

In response to consumer complaints across the country, Congress enacted a statute prohibiting private parties from making automated telephone calls that deliver a recorded message (robocalls). A severable provision of the statute permits robocalls solely to collect a debt owed to or guaranteed by the federal government.

An organization that wishes to make robocalls to solicit political donations challenged the statutory provision authorizing robocalls to collect federal government debt as unconstitutional under the First Amendment.

Will the organization's challenge likely prevail?

- A. No, because the provision is a content-neutral speech restriction.
- B. No, because the provision leaves open ample alternative channels of communication.
- C. Yes, because the provision is a content-based speech restriction.
- D. Yes, because the provision targets a particular form of communication for specific regulation.

Explanation:

Speech regulations

Type	Definition	Test
Content-based	<ul style="list-style-type: none">• Facial discrimination• Primary purpose targets message, subject, or idea	Strict scrutiny <ul style="list-style-type: none">• Necessary & narrowly tailored to achieve compelling interest
Content-neutral	<ul style="list-style-type: none">• Regulates time, place, or manner of speech	Intermediate scrutiny <ul style="list-style-type: none">• Narrowly tailored to achieve important interest• Alternative avenues of communication remain

The First Amendment **free speech clause** is designed to protect the free flow of information and ideas from undue government restrictions. A **content-based restriction** exists when the government treats speech differently based on its message or subject matter. Such a restriction is **presumptively invalid** and will only be upheld if it survives **strict scrutiny**. This level of scrutiny requires the government to satisfy the **nearly impossible task** of proving that the restriction is **necessary and narrowly tailored** to further a **compelling government interest**.

Here, the congressional statute prohibiting robocalls by private parties contains a severable provision* that permits such calls to collect a debt owed to or guaranteed by the federal government. This provision is a content-based speech restriction because it allows speech on one subject (government debt collection) but no others (eg, political donation solicitation). Since it is highly unlikely that the government can justify the provision under strict scrutiny, the organization's challenge will likely prevail.

*A statutory provision that is held unconstitutional does not affect the validity of the rest of the statute when, as here, it can be severed from the rest of the law.

(Choices A & B) Content-neutral speech restrictions regulate the time, place, or manner of speech (eg, no robocalls after 5:00 PM). These restrictions are constitutional if they satisfy intermediate scrutiny, which requires that alternative channels of communication remain open. But since the statutory provision here is a content-based restriction, the fact that it leaves open such channels is irrelevant.

(Choice D) A speech regulation does not violate the First Amendment simply because it specifically targets a particular form of communication (eg, robocalls—as seen here).

Educational objective:

A content-based speech restriction exists when the government singles out messages or subject matter for different treatment. Such restrictions will only be upheld if the government satisfies strict scrutiny by proving that the restriction is necessary and narrowly tailored to further a compelling government interest.

References

- Barr v. Am. Ass'n of Political Consultants, Inc., 140 S. Ct. 2335, 2347 (2020) (holding that a provision allowing robocalls to collect government debt but barring all others is a content-based restriction that cannot satisfy strict scrutiny).

Copyright © UWorld. All rights reserved.