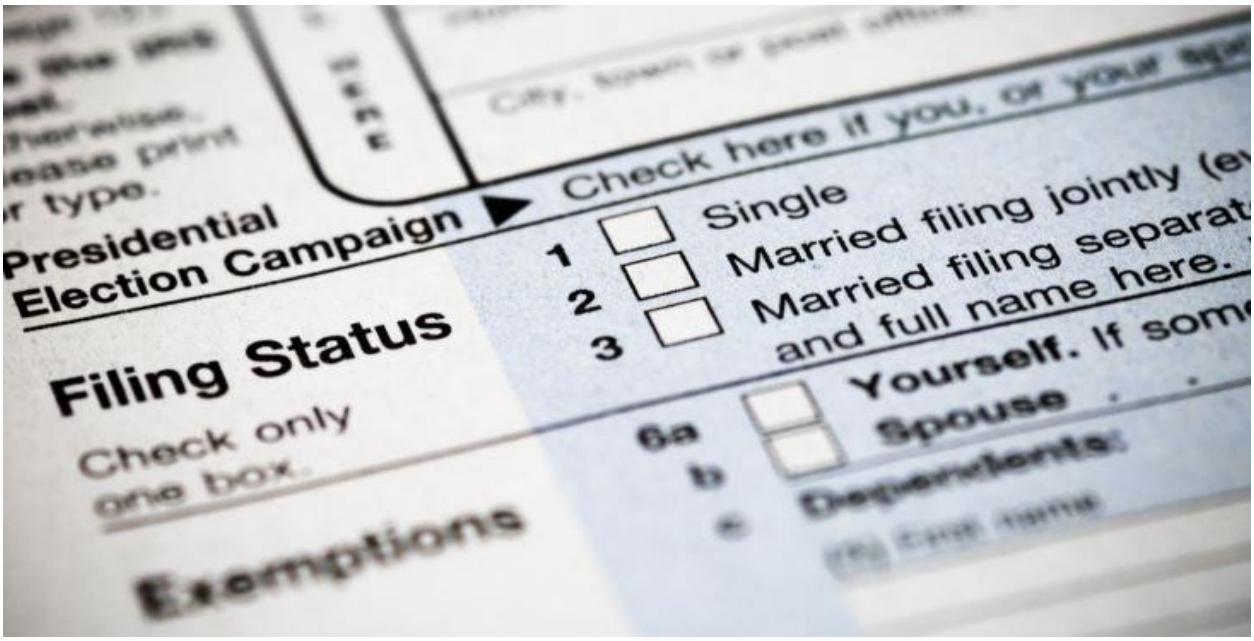
Content-Based Restrictions



Content-based restrictions *regulate speech based on its viewpoint or subject matter of the speech at issue. A content-based speech restriction is one that regulates speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction. These restrictions seek to "suppress, disadvantage, or impose differential burdens upon speech because of its content." see* Turner *Broad. Sys. v. Federal Comms. Comm'n, 512 U.S. 622, 642 (1994).*

The Supreme Court generally has applies the "strict scrutiny" standard, which means that it will uphold a content-based restriction only if it is necessary "to promote a compelling interest," and is "the least restrictive means to further the articulated interest." See Sable Comms. of Cal., Inc. v. Federal Comms. Comm'n, 492 U.S. 115, 126 (1989) ("The Government may . . . regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest."); Reno v. ACLU, 521 U.S. 844, 876-77 (1997) (finding relevant the fact that a reasonably effective method by which parents could prevent children from accessing internet material which parents believed to be inappropriate "will soon be widely available"). The Court does not apply strict scrutiny to another type of content-based restrictions — restrictions on commercial speech.

In cases of content-based restrictions of speech other than advocacy or threats, such regulations are presumptively invalid. See R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992). On the other hand, a content-based restriction, whether facially content-based or content-based as applied, can outlaw most expression of certain facts or opinions. If a law, such as the laws in Schenck v. United States or NAACP v. Claiborne Hardware Co., bans any conduct that may cause a certain harm, and persuading people to act in certain ways can cause that harm, then any viewpoints that have the potential for such persuasion However in Erznoznik v. City of Jacksonville (1975) the court struck down a ban on the display of nudity on drive-in movie theater screens that are visible from the street, citing Mosley and expressly labeling the law content-based. The court didn't, though, conclude that nudity was a viewpoint, or a subject matter. It just treated a distinction between movies that show nudity and movies that don't as content-based.

Plaintiff averred "[U.S. Individual Income Tax Return, Form 1040] ("[Form 1040]") exists as content-based restriction regulating his protected speech based on its viewpoint or subject matter of the speech at issue.