

A speaker at a rally in a public park argued that paper money was unconstitutional because Article I gave Congress the power only to "coin" money. The speaker ended his speech by setting fire to a pile of one-dollar bills. Although the fire was promptly extinguished and there had been no risk that it would spread, the speaker was convicted of violating a local ordinance against starting an open fire in a public place without a permit from the fire department. The speaker has challenged the conviction on constitutional grounds.

How should the court rule?

- A. The ordinance is constitutional, because it is narrowly tailored to further a significant government interest that is unrelated to the suppression of free expression, and individuals have other ways of communicating their messages.
- B. The ordinance is constitutional, because it regulates conduct rather than speech.
- C. The ordinance is unconstitutional as applied, because the absence of a fire risk demonstrates that the prosecution was a pretext for government censorship.
- D. The ordinance is unconstitutional, because it is overbroad.

Correct

Collecting Statistics

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Explanation:

Speech regulations

Type	Definition	Test
Content-based	Facial discrimination	Strict scrutiny
	Primary purpose targets message, subject, or idea	Necessary & narrowly tailored to achieve compelling interest
Content-neutral	Regulates time, place, or manner of speech	Intermediate scrutiny
		Narrowly tailored to achieve important interest
		Alternative avenues of communication remain

First Amendment speech protections extend to **expressive conduct**—ie, behavior that is intended to **convey a particular message** that is **likely to be understood** by the audience. Here, the speaker's burning of dollar bills constitutes protected expressive conduct because he intended to demonstrate that paper money was unconstitutional, a message his audience would likely understand.

The level of protection afforded expressive conduct or other speech depends on the type of regulation at issue. Regulations based solely on the message being communicated (ie, content-based restrictions) are usually invalid under strict scrutiny. But time, place, and manner restrictions (ie, **content-neutral regulations**) are subject to mere **intermediate scrutiny**, which requires the government to prove that the regulation:

is **narrowly tailored** to further a **substantial or significant government interest** *and* leaves open **ample alternative channels of communication**.

The ordinance prohibiting open fires in public places without a permit is content-neutral because it applies to *all* fires regardless of their purpose. This ordinance is narrowly tailored to further a significant government interest—ie, preventing unregulated burning to avoid extensive harm—as it only requires a permit. And it leaves open ample alternative channels of communication because individuals can still communicate their messages in ways other than starting a fire. Therefore, the court should rule that the ordinance is constitutional.

(Choice B) The content-neutral ordinance is constitutional because it satisfies intermediate scrutiny—not because it regulates conduct rather than speech.

(Choice C) The absence of a fire risk here does not demonstrate that the prosecution was a pretext for government censorship because starting a fire generally poses risks. Therefore, the ordinance is constitutional **as applied** to the speaker.

(Choice D) A law can be unconstitutionally **overbroad** if it restricts a substantial amount of constitutionally protected speech. But here, there is no indication that the ordinance's permit requirement does so.

Educational objective:

Content-neutral restrictions that regulate expressive conduct or other protected speech are valid if the government shows that the restriction (1) is narrowly tailored to further a significant or substantial government interest and (2) leaves open ample alternative channels of communication.

References

Clark v. Cmty. for Creative Non-Violence, 468 U.S. 288, 294 (1984) (setting forth the test for determining whether the government's content-neutral regulation of expressive conduct is valid).

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