content-neutral.[1135] The regulations could therefore be measured by the "intermediate level of scrutiny" set forth in *United States v. O'Brien*.[1136] Two years later, however, a splintered Court could not agree on what standard of review to apply to content-based restrictions of cable broadcasts. Striking down a requirement that cable operators must, in order to protect children, segregate and block programs with patently offensive sexual material, a Court majority in *Denver Area Educational Telecommunications Consortium v. FCC*,[1137] found it unnecessary to determine whether strict scrutiny or some lesser standard applies, because it deemed the restriction invalid under any of the alternative tests. There was no opinion of the Court on the other two holdings in the case,[1138] and a plurality[1139] rejected assertions that public forum analysis,[1140] or a rule giving cable operators' editorial rights "general primacy" over the rights of programmers and viewers,[1141] should govern.

Subsequently, in *United States v. Playboy Entertainment Group, Inc.*,[1142] the Supreme Court made clear, as it had not in *Denver Consortium*, that strict scrutiny applies to content-based speech restrictions on cable television. The Court struck down a federal statute designed to "shield children from hearing or seeing images resulting from signal bleed," which refers to blurred images or sounds that come through to non-subscribers.[1143] The statute required cable

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[1135] 512 U.S. at 645. "Deciding whether a particular regulation is content-based or content-neutral is not always a simple task," the Court confessed. Id. at 642. Indeed, dissenting Justice O'Connor, joined by Justices Scalia, Ginsburg, and Thomas, viewed the rules as content-based. Id. at 674–82.

[1136] 391 U.S. 367, 377 (1968). The Court remanded *Turner* for further factual findings relevant to the *O'Brien* test. On remand, the district court upheld the must-carry provisions, and the Supreme Court affirmed, concluding that it "cannot displace Congress's judgment respecting content-neutral regulations with our own, so long as its policy is grounded on reasonable factual findings supported by evidence that is substantial for a legislative determination." Turner Broadcasting System v. FCC, 520 U.S. 180, 224 (1997).

[1137] 518 U.S. 727, 755 (1996) (invalidating § 10(b) of the Cable Television Consumer Protection and Competition Act of 1992).

[1138] Upholding § 10(a) of the Act, which permits cable operators to prohibit indecent material on leased access channels; and striking down § 10(c), which permits a cable operator to prevent transmission of "sexually explicit" programming on public access channels. In upholding § 10(a), Justice Breyer's plurality opinion cited FCC v. Pacifica Foundation, 438 U.S. 726 (1978), and noted that cable television "is as 'accessible to children' as over-the-air broadcasting, if not more so." 518 U.S. at 744.

[1139] This section of Justice Breyer's opinion was joined by Justices Stevens, O'Connor, and Souter. 518 U.S. at 749.

[1140] Justice Kennedy, joined by Justice Ginsburg, advocated this approach, 518 U.S. at 791, and took the plurality to task for its "evasion of any clear legal standard." 518 U.S. at 784.

[1141] Justice Thomas, joined by Chief Justice Rehnquist and Justice Scalia, advocated this approach.

[1142] 529 U.S. 803, 813 (2000).

[1143] 529 U.S. at 806.