

A federal law requires cable television providers to carry local broadcast television stations as part of the television programming they provide to subscribers. The purpose of the federal law is to preserve the economic viability of local broadcast television, which has suffered a significant decline in viewers and revenue due to the increased demand for cable television.

A cable television provider that refuses to carry local broadcast television stations has filed an action in a federal district court that challenges the federal law. The provider argues that the law is unconstitutional.

Is this federal law constitutional?

- A. No, because the federal government cannot regulate the content of cable television.
- B. No, because there are less restrictive means to preserve the economic viability of local broadcast television stations.
- C. Yes, because the cable television provider cannot show that the federal law does not directly advance an important government interest.
- D. Yes, because the federal law preserves the economic viability of local broadcast television without being substantially more restrictive than necessary.

Explanation:

The First Amendment protects the right to freely communicate information and ideas, including those transmitted by cable television. As a result, a **government regulation of cable television** is subject to strict scrutiny if it is content-based—ie, targets the message being conveyed. However, a regulation is subject to less strenuous **intermediate scrutiny** if it is **content-neutral**—ie, targets the manner of operations. Intermediate scrutiny requires the government to prove that its regulation:

- directly advances an **important government interest** *and*
- is **not substantially more restrictive than necessary** to serve that interest.

Here, the federal law requires cable providers to carry local broadcast television stations. This requirement is content-neutral since it regulates the providers' manner of operations—not the content of their programming. SCOTUS has held that Congress has an important interest in preserving the economic viability of local broadcast television stations. And since the federal law directly advances this interest without being substantially more restrictive than necessary, the law satisfies intermediate scrutiny and is constitutional.

(Choice A) The federal government *can* regulate the content of cable television if the regulation satisfies strict scrutiny. Additionally, the federal law here does not regulate the content of cable television but is merely a content-neutral regulation.

(Choice B) There may be *less* restrictive means available to preserve the economic viability of local broadcast television stations (eg, providing them with subsidies). However, intermediate scrutiny only requires that the regulation not be substantially *more* restrictive than necessary to achieve an important government interest.

(Choice C) Intermediate scrutiny places the burden on the government, not the challenger, to show that its content-neutral regulation directly advances an important government interest.

Educational objective:

Content-neutral regulations of speech, including speech transmitted by cable television, are constitutional if they satisfy intermediate scrutiny. This requires the government to prove that the regulation (1) directly advances an important government interest and (2) is not substantially more restrictive than necessary to serve that interest.

SCOTUS = Supreme Court of the United States.

References

- *Turner Broad. Sys., Inc. v. Fed. Comm'n Comm'n*, 512 U.S. 622, 662 (1994) (holding that a federal law requiring cable providers to carry local broadcast television is a content-neutral regulation subject to intermediate scrutiny).

First Amendment speech protections

