

To express their disagreement with a city ordinance prohibiting public nudity, a group of demonstrators performed a dance in the nude in a city park. The demonstrators were convicted of violating the ordinance.

Do the convictions violate the First Amendment?

- A. No, because the demonstrators' conduct is not protected by the First Amendment.
- B. No, because the demonstrators' protected expression may be validly subject to content-neutral regulation such as the public nudity ordinance.
- C. Yes, because the city park is a public forum.
- D. Yes, because the demonstrators' conduct constitutes protected speech and the ordinance is not narrowly tailored to further a substantial government interest.

Incorrect

Correct answer B

Collecting Statistics

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## Explanation:

The **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 demonstrators' nude dancing was protected expressive conduct because it conveyed their disagreement with the city's ordinance prohibiting public nudity, a message that would likely be understood by their audience (**Choice A**).

The level of protection that First Amendment speech receives 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**.

Here, the ordinance prohibiting public nudity is content-neutral since it applies to *all* public nudity. The government has a substantial interest in banning public nudity because it might negatively impact public health. The ordinance is narrowly tailored to further that interest because it prohibits nudity in public settings—not in private settings (**Choice D**). And since individuals can communicate their messages in ways other than being nude in public, the ordinance satisfies intermediate scrutiny. Therefore, the convictions do not violate the First Amendment.

**(Choice C)** Content-neutral restrictions on protected speech in a **public forum** (eg, city park) are permitted if they satisfy intermediate scrutiny review. The city's ordinance satisfies that standard, so the demonstrators' convictions do not violate the First Amendment.

## 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 substantial or significant government interest and (2) leaves open ample alternative channels of communication.

## References

City of Erie v. Pap's A.M., 529 U.S. 277, 302 (2000) (holding that government restrictions on public nudity are constitutional time, place, and manner restrictions on speech that are subject to intermediate scrutiny).

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