

A state has a statute providing that an unsuccessful candidate in a primary election for a party's nomination for elected public office may not become a candidate for the same office at the following general election by nominating petition or by write-in votes.

A woman sought her party's nomination for governor in the primary election. After losing in the primary, the woman filed nominating petitions containing the requisite number of signatures to become a candidate for the office of governor in the following general election. The chief elections officer of the state refused to certify the woman's petitions solely because of the above statute. The woman then filed suit in federal district court challenging the constitutionality of this statute.

If the court holds that the statute constitutes a severe restriction, which of the following is the proper burden of persuasion in this suit?

- A. The state must demonstrate that the statute is rationally related to a legitimate state interest.
- B. The state must demonstrate that the statute is the least restrictive means of achieving a compelling state interest.
- C. The woman must demonstrate that the statute is not necessary to achieve a compelling state interest.
- D. The woman must demonstrate that the statute is not rationally related to a legitimate state interest.

Explanation:

State-election restrictions

Restriction	Examples	Test
Ordinary (nondiscriminatory)	<ul style="list-style-type: none">• Voter registration• Photo-ID requirement• Disallowing write-in voting	Rational basis: <i>challenger</i> must show restriction lacks rational relationship to legitimate state interest
Severe (discriminatory)	<ul style="list-style-type: none">• Poll tax• Disallowing third-party candidacies• Property-ownership requirement	Strict scrutiny: <i>state</i> must show restriction is necessary to achieve compelling state interest

States may regulate their own elections by requiring voters and candidates to abide by certain requirements. But these regulations must comply with the First Amendment and the Fourteenth Amendment equal protection clause, which together secure an individual's right to vote and freely associate. If the **electoral regulation** is challenged under either constitutional provision, the standard for evaluating that regulation depends on the severity of the burden imposed. A court will apply either:

- **rational basis review** – applies to **ordinary (nondiscriminatory) burdens** and requires the **challenger** to prove that the regulation is **not rationally related** to a **legitimate state interest** *or*
- **strict scrutiny** – applies to **severe (discriminatory) burdens** and requires the **state** to prove that its regulation is the **least restrictive means** of achieving a **compelling state interest**.

Here, a state statute prohibits a loser of a primary election from running for the same public office in the general election (ie, "sore-loser law"). This infringed upon the woman's right to access the ballot as a political candidate (ie, her right to vote and freely associate). And if the court holds that the statute constitutes a severe restriction on that right, then the *state* must demonstrate that the statute is the least restrictive means of achieving a compelling state interest.

(Choices A & D) Rational basis review places the burden of persuasion on the challenging party—not the state—when *ordinary* electoral regulations are involved.

(Choice C) Strict scrutiny places the burden of persuasion on the *state* to demonstrate that a law is necessary (ie, the least restrictive means) to achieve a compelling state interest.

Educational objective:

When an electoral regulation imposes an *ordinary* burden, the challenging party must prove that the regulation is not rationally related to a legitimate state interest (ie, rational basis test). But if the burden is *severe*, the state must show that the regulation is the least restrictive means of achieving a compelling state interest (ie, strict scrutiny).

References

- U.S. Const. amend. I (freedom of association).
- U.S. Const. amend. XIV (equal protection clause).
- *Burdick v. Takushi*, 504 U.S. 428, 433–34 (1992) (explaining that the level of scrutiny of an election law depends on the severity of the restriction).

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