The First Amendment: Free Speech

- Adult Use Zoning
  - *City of Renton v. Playtime Theatres*
- Advertising and Information Dissemination
  - *Metromedia, Inc. v. City of San Diego*

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- Time, place, manner regulation (not content-based) unless—
  1. broadcasting indecent materials or
  2. *secondary effects*
- No record that regulation is rational based on city-specific study
- City’s zoning must afford adequate opportunity for the adult use

Regulation of Adult Businesses or Sexually-Oriented Businesses (SOBs)

Is the ordinance a—

• A Time, Manner, Place Regulation,
• Content-Neutral, or
• Content-Based???

Alameda Books Cont’d

Time, Place, and Manner Regulation

1. Serves a significant/substantial government interest,
2. Is content-neutral,
3. Is the least restrictive means to achieve the objective, and
4. Leaves alternative channels of communication.
Alameda Books Cont’d

- **Content-based** – aimed at speech = *strict scrutiny*. Ordinance is presumptively invalid.

- **Content-neutral** – aimed at negative secondary effects = *intermediate scrutiny*. City must show that the ordinance was designed to serve a substantial government interest.

Alameda Books Cont’d

- **Content-correlated** – City must demonstrate with empirical data that the secondary effects exist, that they are caused by the expressive activity, and that the ordinance will help combat the effects.
Empirical Evidence

What level of specificity is needed for the empirical evidence to support the government’s finding of adverse secondary effects?

- Rules out every theory?
- Fairly supports its rationale for the ordinance?


Commercial Speech Standard

1. First Amendment protects speech re lawful activity that is not misleading.

Restriction is valid if it seeks to implement—

2. a substantial government interest,

3. directly advances that interest, and

4. reaches no further than necessary.
Metromedia Cont’d

- Noncommercial v. Commercial Speech
- Safety
- Aesthetics
- Alternative Channels

What Advice Would You Give?

- Neon signs
- Sex-oriented business signs
- Display of flags
Assignment for Tomorrow

Pages 350-52, Tien Tao Association, Inc. v. Kingsbridge Park Community Association, Inc. (pdf), Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah (pdf), pages 353-67 (what’s listed on the website as the assignment for today, Oct. 17th)