

An unconstrued state law prohibited the distribution within the state of "seditious propaganda." The state prosecuted United States Post Office letter carriers under this law for delivering propaganda from a foreign country to state residents.

Which of the following statements is an INACCURATE description of the state's law as applied to the letter carriers?

- A. It is an unconstitutional bill of attainder.
- B. It is void for vagueness.
- C. It may not be applied to the letter carriers, because they are employees of a federal instrumentality carrying out an authorized function.
- D. It unconstitutionally abridges rights protected by the First and Fourteenth Amendments.

## Explanation:

### Prohibited legislation

**Bill of attainder clauses** Prohibit legislative acts that inflict *civil or criminal* punishment against identified persons (or groups of persons) without a trial

**Ex post facto clauses** Prohibit enactment of retroactive *criminal* laws that:

- criminalize previously legal conduct
- impose greater punishment than previously prescribed
- eliminate previously available defenses
- decrease prosecution's previous burden of proof

The Constitution bars the federal and state governments from enacting **bills of attainder**—ie, legislative acts that **punish specified persons** (or an easily identifiable group of persons) **without a judicial trial**. Here, the state law prohibits the distribution of seditious propaganda by *all* persons—not just *specified* letter carriers. And since the state prosecuted the letter carriers under this law, it afforded them a trial prior to imposing any punishment. Therefore, the law is *not* an unconstitutional bill of attainder **as applied** to the letter carriers.

**(Choice B)** A law is void for **vagueness** if it fails to provide persons of ordinary intelligence with fair and reasonable notice of the prohibited conduct. Here, the law is unconstitutionally vague since it does not define "seditious propaganda" and the average person would not know what this term means.

**(Choice C)** States cannot regulate the federal government unless Congress consents. As a result, federal employees are immune from state laws that interfere with their obligation to carry out authorized functions of their employment. And since U.S. Post Office letter carriers are authorized by federal law to deliver mail, they would be immune from the state law prohibiting the distribution of seditious propaganda.

**(Choice D)** The First Amendment—applied to the states through the Fourteenth Amendment—protects individuals' right of expression, including the distribution of seditious propaganda. Seditious speech is **unprotected** and subject to punishment only when it is directed to incite imminent lawlessness and likely will do so. But since the state law prohibits the distribution of *all* seditious propaganda, it unconstitutionally abridges free expression.

### Educational objective:

Bills of attainder are constitutionally prohibited legislative acts that punish *specified* persons—or an easily identifiable group of persons—without a trial. Therefore, laws that applies to *all* persons are not bills of attainder.

**References**

- U.S. Const. art. I, § 10 (prohibits states from enacting bills of attainder).
- United States v. Lovett, 328 U.S. 303, 315 (1946) (explaining that the Constitution prohibits bills of attainder).

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