

A state enacted a statute providing for the closure of the official state records of arrest and prosecution of all persons acquitted of a crime by a court or against whom criminal charges were filed and subsequently dropped or dismissed. The purpose of this statute is to protect these persons from further publicity or embarrassment relating to those state proceedings. However, this statute does not prohibit the publication of such information that is in the possession of private persons.

A prominent businessman in the state was arrested and charged with rape. Prior to trial, the prosecutor announced that new information indicated that the charges should be dropped. He then dropped the charges without further explanation, and the records relating thereto were closed to the public pursuant to the state statute. A newspaper in the state conducted an investigation to determine why the businessman was not prosecuted but was refused access to the closed official state records.

In an effort to determine whether the law enforcement agencies involved were properly doing their duty, the newspaper filed suit against appropriate state officials to force opening of the records and to invalidate the statute on constitutional grounds.

Which of the following would be most helpful to the state in defending the constitutionality of this statute?

- A. The argument that the rights of the press are no greater than those of citizens generally.
- B. The argument that the state may seal official records owned by the state on any basis its legislature chooses.
- C. The fact that the statute only prohibits public access to these official state records and does not prohibit the publication of information they contain that is in the possession of private persons.
- D. The fact that the statute treats in an identical manner the arrest and prosecution records of all persons who have been acquitted of a crime by a court or against whom criminal charges were filed and subsequently dropped or dismissed.

Explanation:

There is **no constitutional right to *access* government information**. Therefore, the government can deny the public (and media) access to official state records. But since there is a **First Amendment right to *publish* truthful information**, any **government restriction** on this right is **unconstitutional** unless it survives strict scrutiny—ie, the government proves that the restriction is necessary to achieve a compelling government interest. Therefore, the fact that the statute only prohibits public *access* to state records and does not prohibit the *publication* of information they contain would help the state defend the statute's constitutionality.

(Choice A) The argument that the press has no greater rights than citizens generally, while true, merely shows that the same standard applies to claims by the press and ordinary citizens. But it does not explain why the newspaper's claim will fail.

(Choice B) A state may seal its official records on any legal or constitutional basis—not any basis that its legislature chooses.

(Choice D) The fact that the statute treats the records of all persons charged with, but not convicted of, a crime identically shows that the statute complies with the Fourteenth Amendment [equal protection clause](#). But this fact will not help the state because it does not address the First Amendment issue—accessing and publishing those records.

Educational objective:

Although there is no right to *access* government information, there is a First Amendment right to *publish* truthful information. As a result, any government restriction on this right is unconstitutional unless it survives strict scrutiny.

References

- U.S. Const. amend. I (free press).
- *Houchins v. KQED, Inc.*, 438 U.S. 1, 14–15 (1978) (holding that there is no constitutional right to access government information).

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First Amendment protections

Access to government records ≠
protected



Publication of government records =
protected

