

An organization that opposes capital punishment applied to a city for a permit to demonstrate in a public park near the statehouse. In its permit application, the organization stated that it would show videos of executions, and that the executions depicted in the videos are violent. Although the city regularly allows the park to be used for expressive activity, it denied the organization a permit. The city was concerned that the videos would be disturbing to visitors at the statehouse, especially children.

What standard of review should a court use in determining whether the city's denial of the permit violated the First Amendment?

- A. Whether the city's denial of the permit was narrowly tailored to serve an important government interest.
- B. Whether the city's denial of the permit was necessary to serve a compelling government interest.
- C. Whether the organization has an ample, alternative opportunity for communicating its message.
- D. Whether the violence in the videos is patently offensive according to the standards of the community.

Incorrect

Correct answer B

Collecting Statistics

03 mins, 41 secsTime Spent

2023Version

Explanation:

The **First Amendment** protects the right of free expression to encourage the free flow of ideas—even on government property. As a result, speech that occurs in a public forum (eg, public park) cannot be regulated based on its message, subject, or ideas (ie, **content-based restriction**) unless that regulation satisfies **strict scrutiny**. This standard of constitutional review places the nearly impossible burden on the government to prove that the restriction is **necessary** (and narrowly tailored) to serve a **compelling government interest**.

Here, the organization applied for a city permit to demonstrate against capital punishment in a public park near the statehouse. The city denied the permit because it was concerned that the organization's execution videos would be disturbing to visitors of the statehouse, especially children. Since the permit denial was based on the content of the videos, the strict scrutiny standard of review applies. Therefore, the court should determine whether the city's denial of the permit was necessary (and narrowly tailored) to serve a compelling government interest.

(Choice A) The city's permit denial was based on the content of the organization's videos. As a result, the city must demonstrate that its denial was narrowly tailored to serve a compelling—not merely important—government interest.

(Choice C) *Content-neutral restrictions* that regulate the time, place, or manner of speech (eg, no demonstrating after 5:00 p.m.) must provide ample, alternative channels of communication. But since the permit denial was *content-based*, it is irrelevant whether the organization has ample, alternative opportunities for communicating its message.

(Choice D) Under the *Miller test*, speech that depicts *sexual* conduct in a patently offensive way according to the standards of the community may be freely regulated as obscene speech. However, this test does not apply to speech that depicts *violence* in a patently offensive way (as seen here).

Educational objective:

The government cannot impose content-based restrictions on speech in public forums unless it can satisfy strict scrutiny—ie, show that the restrictions are necessary and narrowly tailored to achieve a compelling government interest.

References

United States v. Playboy Entm't Grp., 529 U.S. 803, 816–17 (2000) (explaining that content-based restrictions on speech require the government to satisfy strict scrutiny).

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**Content-based restrictions
(speech on government property)**

