

A city zoning ordinance contains provisions restricting places of "adult entertainment" to two specified city blocks within the commercial center of the city. These provisions define "adult entertainment" as "live or filmed nudity or sexual activity, real or simulated, of an indecent nature."

An entrepreneur proposes to operate an adult-entertainment establishment outside the two-block area zoned for such establishments but within the commercial center of the city. When his application for permission to do so is rejected solely because it is inconsistent with the adult-entertainment provisions of the zoning ordinance, he sues the appropriate city officials, seeking to enjoin them from enforcing those provisions against him. He asserts that these provisions violate the First Amendment as made applicable to the city by the Fourteenth Amendment.

In this case, is the court likely to hold that the adult-entertainment provisions of the zoning ordinance are constitutional?

- A. No, because they prohibit in the commercial area of the city adult entertainment that is not "obscene" within the meaning of the First and Fourteenth Amendments.
- B. No, because zoning ordinances that restrict freedom of speech may be justified only by a substantial interest in preserving the quality of a community's residential neighborhoods.
- C. Yes, because adult entertainment of the kind described in these provisions is not protected by the free speech guarantee of the First and Fourteenth Amendments.
- D. Yes, because they do not prohibit adult entertainment everywhere in the city, and the city has a substantial interest in keeping the major part of its commercial center free of uses it considers harmful to that area.

Explanation:

The First Amendment **free speech** protections—applicable to local governments through the Fourteenth Amendment—extend to adult entertainment (as seen here) **(Choice C)**. As a result, government regulation of such businesses is subject to constitutional review. The level of review depends on whether the restriction is either:

- **content-based** (targets what is being said) – **strict scrutiny** requires that the regulation be necessary and narrowly tailored (ie, the least restrictive means) to achieve a compelling government interest *or*
- **content-neutral** (targets time, place, or manner of speech) – **intermediate scrutiny** requires that the regulation be narrowly tailored (ie, no greater than necessary) to achieve an important or substantial government interest and leave open ample alternative avenues of communication.

In *Renton v. Playtime Theatres, Inc.*, the Supreme Court held that **zoning ordinances** for **adult-entertainment** businesses (as seen here) target the **secondary effects** that these businesses have on the surrounding community—not the acceptability of their content. As a result, they are considered **content-neutral** restrictions subject to intermediate scrutiny.

Here, the ordinance can pass intermediate scrutiny because it furthers the city's substantial interest in keeping its commercial center free of harmful uses. And it is no more restrictive than necessary to achieve that interest since it does not prohibit adult entertainment everywhere. Instead, it provides ample alternative avenues of communication by allowing these businesses in a two-block area within the city's commercial center. Therefore, the court is likely to hold that the ordinance is constitutional.

(Choice A) Although the ordinance restricts adult entertainment that is not **obscene**—and therefore is protected by the First and Fourteenth Amendments—that restriction is constitutional because it can survive intermediate scrutiny.

(Choice B) Zoning ordinances that impose content-neutral restrictions on speech may be justified by *any* substantial government interest—not just preserving residential areas.

Educational objective:

Zoning ordinances affecting adult-entertainment businesses are content-neutral speech restrictions that are subject to intermediate scrutiny—ie, the ordinance must be (1) narrowly tailored to serve a substantial government interest and (2) provide ample alternative avenues of communication.

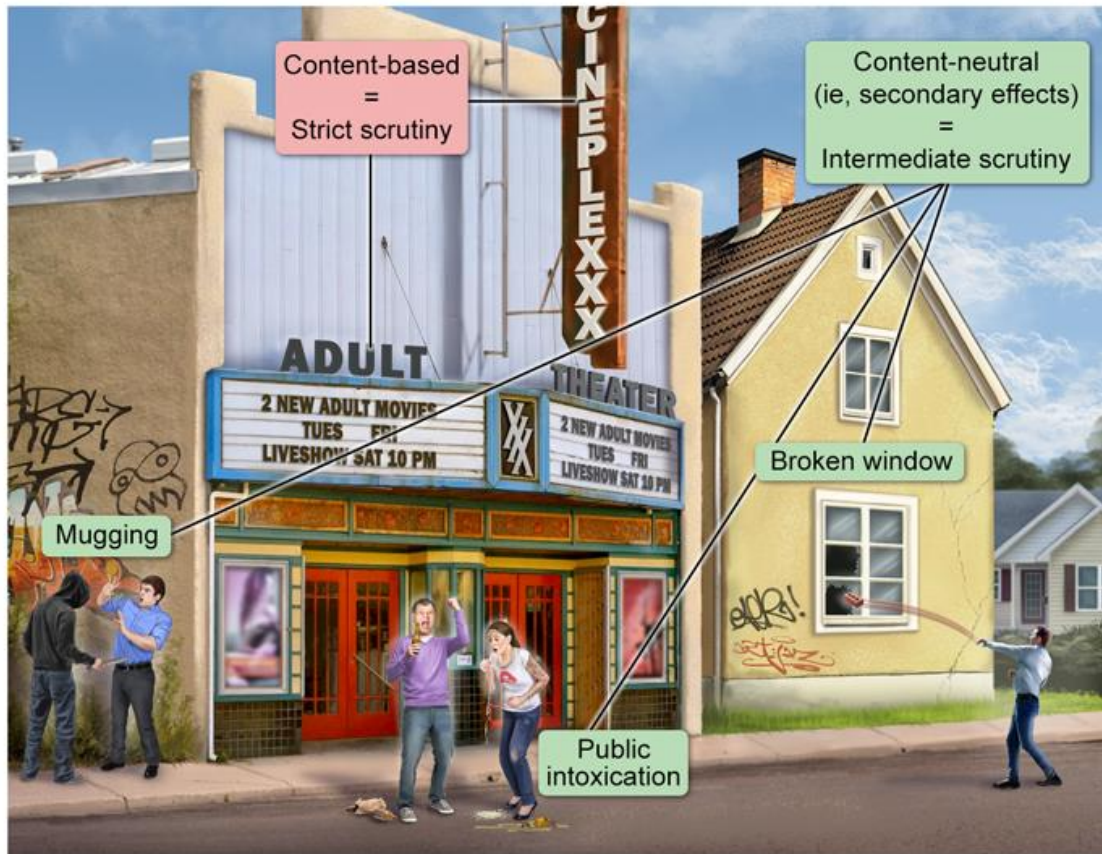
References

- *Renton v. Playtime Theatres*, 475 U.S. 41, 48–50 (1986) (applying intermediate scrutiny to a zoning ordinance prohibiting adult theaters in certain parts of the city since it targets the secondary effects of adult theaters).

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**Regulation of adult entertainment
(*Renton v. Playtime Theaters, Inc.*)**



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