

A protester entered an IRS office during business hours. He denounced the income tax and set fire to pages from his copy of the Internal Revenue Code. The fire was extinguished before it caused any other damage. The protester was arrested and charged with violating a state law that prohibited igniting a fire in a public building. He claimed that his prosecution was unconstitutional under the First Amendment.

May the protester constitutionally be convicted?

- A. No, because he was exercising his right to freedom of speech by burning a copy of the code.
- B. No, because the copy of the code belonged to him, and thus burning it did not infringe upon a legitimate government interest.
- C. Yes, because the burning of the code was conduct rather than speech.
- D. Yes, because the state law is narrowly drawn to further a substantial government interest in prohibiting the noncommunicative aspects of the act in question.

## Explanation:

The **First Amendment** protects *all* forms of expression from unjustified government interference. This includes **expressive conduct**—ie, behavior that is intended to **convey a particular message** that is **likely to be understood** by the audience. To ensure such protection, regulations based solely on the message being communicated (ie, content-based restrictions) are subject to strict scrutiny and usually invalid. But **content-neutral regulations** are valid so long as they are **narrowly tailored** to further a **substantial government interest**.

Here, the protester's burning of the tax code was protected *expressive* conduct since it was intended to denounce the IRS and that message would likely be understood by viewers **(Choice C)**. But the law banning fires in public buildings is content-neutral since *all* fires are prohibited—regardless of any message being conveyed. And since the law is a narrowly drawn means of furthering the state's substantial interest in preventing fires in public buildings, the protester can constitutionally be convicted of violating it **(Choice A)**.

**(Choice B)** The state's legitimate (and substantial) interest in preventing fires in public buildings applies regardless of who owns the materials being burned.

## Educational objective:

*Content-based* restrictions on expression (including expressive conduct) are strictly scrutinized and usually invalid. But *content-neutral* restrictions are valid if they are narrowly tailored to further a substantial government interest.

## References

- Clark v. Cmty. for Creative Non-Violence, 468 U.S. 288, 294 (1984) (setting forth the test for determining whether the government's regulation of expressive conduct is valid).

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## First Amendment speech protections

