

The open-air amphitheater in a city park has been utilized for concerts and other entertainment programs. Until this year, each of the groups performing in that city facility was allowed to make its own arrangements for sound equipment and sound technicians.

After recurring complaints from occupants of residential buildings adjacent to the city park about intrusive noise from some performances held in the amphitheater, the city council passed an ordinance establishing city control over all sound amplification at all programs held there. The ordinance provided that the city's parks department would be the sole provider in the amphitheater of sound amplification equipment and of the technicians to operate the equipment "to ensure a proper balance between the quality of the sound at such performances and respect for the privacy of nearby residential neighbors."

Which of the following standards should a court use to determine the constitutionality on its face of this content-neutral ordinance?

- A. The ordinance is narrowly tailored to serve a substantial government interest and does not unreasonably limit alternative avenues of expression.
- B. The ordinance is rationally related to a legitimate government interest and does not unreasonably limit alternative avenues of expression.
- C. The ordinance is rationally related to a legitimate government interest and restricts the expressive rights involved no more than is reasonable under the circumstances.
- D. The ordinance is substantially related to a legitimate governmental interest and restricts the expressive rights involved no more than is reasonable in light of the surrounding circumstances.

Explanation:

The First Amendment primarily protects speech against content-based regulations (ie, restrictions on what is said). And though the government has more latitude to impose **content-neutral** regulations (ie, **time, place, or manner restrictions**), such regulations are still subject to constitutional review. And in a **public forum** (as seen here), the government may only impose time, place, or manner restrictions if they:

- are **narrowly tailored** to serve a **substantial government interest** *and*
- leave open ample **alternative channels of communication**.

Here, the city ordinance regulates the *manner* of performances in the city park by requiring all performers to use city-provided sound equipment and technicians. This content-neutral ordinance is only valid if it is narrowly tailored to serve a substantial government interest and does not unreasonably limit alternative avenues of expression. Therefore, the court should use this standard to determine the ordinance's constitutionality **(Choices B, C, & D)**.

Educational objective:

In a public forum, the government's time, place, or manner restrictions on speech must (1) be narrowly tailored to serve a substantial government interest and (2) leave open ample alternative channels of communication.

References

- Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989) (setting forth the test for determining the validity of government restrictions on the time, place, or manner of protected speech in a public forum).

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

