

A nightclub owner applied for a required zoning permit to open a nude-dancing nightclub in the theater district of a city. An organization of influential city residents began an intensive lobbying effort to persuade the city council to deny the owner a permit to operate any type of nude-dancing facility at any time or in any place in the city.

The owner has sued the city in an appropriate federal court, seeking an injunction that would prohibit the city council from considering the organization's views, on the ground that if the organization is successful in its lobbying efforts, the owner's First and Fourteenth Amendment rights would be violated. The city has moved to dismiss the action.

Should the court dismiss the owner's action?

- A. No, because nude dancing is symbolic speech and is therefore protected by the First and Fourteenth Amendments.
- B. No, because the organization does not seek a reasonable time, place, and manner regulation of nude dancing, but instead seeks a total ban on the owner's opening any type of nude-dancing facility at any time or in any place in the city.
- C. Yes, because the action is not ripe.
- D. Yes, because the First and Fourteenth Amendments do not protect obscenity, and nude dancing is obscene.

### Explanation:

Article III of the Constitution limits the jurisdiction of federal courts to **actual cases or controversies**. An actual case or controversy exists when a **dispute** between adverse parties is **capable of judicial resolution**—ie, **ripe for adjudication**. A suit is ripe when the plaintiff has suffered **actual harm** or an **immediate threat thereof**. But a suit based on potential *future* harm is unripe and should be dismissed.

Here, the nightclub owner applied for a permit to open a nude-dancing facility. An organization then lobbied the city council to deny the permit. In response, the owner sued in federal court to enjoin the city council from considering the organization's views. But the city council has not yet denied his permit request (no actual harm), nor is there any indication that it will do so soon (no immediate threat). And since the owner's action is not ripe, the court should grant the city's motion and dismiss the suit.

**(Choices A & B)** Nude dancing is symbolic speech that is protected by the First and Fourteenth Amendments. As a result, a total ban on nude dancing (ie, a [content-based restriction](#)) would be presumptively unconstitutional. In contrast, a reasonable time, place, and manner (ie, content-neutral) regulation would likely be valid. But the court will not consider the constitutionality of the potential regulation since the suit is unripe.

**(Choice D)** The First and Fourteenth Amendments do not protect certain forms of [speech](#), including obscenity. But mere nudity (including nude dancing) is not obscene.

### Educational objective:

For a suit to be ripe for adjudication, the plaintiff must have suffered actual harm or an immediate threat thereof. Therefore, a claim based on potential future harm is unripe and will be dismissed.

### References

- U.S. Const. art. III, § 2 (case or controversy requirement).
- Texas v. United States, 523 U.S. 296, 300 (1998) (explaining when a claim is unripe for adjudication).

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### Actual case or controversy requirement

