

A state criminal law prohibits the publication of any description of the details of the execution of any prisoner who is sentenced to death by the courts of the state. Although the law allows a specified number of reporters to observe an execution, only the prison warden's official statement that the prisoner was "executed as provided by law" at a certain time and date may be published. The purpose of the law is to protect the public, particularly children, from the details of executions.

After a particular execution was mishandled, causing the prisoner to suffer, a newspaper in the state published a story describing the event in detail. The story was written by the newspaper's reporter, who was permitted to observe the execution but did not promise prison officials that he would report only the warden's official statement. A prosecutor subsequently filed charges against the newspaper for publishing the details of the execution in violation of the state law.

Is this prosecution constitutional?

- A. No, because the prosecution seeks to punish the publication of lawfully obtained, truthful information about a matter of public significance, without adequate justification.
- B. No, because the reporter did not promise prison officials that he would report only the warden's official statement about the execution.
- C. Yes, because publication of the details of such events might cause psychological damage to some children.
- D. Yes, because the newspaper should have brought an action to test the validity of the law before publishing the reporter's story.

Explanation:

First Amendment freedoms

Expression	Right to communicate information & ideas through speech or conduct
Association	Right to form or participate in any group or organization
Press	Right to publish truthful information
Religion	Free exercise – right to practice religion or no religion without government interference Establishment – prohibits government from favoring particular religion or religion generally

The First Amendment **freedom of the press** prohibits the government from unduly restricting the **right to publish lawfully obtained and truthful information** about matters of **public significance**. Any government actions that abridge this right must satisfy **strict scrutiny**, which requires the government to prove that its actions were **narrowly tailored** (ie, the least restrictive means) to achieve a **compelling government interest**.

Here, the state prosecuted a newspaper for publishing the truthful details of a mishandled execution that its reporter was permitted to observe. The state may have a compelling interest in protecting the public, particularly children, from the details of executions. But this interest could be achieved by less restrictive means—eg, by requiring a graphic-content warning (**Choice C**). And since the prosecution lacks adequate justification to survive strict scrutiny, it is unconstitutional.

(Choice B) The prosecution would still be unconstitutional had the reporter promised prison officials that he would report only the warden's official statement about the execution. That is because the published information about the execution was lawfully obtained, truthful, and significant to the public.

(Choice D) The newspaper did not need to bring an action to test the validity of the law before publishing the reporter's story. Instead, it can challenge the law's validity in its defense against this prosecution.

Educational objective:

The First Amendment freedom of the press protects the right to publish lawfully obtained and truthful information about matters of public significance. If the government seeks to abridge this right, it must satisfy strict scrutiny—ie, prove that its actions are narrowly tailored to achieve a compelling government interest.

References

- Smith v. Daily Mail Pub. Co., 443 U.S. 97, 103 (1979) (holding that the government must satisfy strict scrutiny to justifiably punish the publication of lawfully obtained, truthful information about a matter of public significance).

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