

A federal statute prohibits websites from displaying sexually explicit material on their homepages. The purpose of the statute is to prevent minors from easily accessing such material. Several website owners who have been prosecuted for violating the statute have defended on the ground that the prosecution is unconstitutional.

Are the website owners likely to prevail in this defense?

- A. No, because sexually explicit materials are not protected speech.
- B. No, because the government has extensive power to regulate the Internet.
- C. Yes, because the government may not punish the broadcast of sexually explicit material.
- D. Yes, because there are less restrictive means available to protect children from harmful material.

## Explanation:

The First Amendment free speech clause protects the right to freely communicate information and ideas—even through the Internet. To ensure such protection, a **content-based restriction** on speech is **presumptively unconstitutional** and only enforceable if it survives **strict scrutiny**. This means that the government can only restrict speech based on what is being said (ie, its message or ideas) if it can prove that the restriction is the **least restrictive means** (ie, narrowly tailored) to achieve a **compelling government interest**.

Here, the federal statute targets speech based on its content by prohibiting websites from displaying sexually explicit material on their homepages. The government may have a compelling interest in preventing minors from easily accessing such material. However, less restrictive means are available to achieve this interest—eg, requiring sexually explicit materials to be identified so parents can limit what their children can access. Therefore, the statute cannot survive strict scrutiny, and the prosecution of the website owners is likely unconstitutional.

**(Choice A)** The First Amendment does not protect certain forms of [speech](#), including obscenity. Sexually explicit materials are only considered obscene, and fall outside the First Amendment's protections, in the rare instance when they satisfy the [Miller test](#) (not seen here).

**(Choice B)** The government does have power to regulate the Internet, but it must comply with constitutional provisions such as the First Amendment when doing so.

**(Choice C)** The government *may* punish radio and television stations for broadcasting sexual and offensive speech over the airwaves. That is because the government has extensive power to regulate the broadcast spectrum, which has a limited number of frequencies.

## Educational objective:

Content-based government regulations of speech—even speech communicated via the Internet—must survive strict scrutiny. This requires the government to prove that the regulation is the least restrictive means to achieve a compelling government interest.

## References

- Reno v. Am. Civil Lib. Union, 521 U.S. 844, 879 (1997) (holding that the compelling government interest of protecting minors from sexually explicit materials on the Internet can be achieved by means other than a ban).

## First Amendment speech protections

