

To preserve the appearance and accessibility of its capitol building, a state enacted a law prohibiting "the display of any sign on any portion of the public sidewalk surrounding" the building.

A group of five demonstrators who wanted to protest inadequate state funding for children's services applied for a permit to march single file on the sidewalk surrounding the capitol building. Each demonstrator planned to carry a two-foot-square sign that would read, "Our lawmakers do not care about our children."

The group's permit application was denied pursuant to the state law, and the group has filed an action challenging the law's constitutionality.

Should the court uphold the law's constitutionality?

- A. No, because even though the sidewalk at issue is not a public forum, the prohibition against the display of signs is more restrictive than needed to serve a legitimate government interest.
- B. No, because the sidewalk at issue is a public forum, and the prohibition against the display of signs is not narrowly tailored to serve a substantial government interest.
- C. Yes, because even though the sidewalk at issue is a public forum, the prohibition against the display of signs is necessary to serve a compelling public interest.
- D. Yes, because the sidewalk at issue is not a public forum, and the prohibition against the display of signs is reasonable.

Explanation:

The **First Amendment** protects the right to freely communicate information and ideas through speech or conduct—even on government property. But the government can impose reasonable time, place, or manner restrictions (ie, **content-neutral regulations**) on speech that occurs in a **public forum** so long as those restrictions pass **intermediate scrutiny**. This requires the government to prove that the restriction:

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

Here, the group's permit application was denied pursuant to a content-neutral law that prohibits the display of *any* sign on the sidewalk surrounding the capitol building—a public forum (**Choices A & D**). And though the state has a substantial interest in preserving the appearance and accessibility of its capitol building, the law is not narrowly tailored to serve that interest. That is because alternative measures that burden substantially less speech could be used effectively—eg, prohibiting signs near the entrance. Therefore, the law is unconstitutional.

(**Choice C**) *Content-based* restrictions on speech that occurs in a public forum must be necessary and narrowly tailored to serve a compelling government interest (ie, strict scrutiny). But this law is *content-neutral*.

Educational objective:

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

References

- *Frisby v. Schultz*, 487 U.S. 474, 481 (1988) (setting forth the test for determining whether the government's regulation of the time, place, or manner of expression in a public forum is valid).

Copyright © 2019 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

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

