

A group of students at a state university's law school wished to debate the future of affirmative action in that state and at that law school. For this debate, the students requested the use of a meeting room in the law school that is available on a first-come, first-served basis for extracurricular student use. Speakers presenting all sides of the issue were scheduled to participate. The law school administration denied the use of its meeting room for this purpose solely because it believed that "such a debate, even if balanced, would have a negative effect on the morale of the law school community and might cause friction among the students that would disrupt the institution's educational mission."

Is the law school's denial of the use of its meeting room for this purpose likely constitutional?

- A. No, because the law school cannot demonstrate that its action was necessary to serve a compelling state interest.
- B. No, because the law school cannot demonstrate that its action was rationally related to a legitimate state interest.
- C. Yes, because the law school's only concern was the adverse effect of such a discussion of affirmative action on the immediate audience and the mission of the institution.
- D. Yes, because the law students do not have a right to use a state-owned law school facility for a meeting that is not organized and sponsored by the law school itself.

Explanation:

The **First Amendment** protects the right to free expression and encourages the free flow of ideas—even on government property. As a result, speech that occurs in a **public forum** cannot be regulated based on its message, subject, or ideas (ie, **content-based restriction**) unless that regulation meets **strict scrutiny**. This standard of constitutional review gives the government the nearly impossible burden of proving that the restriction is **necessary** to serve a **compelling government interest**.

Here, a state-owned law school has a meeting room that is *designated* for extracurricular student use. A student group asked to use the room to debate affirmative action. However, the school denied this request because it feared that the *content* of the debate would negatively affect the school. As a result, the denial is subject to strict scrutiny. And since this is such a difficult standard to meet, the denial is likely unconstitutional.

(Choice B) Rational basis scrutiny requires the challenger (eg, students) to demonstrate that the government's content-based restriction was not rationally related to any legitimate state interest and viewpoint neutral. But this standard of review only applies when the government restricts use of (1) a nonpublic forum or (2) a public forum for an undesignated purpose (eg, something other than extracurricular student use).

(Choice C) The debate's effect on the immediate audience and the mission of the institution are important—but not compelling—concerns for the state-owned school. But even if they were compelling, the denial was not necessary to achieve those interests.

(Choice D) The meeting room is a designated public forum available for extracurricular student use. Therefore, the students had the right to use the room for a meeting—regardless of whether it was organized or sponsored by the law school—for that limited purpose.

Educational objective:

The government cannot impose content-based restrictions on speech in public forums unless it can satisfy strict scrutiny—ie, show that the restrictions are necessary to achieve a compelling government interest.

References

- *Widmar v. Vincent*, 454 U.S. 263, 269–70 (1981) (holding that a state university's exclusion of a religious student group from using university facilities is a content-based restriction on speech subject to strict scrutiny).

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**Content-based restrictions
(speech on government property)**

