A Very Special Election Episode: Removing Political Signs

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Political signs are both a physical structure and a form of political speech

- “Political speech is entitled to the highest form of protection by the free speech clause of the First Amendment” *McIntyre v Ohio Election Commission*, 514 U.S. 334 (1995)

Content-based vs. time/place/manner regulations

- Content-based regulations are subject to strict scrutiny - regulation must serve a compelling government interest, and the restriction must be as narrowly tailored as possible

  **If you have to read a sign to see if a law applies it is a content-based regulation**

- You will lose in court if you have a content-based regulation “Strict in scrutiny, fatal in fact”

- Towns can regulate time/place/manner of signs
  
  - Subject to a lower level of judicial review, and regulations will be upheld if they:
  
    1. Are content-neutral
    2. Are narrowly tailored to serve a significant government interest, and
    3. It leaves open alternative channels for communications.

    - A significant government interest is a much lower standard than the compelling government interest required for a content based regulation. Common examples of a significant government interest include things like the preservation of aesthetics or public safety

Regulating signs in practice

- Regulations that only apply to political signs are content-based and subject to strict scrutiny (aka you will lose)
  
  - Example – “Political signs must be removed within 30 days of the election”

- Can do things like require a permit to post *ALL* temporary signs that expires within 45 days
• Pretend the sign is blank – if you can determine if a regulation applies without knowing what the sign says, that is a content-neutral regulation

• Remember: enforcement of sign regulations should also be content-neutral