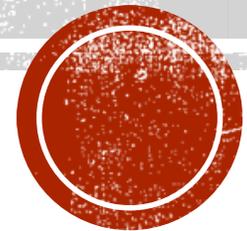


SIGN ORDINANCES POST REED V. GILBERT

**Developing content neutral regulations
for a content driven industry**



APA TEXAS CHAPTER CONFERENCE 2016

T. DANIEL SANTEE
ATTORNEY

BRIAN JAMES
EXECUTIVE DIRECTOR



REED V. TOWN OF GILBERT

- **Case Summary**
- Good News Community Church is a small church located in Gilbert, Ariz. The church rents space in temporary locations for its weekly service. It uses small, temporary signs to invite and direct the community to its services.
- The Town of Gilbert Sign Code imposes strict limits on the size, location, number, and duration of the church's signs. It does not impose the same restrictions on political, ideological, and homeowners' association signs. ***If the church violates the code, Pastor Reed could be fined and possibly jailed.***

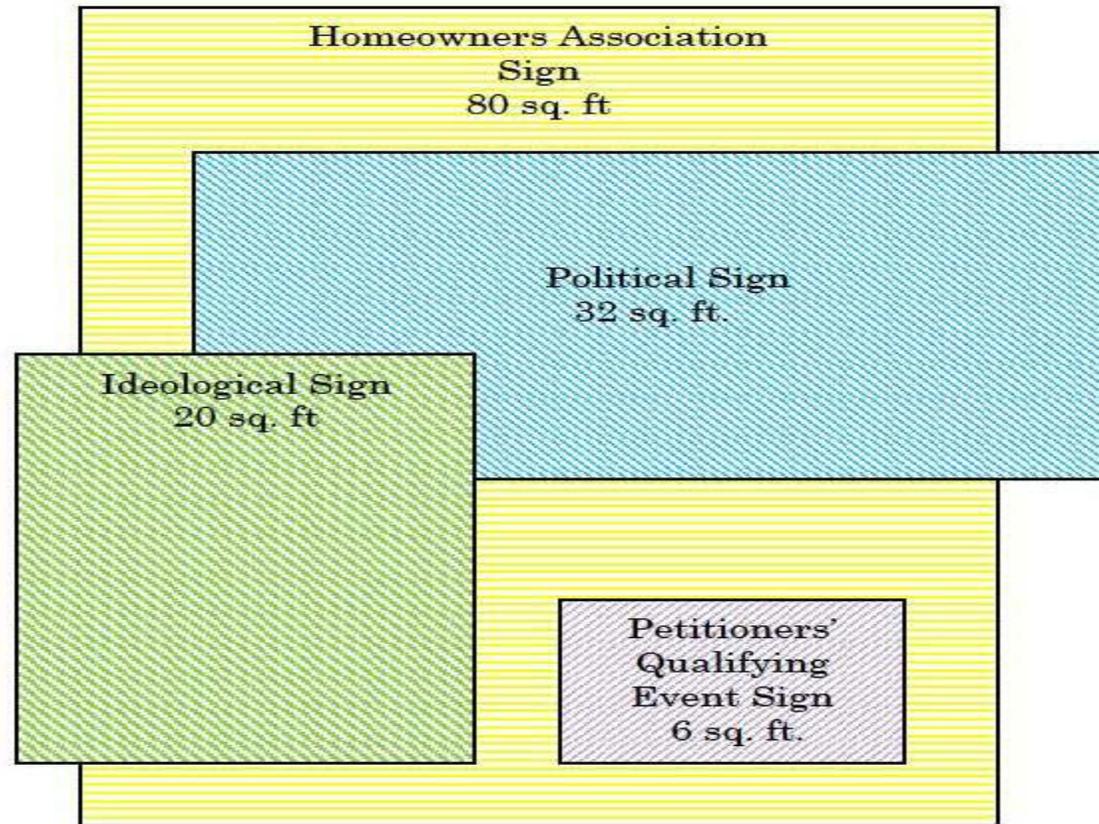


REED V. TOWN OF GILBERT

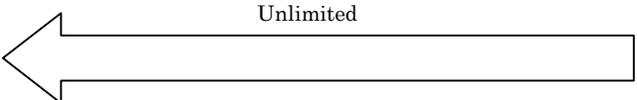
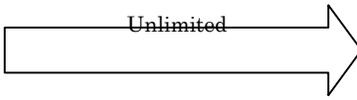
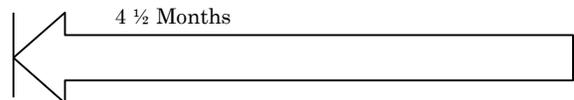
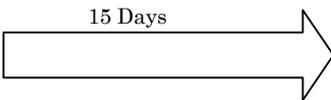
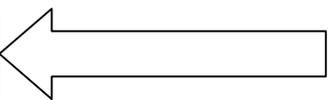
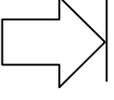
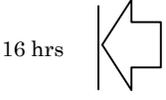
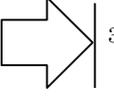
- The text of the town's code regulates signs based on what they say, and the town was alleged to be applying the code in a manner that singled out the church's religious speech for discriminatory treatment.
- Both are impermissible under the First Amendment.
- The church filed suit against the town in 2007, arguing that the code – *both as written and as applied to its signs* – is an unconstitutional restriction on its First Amendment right to free speech.



REED V. TOWN OF GILBERT



REED V. TOWN OF GILBERT

Display Time Before	Sign Content	Display Time After
 Unlimited	Ideological	 Unlimited
 4 ½ Months	Election	 15 Days
 30 Days	HOA Event	 48 hrs
 16 hrs	Real Estate Sale	 36 hrs
 12 hrs	Religious Event	 1 hr



REED V. TOWN OF GILBERT

POLITICAL SIGNS IN GILBERT ARIZONA WHICH ARE PERMITTED VIRTUALLY ALL YEAR LONG.



REED V. TOWN OF GILBERT

BUT THE TOWN'S STRICT LIMITATIONS ON THE CHURCH'S SIGNS MAKE IT HIGHLY UNLIKELY THAT DRIVERS WOULD EVER SEE A SIGN INVITING THEM TO THE CHURCH'S SERVICES. *THE TOWN ESSENTIALLY ONLY ALLOWS THE CHURCH'S MESSAGE TO BE DISPLAYED OVERNIGHT, UNDER THE COVER OF DARKNESS, AND IN THE EARLY MORNING HOURS.*



REED V. TOWN OF GILBERT

KEY QUOTES

- From the Majority Opinion, written by Justice Thomas (joined by Justices Roberts, Scalia, Kennedy, Alito, and Sotomayor)
 - “The Town’s Sign Code is content based on its face. It defines ‘Temporary Directional Signs’ on the basis of whether a sign conveys the message of directing the public to church or some other ‘qualifying event.’”
 - “The restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign. If a sign informs its reader of the time and place a book club will discuss John Locke’s Two Treatises of Government, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke’s followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke’s theory of government.”



REED V. TOWN OF GILBERT

KEY QUOTES

- From the Majority Opinion, written by Justice Thomas (joined by Justices Roberts, Scalia, Kennedy, Alito, and Sotomayor)
 - “In reaching the contrary conclusion, the Court of Appeals offered several theories to explain why the Town’s Sign Code should be deemed content neutral. None is persuasive.”
 - “But [The Town’s] analysis skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face.”
 - “Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech.”



REED V. TOWN OF GILBERT

KEY QUOTES

- From the Concurring Opinion written by Justice Alito (joined by Justices Kennedy and Sotomayor)
 - “I will not attempt to provide anything like a comprehensive list [of reasonable sign regulations], but here are some rules that would not be content based:
 - Rules regulating the size of signs. These rules may distinguish among signs based on any content-neutral criteria, including any relevant criteria listed below.
 - Rules regulating the locations in which signs may be placed. These rules may distinguish between freestanding signs and those attached to buildings.
 - Rules distinguishing between lighted and unlighted signs.
 - Rules distinguishing between signs with fixed messages and electronic signs with messages that change.



REED V. TOWN OF GILBERT

KEY QUOTES

- From the Concurring Opinion written by Justice Alito (joined by Justices Kennedy and Sotomayor)
 - Rules that distinguish between the placement of signs on private and public property.
 - Rules distinguishing between the placement of signs on commercial and residential property.
 - Rules distinguishing between on-premises and off-premises signs.
 - Rules restricting the total number of signs allowed per mile of roadway.
 - Rules imposing time restrictions on signs advertising a one-time event.



REED V. TOWN OF GILBERT

OPINION SUMMARY

- Justice Thomas' Opinion (Roberts, Scalia, Kennedy, Thomas, Alito, Sotomayor)
- Content-based laws trigger strict scrutiny. A law is content based if it draws distinctions based on the message a speaker conveys. A law is facially content based not only if it defines speech by its subject matter, but also if it defines speech based on its function or purpose. Both categories wholly depend on the message a speaker conveys and thus trigger strict scrutiny. A law may also be content based if it was adopted based on the government's disagreement with a message, but such illicit motivations are not required



REED V. TOWN OF GILBERT

OPINION SUMMARY

- Justice Thomas' Opinion (Roberts, Scalia, Kennedy, Thomas, Alito, Sotomayor)
- The Code is content based on its face because the Temporary Directional Sign category only applies to signs that direct the public to an event. The Town's motives for enacting the Code are irrelevant. If a law is content based on its face, it is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of animus towards the ideas expressed. A content-based purpose is sufficient to show a regulation is content based but it is not and has never been required. No innocuous justification can transform a facially content-based law into a content-neutral one. Courts must consider whether a law is facially content neutral *before* turning to the law's justification or purpose.



MUNICIPAL AUTHORITY TO REGULATE

- The City Council is authorized to regulate signs by virtue of the Texas Constitution, the City's police power, and Texas Local Government Code Chapters 216 and 211
- Sec. 211.003. ZONING REGULATIONS GENERALLY. (a) The governing body of a municipality may regulate:
 - (5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes



MUNICIPAL AUTHORITY TO REGULATE

- **CHAPTER 216. REGULATION OF SIGNS BY MUNICIPALITIES**
- **Sec. 216.003. MUNICIPAL REGULATION.** (a) Subject to the requirements of this subchapter, a municipality may require the relocation, reconstruction, or removal of any sign within its corporate limits or extraterritorial jurisdiction.
- **Sec. 216.902. REGULATION OF OUTDOOR SIGNS IN MUNICIPALITY'S EXTRATERRITORIAL JURISDICTION.** (a) A municipality may extend the provisions of its outdoor sign regulatory ordinance and enforce the ordinance within its area of extraterritorial jurisdiction...



IDENTIFIED AREAS OF CONCERN

- *Historic sign* means a sign that is an integral part of the historical character of a landmark building or historic district.
- *Holiday sign* means a temporary display or decoration customarily associated with any national, state, local, or religious holiday or celebration.
- *Home occupation signs* means signs that advertise for a business that is operated in a home located in a residential zone.
- *Off-premises sign* means a sign displaying advertising copy that pertains to a business, person, organization, activity, event, place, service, or product not principally located or primarily manufactured or sold on the premises on which the sign is located.
- *On-premises sign* means a sign identifying or advertising a business, person, or activity that is installed and maintained on the same premises as the business, person, or activity.



IDENTIFIED AREAS OF CONCERN

- *Political sign* means signs which by their content support or oppose any candidate for public office or any proposition to be voted upon at an election or which make a political or ideological statement in the nature of constitutionally protected noncommercial free speech.
- *Subdivision sign* means any sign used to advertise a specific subdivision; a temporary sign designed in such a way as to indicate the name and location of the specific community.
- *Community service sign* means a sign which solicits support for or participation in a nonprofit, nonpolitical, community, public, social event, or activity.
- *Daily display/promotional signs* means nonpermanent signs relating to the business conducted on the premises.



IDENTIFIED AREAS OF CONCERN

- *Event signs, off-site*, means signs giving directions to an occasional event at another location, other than a business event at an establishment, such as directions to a civic or other noncommercial ceremony, to an event for the members of an organization, or to an event at a residence such as a garage sale or private party.
- *Event signs, on-site*, means signs which are placed to advertise or mark the location of an occasional event on the same site, other than a business event, at an establishment, such as a civic or other noncommercial ceremony, an event for the members of an organization, or private party.
- *Flag/patriotic* means a national, state, church, school flags, or any other flag that constitutes protected noncommercial free speech. A fabric sheet attached at one end to a pole, cable, or rope.



KEY RECOMMENDATIONS

- Establish the Planning and Zoning Commission and Zoning Board of Adjustment as additional authorities over certain aspects of the approval and appeal process and because the potential constitutional challenges that could come regarding LGC Chapter 216.
- The removal of all content based regulation within the ordinance and replacing it with neutral regulation based on the number, size and other neutral factors.



BATTLEGROUND TEXAS

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-14-00375-CV

Auspro Enterprises, LP, Appellant

v.

Texas Department of Transportation, Appellee

**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 345TH JUDICIAL DISTRICT
NO. D-1-GN-11-002740, HONORABLE TIM SULAK, JUDGE PRESIDING**



AUSPRO ENTERPRISES V. TXDOT

- In July 2011, Auspro Enterprises LP placed a hand-painted sign on its property along the State Highway 71, showing its support for Ron Paul's 2012 presidential campaign.
- A week later, the Texas Department of Transportation ordered Auspro to remove the sign, explaining that the sign was illegal according to the Act.
- Political signs could be displayed only 90 days before and 10 days after an election; Auspro's sign was outside the time limit.
- Auspro did not remove the sign and ultimately asserted that the Act violates Auspro's right to free speech
- TxDOT filed an action for injunctive relief and civil penalties. The trial court ruled in TxDOT's favor, disagreeing with Auspro's argument that the act violated its free-speech rights.



AUSPRO ENTERPRISES V. TXDOT

- Auspro appealed, and the Austin-based Third District Texas Court of Appeals reversed the decision in an Aug. 26 opinion written by Chief Justice Jeff Rose.
- Rose disagreed with TxDOT's argument that the Texas Highway Beautification Act protects Auspro's rights by allowing election signs to be displayed for 100 days near highways, where they would be banned if they carried other messages.
- In addition to reversing the trial court's ruling, Rose added that the content-based provisions in subchapters B and C of the Texas Highway Beautification Act are unconstitutional and must be severed from the law.
- The Austin Court of Appeals adopted the U.S. Supreme Court's mandate that, if a person has to *read the content of the sign* to determine whether it is subject to regulation, the regulation will usually violate the First Amendment.



AUSPRO ENTERPRISES V. TXDOT

- The State has filed a motion for rehearing arguing for the Third Court of Appeals to:
 - Grant the petition for rehearing
 - Vacate its opinion
 - Withdraw its judgment
 - Issue a revised opinion and judgment holding that:
 - Subchapters B and C of the Texas Highway Beautification Act do not violate the First Amendment as applied to commercial speech
 - That would preserve AusPro's interest under *Reed* in displaying noncommercial signs on its property
 - It would also honor the Texas Legislature's intent to regulate commercial advertisements



AUSPRO ENTERPRISES V. TXDOT

- Scenic Texas has filed an Amicus Brief in support of the State's Motion joined by, among others:
 - American Planning Association, Texas Chapter
 - City of Fort Worth
 - Harris County
 - Texas Association of Counties
 - Texas City Attorneys Association
 - Texas Municipal League



AUSPRO ENTERPRISES V. TXDOT

- TxDOT continues to require, issue, and deny permits and licenses, enforce its height, size, spacing, and other regulations, and initiate new and continue existing administrative prosecutions for permit cancellations and violations
- TxDOT argues that the Auspro decision is currently not final or enforceable, because it is appealing to the Texas Supreme Court or higher
- In this instance, with the existence of a 2003 Texas Supreme Court case upholding the Texas HBA in *TxDOT vs Barber*, and the precedent in *Reed vs Town of Gilbert*, there is a good chance the Texas Supreme Court will eventually decide the case.



AUSPRO ENTERPRISES V. TXDOT

- Before any action by the Texas Supreme Court, which would probably not occur until 2018, the Texas Legislature is expected to address the issue in its session commencing in January 2017
- The Legislature would attempt to make the Texas HBA constitutional by substituting the current content based regulations with time, manner, and placement restrictions signs
- As previously recommended for local ordinances, this would involve height, size, location, and temporal regulations applicable to all categories of signs, without regard to the content of the messages displayed on the signs



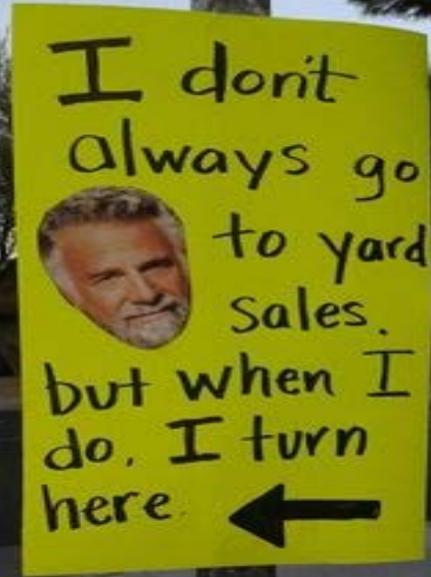
THE NEXT STATUTE TO FALL?

- Sec. 216.903. REGULATION OF POLITICAL SIGNS BY MUNICIPALITY. (a) In this section, "private real property" does not include real property subject to an easement or other encumbrance that allows a municipality to use the property for a public purpose.
- (b) A municipal charter provision or ordinance that regulates signs may not, for a sign that contains primarily a political message and that is located on private real property with the consent of the property owner:
 - (1) prohibit the sign from being placed;
 - (2) require a permit or approval of the municipality or impose a fee for the sign to be placed;
 - (3) restrict the size of the sign; or
 - (4) provide for a charge for the removal of a political sign that is greater than the charge for removal of other signs regulated by ordinance.
- (c) Subsection (b) does not apply to a sign, including a billboard, that contains primarily a political message on a temporary basis and that is generally available for rent or purchase to carry commercial advertising or other messages that are not primarily political.
- (d) Subsection (b) does not apply to a sign that:
 - (1) has an effective area greater than 36 feet;
 - (2) is more than eight feet high;
 - (3) is illuminated; or
 - (4) has any moving elements.





I don't
always go
to yard
sales.
but when I
do, I turn
here ←



GOING TO
JAIL
SALE
2835 W ALAMEDA

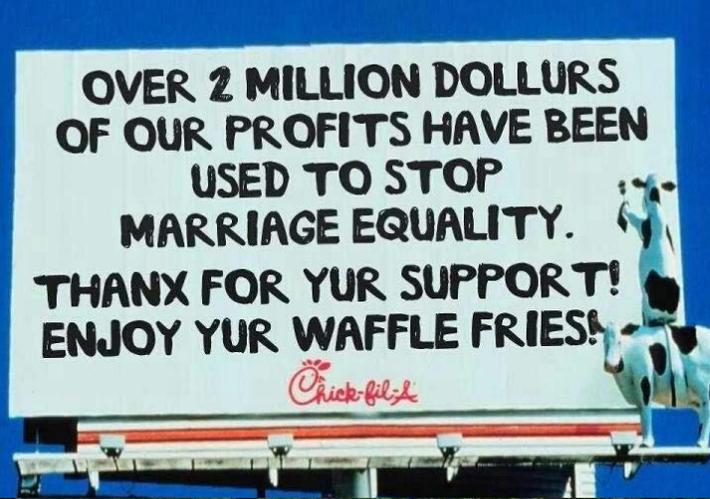


TAKE MY
EX'S STUFF
YARD SALE
IT'S ALL GOTTA GO! JUST
LIKE HIM!



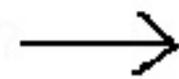
OMG
Becky Look
AT HER
SALE
it is so big.
Palisades Sata Tam

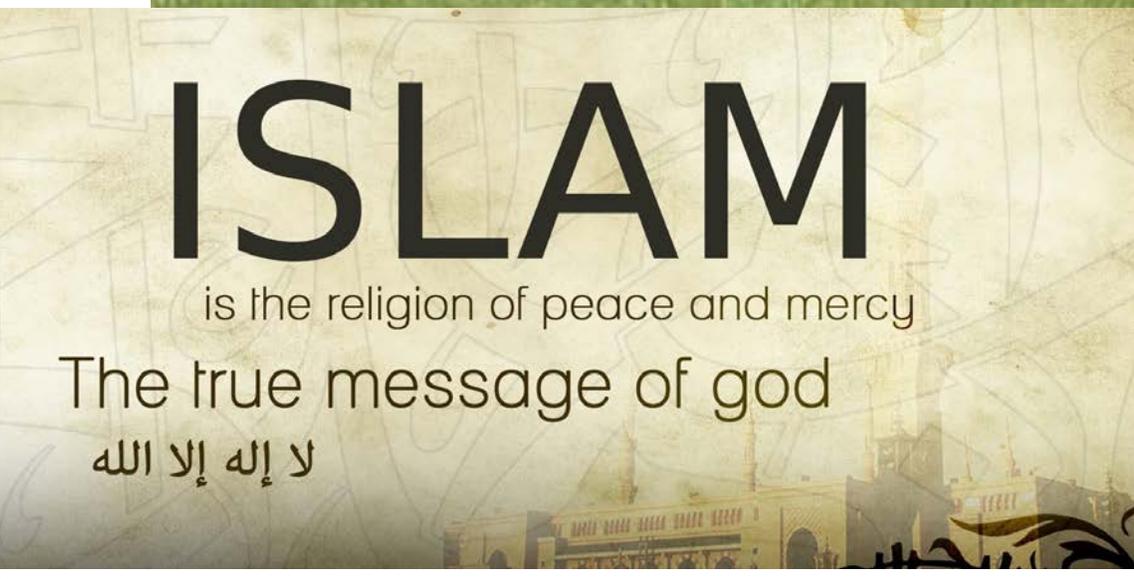
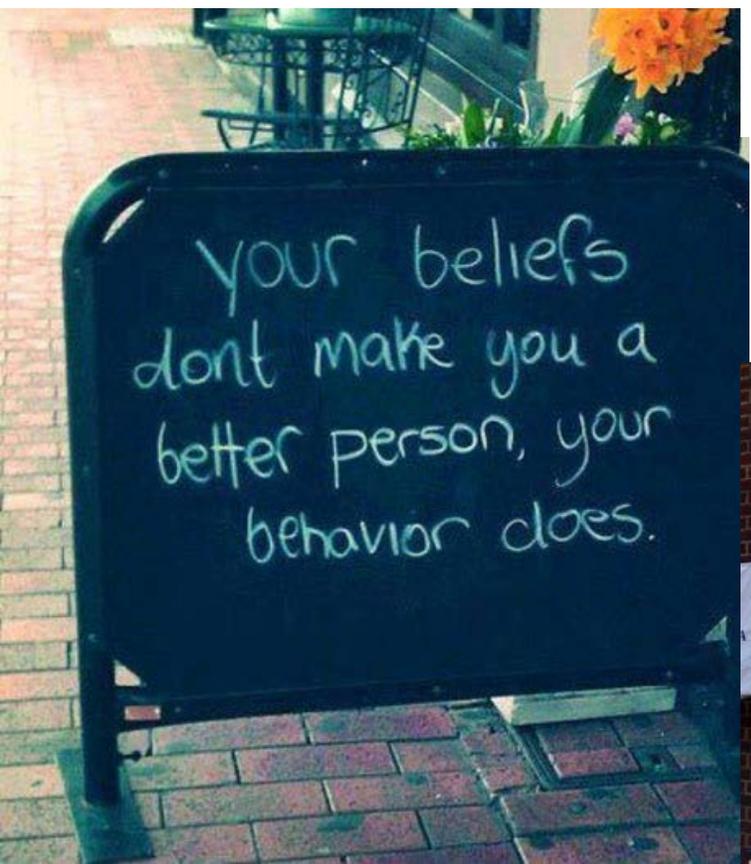




This is a billboard

This is not a billboard







THE WINNING TRADITION
OF THE UNICORNS
WILL NOT BE
ENTRUSTED
TO THE TIMID
OR TO THE WEAK

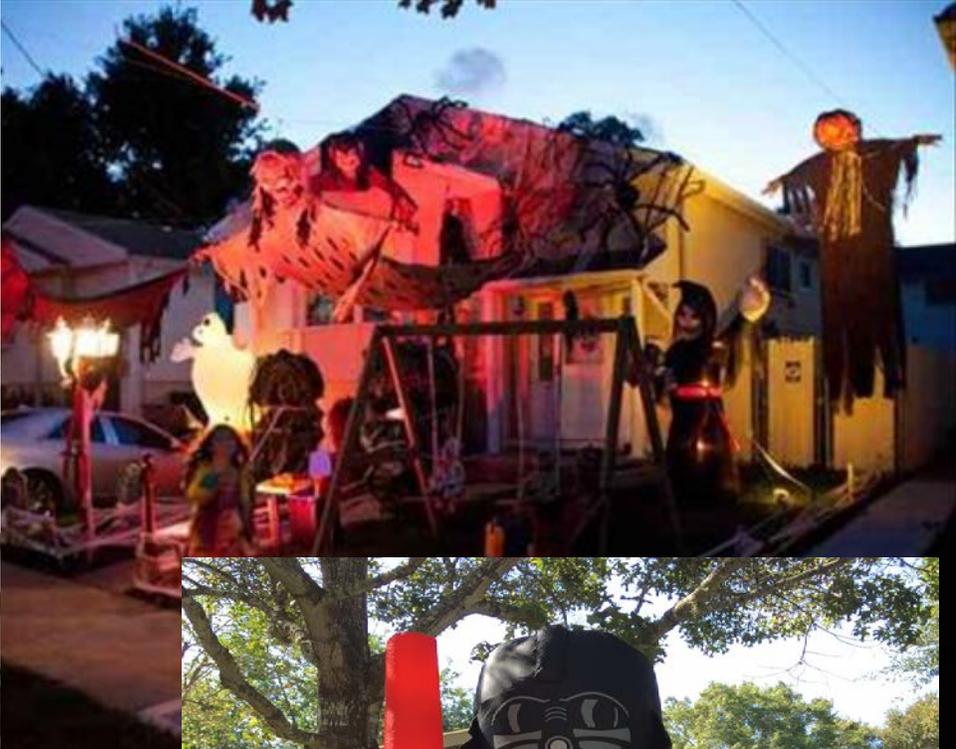


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Fred Locks | Mutabaruka (Blakk Muzik) | DJ Jesse

Friday Nov 13th

Concert - Showtime @ 7pm-12midnight

**Special Performance by Luciano
& Bushman**

Jah Bouks | Mcee Ron Muschette

Saturday Nov 14th

**Special Performance by Tarrus Riley
& IWayne**

Concert - Showtime @ 7pm-12midnight

Mighty Diamonds | Jah 9 | Mcee Elise Kelly

Sunday Nov 15th

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QUESTIONS?

