

A state adopted a rule denying admission to its bar to anyone who was currently or had previously been a member of a subversive group. The state's bar-application form was modified to ask applicants whether they were or had previously been members of any subversive organization. An applicant refused to answer the question and was denied bar admission on that basis. The applicant challenged the decision, arguing that the question infringed upon his freedom of association.

Is the applicant likely to prevail?

- A. No, because membership in a subversive group constitutes endorsement of the group's illegal activities.
- B. No, because the Constitution does not apply to the bar.
- C. Yes, because denying bar admission based on any association with a subversive organization violates the First Amendment.
- D. Yes, because inquiring into an applicant's association with a subversive organization to deny bar admission violates the First Amendment.

Explanation:

The First Amendment, as applied to the states through the Fourteenth Amendment, protects the **right to freely associate** with any group or organization—including subversive organizations. As a result, the government cannot **inquire about a person's associations** for the sole purpose of withholding a right or benefit because of that person's beliefs. Instead, the government must show that the inquiry is **necessary** (ie, the least restrictive means) to protect a **legitimate state interest**.

Here, an applicant was denied bar admission for refusing to answer whether he was or had been a member of any subversive organization. This question (and the associated rule) relates to the state's legitimate interest in ensuring that applicants have the requisite character and professional competence to practice law. But since that interest can be protected through less-restrictive means—eg, requiring a list of references and other personal/professional information—the question infringed upon the applicant's freedom of association. As a result, he is likely to prevail.

(Choice A) Membership in a subversive group does not necessarily constitute endorsement of the group's illegal activities since the individual may have joined for other, nonsubversive reasons.

(Choice B) The Constitution (excluding the Thirteenth Amendment) applies only to government action. The rule at issue here constitutes government action since it was adopted by the state. Therefore, the Constitution applies.

(Choice C) The government may punish individuals (eg, by denying bar admission) who are *active* members of subversive organizations and have the specific intent to further the organizations' illegal activities.

Educational objective:

The First Amendment prohibits the government from inquiring into a person's associations unless that inquiry is necessary to protect a legitimate state interest.

References

- Baird v. State Bar of Ariz., 401 U.S. 1, 6–7 (1971) (holding that a state can only inquire about a person's associations if it is necessary to serve a legitimate state interest).

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Freedom of association (inquiry & punishment)

