

Implications of /questions that emerge from Easterbrook's opinion

- It is my view that Easterbrook makes a strong argument that Indianapolis ordinance is unconstitutional in that it violates free speech interests even though that form of speech causes group-based *harm*. His argument that restrictions on free speech must be "viewpoint neutral" is solid, and he bases this position on the notion that government cannot be in the business of endorsing or guaranteeing the truth of any expression, whether the truth in question is descriptive or normative. Were government even minimally allowed to do this leads to a slippery slope towards which government becomes the sole arbiter and perhaps purveyor of truth, which would clearly limit the capacity of individuals or collections of them to play a role in what counts for truth/the good and how these truths should affect and impact their lives. He also demonstrates well how the Indianapolis ordinance is not viewpoint neutral. Thus, for Easterbrook, this free-speech interest overrides any state interest to provide equal protection.
- With that said, however, there seem to be some implications and questions that arise from holding this view:
 - What Mackinnon points out: If this notion of viewpoint neutrality were applied consistently, obscenity laws and laws against child pornography would seem to have to be said to be violations of free speech. Why? Clearly the government in making such restrictions is endorsing and adopting viewpoint with respect to matters of the display of offensive situations (sexual or otherwise) and children having sex.
 - Why would racial/ethnic discrimination policies held by businesses not be examples of expression that could be protected as free speech, even though harmful? Consider the sign, "No Finns allowed." Why is this not speech?
 - Why does the free-speech interest not override the equal protection interest in the case of restrictions on speech near places of governmental polling?
 - Why is a political bribe not a form of expression that might be protected even though it creates harm, particularly harm that denies others equal participation?
 - The answer to these and similar questions would seem to hinge on the nature of pornography's harm, relative to other situations that involve speech and harm:
 - o Issues of intentionally, indirect/direct nature of harm – harm in the form of psychological conditioning.

Other questions

- Is pornography unique in being a form of expression that indirectly causes such pervasive harm through conditioning? If not, is it unique in its power through its inherent connection to sexuality?
 - Easterbrook does not seem to think its connection to sexuality makes it uniquely powerful with respect to conditioning, but if he did, it may be possible that he might view it as a restrictable form of speech. That is it might be able to be judged as a category of speech and not by its content.