

On the basis of scientific studies showing a causal relationship between the consumption of "red meat" (principally beef) and certain forms of cancer, a federal statute prohibits all commercial advertising of red-meat products. The statute does not, however, restrict the sale of red-meat products. Producers of red meat have challenged the statute as a violation of their free speech rights protected by the First Amendment.

Is the court likely to find the statute constitutional?

- A. No, because it does not serve a substantial government interest.
- B. No, because it is more extensive than necessary to serve the government interest in preventing certain cancers.
- C. Yes, because it does not affect speech protected by the First Amendment.
- D. Yes, because it serves a legitimate government interest in protecting public health.

Explanation:

The **government can ban** commercial speech that (1) is **false or misleading** or (2) concerns **unlawful activity**. But all other commercial speech is protected by the First Amendment, albeit to a lesser extent than other forms of expression (eg, political speech). This means that the government can only **regulate protected commercial speech** if the government proves that its regulation **directly advances a substantial government interest** *and* is **not more extensive than necessary** to serve that interest.

Here, the red-meat advertisements *are* protected commercial speech since there is no evidence that they are false or misleading and red meat is a lawful product **(Choice C)**. And the statute prohibiting these advertisements likely advances the government's substantial interest in protecting the public from certain cancers **(Choice A)**. But the statute is more extensive than necessary to achieve that interest since a cancer warning in those advertisements (instead of a total ban) would suffice. Therefore, the statute will likely be found unconstitutional.

(Choice D) A legitimate government interest is never sufficient to justify the regulation of protected speech.

Educational objective:

The government can only regulate protected commercial speech if the regulation (1) directly advances a substantial government interest and (2) is not more extensive than necessary to serve that interest.

References

- Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n, 447 U.S. 557, 564 (1980) (providing the test for determining whether the government's regulation of protected commercial speech is constitutional).

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Regulation of commercial speech

