the strewing of over 30 signs in the yard just so long as no single sign was larger than six-square feet, was constitutionally permissible. (City's Appellate Brief, at 38.)

Recognizing the absurdity and lack of any legitimate justification for this dichotomy in what was permitted and not permitted, Mr. Wagner commenced this civil rights action pursuant to 42 U.S.C. § 1983, challenging the constitutionality of the City's regulation of political signs, both facially and as applied. In considering cross-motions for

summary judgment, the District Court concluded the sign regulation was a content-based restriction on core political speech for which the City had not satisfied the requirements of strict scrutiny. (R.57, Decision, PageID#1937-55.) On appeal, though, the Sixth Circuit reversed the judgment of the District Court, concluding that the sign regulation, on its face, was content-neutral and satisfied the requirements of intermediate scrutiny and, thus, directed that judgment

REASONS FOR GRANTING THE PETITION

First Question Presented: Whether the mere assertion by a government that its sign regulations lack a discriminatory motive renders such regulations to be content-neutral sign regulations notwithstanding the facially content-based aspects of such sign regulations?

1. The First Question Presented Is Already Before the Court Due to a Circuit Split. In its opinion below, the Sixth Circuit recognized that, in assessing a sign regulation, a threshold inquiry concerns “*how* to determine whether a regulation is content-based or content-neutral.” (Pet.App11a). And with respect to this critical question, the Sixth Circuit acknowledged that “[a] circuit split exists, and our circuit, in a published opinion, has taken a side.” (Pet.App14a).

In *H.D.V.-Greektown, LLC v. City of Detroit*, 568 F.3d 609 (6th Cir. 2009), the Sixth Circuit had previously adopted a motive-based test to determine whether a sign regulation is content-based or content-neutral. In adopting this motive-based test, the court stated that “an ordinance is not a content-based regulation of speech if,” among other things, “the regulation was not adopted because of disagreement with the message the speech conveys.” *Id.* at 621. Applying this test, the Sixth Circuit found the code at issue in *H.D.V.-Greektown* to be content-neutral, despite its facially content-based provisions, because there was “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.” *Id.*

Thus, bound to and applying circuit precedent, the Sixth Circuit concluded in that the regulation of political signs in the City of Garfield Heights was not content-neutral and, thus, subjected such regulation to intermediate scrutiny in ultimately concluding that such regulation was facially constitutional. (Pet.App26a).

However, as noted above, the Sixth Circuit explicitly recognized and acknowledged that “[a] circuit split exists” with respect to how to determine whether a regulation is content-based or content-neutral. (Pet.App11a & 14a). And this issue and resolution of the acknowledged circuit split is presently before this Court in *Reed v. Town of Gilbert, Arizona*, Case No. 13-502 (oral argument scheduled for January 12, 2015). As developed in the petition for certiorari filed in *Reed*, as well as the merits briefs therein, there exists a three-way circuit split by which courts determine whether a sign regulation is content-neutral.

Presently, the First, Second, Eighth and Eleventh Circuits follow a “text-based test” under which content-neutrality is determined objectively based on the regulation’s plain terms:

- *Matthews v. Town of Needham*, 764 F.2d 58, 60 (1st Cir. 1985) (sign code found content-based where it facially banned political signs but permitted for sale, professional office, and religious and charitable cause signs);
- *National Adver. Co. v. Town of Babylon*, 900 F.2d 551, 557 (2d Cir. 1990) (sign code found content-based because it facially exempted political signs and signs identifying a grand opening, parade, festival,

fund drive or similar occasion from a general sign ban);

- *Neighborhood Enterprises, Inc. v. City of St. Louis*, 644 F.3d 728, 736 (8th Cir. 2011)(“we conclude that the zoning code’s definition of ‘sign’ is impermissibly content-based because ‘the message conveyed determines whether the speech is subject to the restriction’”)
- *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1259 n.8 & 1266 (11th Cir. 2005)(relying on the decision in *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993), recognized that the Supreme Court has “return[ed] to its focus on the law’s own terms, rather than its justification” and, thus, “because some types of signs are extensively regulated while others are exempt from regulation based on the nature of the messages they seek to convey, the sign code is undeniably a content-based restriction on speech”).

In contrast, the Fourth, Sixth and Ninth Circuit follow a subjective “motive-based test,” which permits content-based distinctions on the face of a code so long as the government can assert a neutral justification or lack of censorial motive for the sign regulation:

- *Brown v. Town of Cary*, 706 F.3d 294, 304 & 306 (4th Cir. 2013)(finding sign regulation to be content-neutral because it was not “adopted because of a disagreement with the message conveyed” and any content-based distinctions had “a reasonable relation” to the town’s asserted neutral justifications for enacting the code, *i.e.*, traffic safety and aesthetic);
- *H.D.V.-Greektown, LLC v. City of Detroit*, 568 F.3d 609, 621 (6th Cir. 2009)(“an ordinance is not a

content-based regulation of speech if,” *inter alia*, “the regulation was not adopted because of disagreement with the message the speech conveys”; with respect to any content-based distinctions, there was “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”);

- *Reed v. Town of Gilbert, Arizona*, 707 F.3d 1057 (9th Cir. 2013)(sign regulation is content-neutral because government “did not adopt its regulation of speech because it disagreed with the message conveyed,” and any interests in regulating signs are “unrelated to the content”), *cert. granted*, __ U.S. __, 134 S.Ct. 2900 (2014).

And the Third Circuit employs a “context-sensitive test,” which permits content-based distinctions on the face of a code pursuant to a multi-part, convoluted balancing test that purports to determine instances where the value of certain speech in certain locations exceeds the government’s overarching regulatory purpose.

- *Melrose, Inc. v. City of Pittsburgh*, 613 F.3d 380, 389 (3d Cir. 2010) (describing as a “context-sensitive” test its assessment as to whether a sign regulation is content-neutral so as to uphold a sign regulation when the following conditions are met: (1) the government exempts a sign from general sign regulations where “there is a significant relationship between the content of particular speech and a specific location or its use,” (2) the exemption was not made “in an attempt to censor certain viewpoints or to control what issues are appropriate for public debate,” (3) “the exception is substantially related to advancing an important state interest that is at least as important as the interests

advanced by the underlying regulation,” (4) “the exception is no broader than necessary to advance the special goal,” and (5) “the exception is narrowly drawn so as to impinge as little as possible on the overall goal.” *Rappa v. New Castle Cnty.*, 18 F.3d 1043, 1065 (3d Cir. 1994).

In the foregoing circuit split presently before this Court in *Reed v. Town of Gilbert, Arizona*, Case No. 13-502 (oral argument scheduled for January 12, 2015), upon the issuance of a decision in *Reed* wherein clarification of the correct analysis relating to regulation of signs under the First Amendment should be provided, the petition for certiorari in this case should be granted, the judgment below vacated, and the matter remanded for further review in light of *Reed*.

Second Question Presented: In order to constitutionally justify a content-neutral sign regulation under intermediate scrutiny, must a government establish with evidence that the specific sign regulation at issue actually advances a significant governmental interest and leaves open alternative channels of communication or may a government rely simply upon *ipse dixit* and general pronouncements in case law concerning different forms or media of communication in order to satisfy the requirements of intermediate scrutiny?

2. The Second Question Presented is raised as the decision of the Sixth Circuit conflicts with relevant decisions of this Court that have treated and analyzed governmental interests supposedly being advanced by sign regulations based upon the distinct medium and venue of the expression involved and not with a one-size-fits-all approach lacking in any supporting evidence. Regardless of the specific medium or venue of expression being regulated, governments systematically invoke, usually through *ipse dixit*, the concepts of aesthetics and traffic safety

as constitutionality justifying a content-neutral sign regulation under intermediate scrutiny. *See, e.g., Arlington County Republican Committee v. Arlington County, Va.*, 983 F.2d 587, 590 (4th Cir. 1993) (“[t]he County defended [a two-sign limit] on the basis that it furthered the County’s substantial interests in promoting aesthetics and traffic safety”); *Neighborhood Enterprises, Inc. v. City of St. Louis*, 644 F.3d 728, 732 (8th Cir. 2011) (“[t]he City justified its outdoor sign restrictions principally on concerns for traffic safety and aesthetics”). And while aesthetics and traffic safety may, in the abstract, constitute important governmental interests, the decision of the Sixth Circuit below, directing the entry of summary judgment in favor of the government, treated such interests as clearly established based solely upon *ipse dixit* and general pronouncements in case law concerning different forms or media of communications. But the precedent of this Court rejects such a one-size-fits-all application that treats any claimed governmental interest as equally applicable to residential yard signs as to commercial billboards; the precedent of this Court rejects such blind invocation of aesthetics and traffic safety as somehow universally justifying any and all regulation of signs regardless of the medium or venue involved.

In *Metromedia v. City of San Diego*, 453 U.S. 490 (1981), this Court expressly recognized “the problem of applying the broad principles of the First Amendment to unique forums of expression.” *Id.* at 500. For “each method of communicating idea is ‘a law unto itself,’ and that law must reflect the ‘differing natures, values, abuses and dangers’ of each method.” *Id.* at 501 (quoting *Kovacs v. Cooper*, 336 U.S. 77, 97 (1949)(Jackson, J., concurring)); accord *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 557 (1975) (“[e]ach medium of expression...must be assessed for First Amendment purposes by standards suited to it, for each may present its own problems”)

Thus, in *Metromedia*, this Court constrained its analysis and decision to dealing with “the law of billboards.” *Metromedia*, 453 U.S. at 501. For this Court recognized that “the billboard remains a ‘large, immobile, and permanent structure which, like other structures, is subject to . . . regulation.’ Moreover, because it is designed to stand out and apart from its surroundings, the billboard creates a unique set of problems for land use planning and development.” *Id.* at 502 (quoting *Metromedia, Inc. v. City of San Diego*, 164 Cal.Rptr. 510, 26 Cal.3d 848, 610 P.2d 407, 419 (1980)). And, thus, in limiting its consideration in *Metromedia* to “the law of billboards” involving commercial speech, this Court found reasonable the conclusion “that billboards are real and substantial hazards to traffic safety,” 453 U.S. at 509, and “that billboards, by their very nature, wherever located and however constructed, can be perceived as an ‘esthetic harm’.” *Id.* at 510. And with respect to aesthetic interests justifying the content-neutral regulation of billboards in *Metromedia*, this Court similarly concluded in *City of Lakewood v. Plain Dealer Publ. Co.*, 486 U.S. 750 (1988), that such esthetic considerations “applies to newsracks as well as billboards.” *Id.* at 783.

In clear contrast to the law of billboards addressed in *Metromedia* and the law relating to commercial newsracks addressed in *Lakewood*, this Court addressed the permissible regulation *vel non* of a distinctly different medium and venue in *City of Ladue v. Gilleo*, 512 U.S. 43 (1994). Instead of dealing with billboards or newsracks, this Court in *Ladue* specifically addressed “a venerable means of communication that is both *unique and important*,” *id.* at 54 (emphasis added), when it ruled upon the constitutionality of a content-neutral regulation of residential yard signs. *Cf. Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 812 (1984)(no indication that “the posting of

political posters *on public property* is a uniquely valuable or important mode of communication” (emphasis added).)

Critical to this Court’s assessment of the sign regulation at issue in *Ladue* was the venue involved, *i.e.*, an individual private resident; in contrast, *Metromedia* and *Lakewood* involved not only commercial speech, but also such speech at a venue different than the commercial activity being advertised. Thus, in *Ladue*, this Court implicitly recognized a distinction in the venue is critical to assessing a government’s interest in regulating speech: “Displaying a sign from one’s own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means. ... Furthermore, a person who puts up a sign at her residence often intends to reach *neighbors*, an audience that could not be reached nearly as well by other means. [And] [a] special respect for individual liberty in the home has long been part of our culture and our law; that principle has special resonance when the government seeks to constrain a person’s ability to *speak* there. [The government’s need] to regulate temperate speech from the home is surely much less pressing.” *Ladue*, 512 U.S. at 56-58.

And this Court, thus, recognized clear and critical distinctions in the governmental interests at issue in *Metromedia* and *Lakewood*: “It bears mentioning that individual residents themselves have strong incentives to keep their own property values up and to prevent ‘visual clutter’ in their own yards and neighborhoods—incentives markedly different from those of persons who erect signs on others’ land, in others’ neighborhoods, or on public property. Residents’ self-interest diminishes the danger of the ‘unlimited’ proliferation of residential signs that concerns the City of Ladue.” *Id.* at 58-59.

Yet, notwithstanding this Court’s recognition and appreciation of the distinctions between governmental

regulation of off-premises signs versus residential signs displaying political messages, including the governmental interests supposedly being advanced by such regulation, the Sixth Circuit in the decision below effectively merged aesthetics and traffic safety into a singular, universal justification for any and all types of sign regulations with such interests dispositively established through nothing more than *ipse dixit* and general pronouncements in case law concerning different forms or media of communications.

For even though this case involved a government's prohibition of any political sign larger than six square-feet at a residence such that the following was made criminal:



while the following is permitted (as no single sign exceeds six square-feet in area):



the Sixth Circuit concluded the City of Garfield Heights was entitled to summary judgment so as to uphold such a sign regulation because “[i]t is far too late to contend’ that traffic safety and aesthetics are not “substantial governmental goals.”” (Pet.App21a). Of course, in so doing, the Sixth Circuit arrived at this conclusion only through consideration of the *ipse dixit* of the government and through exclusive reliance upon case law concerning billboards containing commercial messages, not yard signs containing political speech. (Pet.App21a (citing to *Metromedia, Prime Media, Inc. v. City of Franklin*, 181 F. App’x 536, 539 (6th Cir. 2006), and *Prime Media, Inc. v. City of Brentwood*, 398 F.3d 814, 819 (6th Cir. 2005)). In so doing, the Sixth Circuit resolved an important question of constitutional law in a way that conflicts with relevant decisions of this Court.

For in addition to this Court recognizing a critical distinction between regulation of off-premises commercial speech versus the exercise of core political speech through the posting of a sign at one’s residence, when examining a content-neutral regulation of speech under intermediate scrutiny, decisions of this Court have required the government to not only assert a substantial interest in support of its regulation, but to actually “demonstrate that the restriction...directly and materially advances that interest.” *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 624 (1995).

But, in contrast to other circuit courts, the Sixth Circuit in the present case did not even consider or address whether the summary judgment evidence actually established that the restriction of all residential political signs to six square-feet “directly and materially advance[d]” the claimed interest of aesthetics and traffic safety. Instead, in a single paragraph (Pet.App21a), the Sixth Circuit ignored the evidentiary requirements of this Court for summary judgment standard when it concluded as a *fait accompli* that aesthetics and

traffic safety justified any and all sign regulations *sine* evidence. *Cf. Watseka v. Illinois Public Action Council*, 796 F.2d 1547 (7th Cir. 1986)(striking down an ordinance restricting solicitation for, *inter alia*, lack of evidence supporting the city's posited substantial interest), *aff'd*, 479 U.S. 1048 (1987); *Leverett v. City of Pinellas Park*, 775 F.2d 1536, 1540 (11th Cir. 1985)("the City made no showing as to the factual basis for its articulated concerns and the motivation for passage of Sec. 16-112 beyond the conclusions stated in the ordinance itself....[W]e hold that *Krueger* [*v. City of Pensacola*, 759 F.2d 851 (11th Cir. 1985),] requires more than a conclusory assertion of the factual basis and motivation underlying an ordinance that treads upon First Amendment rights.... [T]he showing required by *Krueger* would serve little purpose if it could be made by simply pointing to an assertion of concern and motivation unsupported by any factual record. Such a minimal showing is an insufficient safeguard for fundamental constitutional values. The statement of factual basis and motivation contained in Sec. 16-112 does not justify its infringement on protected expression"). And in so doing, the Sixth Circuit not only lessened the evidentiary standard required by this Court and other circuit to justify a restriction on First Amendment rights, but also ignored the summary judgment evidence actually tendered by Petitioner refuted the claimed (though unproven) interests of traffic safety and aesthetics.

Thus, even if this Court's decision in *Reed v. Town of Gilbert, Arizona*, Case No. 13-502, supports an analysis of the sign regulation at issue herein as a content-neutral regulation of speech so as to be subject to intermediate scrutiny, the decision and analysis of the Sixth Circuit herein resolved an important question of constitutional law in a way that conflicts with relevant decisions of this Court and other

circuits. See Sup. Ct. R. 10(a) & 10(c). Thus, the petition for a writ certiorari should be granted

CONCLUSION

With respect to the First Question Presented, as the issue raised therein is presently before the Court, the petition for a writ of certiorari should be held pending the Court's final disposition of *Reed v. Town of Gilbert, Arizona*, Case No. 13-502, and, then, disposed of consistent with the Court's decision therein.

With respect to the Second Question Presented, should the Court conclude that, in light of this Court's forthcoming decision in *Reed v. Town of Gilbert, Arizona*, Case No. 13-502, the Sixth Circuit still applied the correct legal standard for how to determine whether a sign regulation is content-based or content-neutral, potentially left unanswered in *Reed* is the quantum and quality of proof as to how a government establishes the requirements of intermediate scrutiny, *i.e.*, whether *ipse dixit* and general pronouncements in case law are sufficient in a one-size-fits-all methodology to satisfy the requirements of intermediate scrutiny with respect to the specific sign regulation at issue. For precedent of this Court does not allow *ipse dixit* or generalized statements in cases addressing restrictions on billboard or newsracks to be bootstrapped so as established as dispositive evidence justification for restrictions residential yard signs displaying political messages.

Respectfully submitted,

CURT C. HARTMAN
Counsel of Record
THE LAW FIRM OF CURT C.
HARTMAN
7394 Ridgpoint Drive, Suite
8
Cincinnati, OH 45245
(513) 379-2923
hartmanlawfirm@fuse.net

CHRISTOPHER P. FINNEY
FINNEY LAW FIRM, LLC
4270 Ivy Pointe Blvd. Suite
225
Cincinnati, OH 45245

January 2, 2015