

A state prohibits voting for a write-in candidate in both primary and general elections. However, the state provides a mechanism by which individuals who want to appear as candidates on the primary ballot, as well as groups that want to be classified as a party, can do so.

Of the following, which is the best argument that a voter challenging the constitutionality of this ban on write-in candidates can make?

- A. The Fifteenth Amendment limits a state's power to regulate its own elections.
- B. The mechanism provided by the state does not provide for reasonable access to the ballot.
- C. The right to vote is a fundamental right, so the state ban is subject to strict scrutiny review.
- D. The state ban imposes a burden on the right of voters to select the candidates of their choice.

## Explanation:

### State-election restrictions

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

State **electoral regulations** impact an individual's fundamental right to vote and freely associate, so they can be challenged under the First Amendment or the Fourteenth Amendment equal protection clause. The standard for evaluating such regulations under either amendment 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 show 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 show that the regulation is the least restrictive means of achieving a compelling state interest.

Here, the state bans write-in candidates in both primary and general elections. The state instead provides a mechanism by which individuals who want to appear as candidates on the primary ballot, as well as groups that want to be classified as a party, can do so. Since this ban is an ordinary (nondiscriminatory) burden, it is subject to rational basis review—not strict scrutiny review (**Choice C**). Therefore, the best argument to challenge this ban is that the mechanism provided by the state does not provide for reasonable access to the ballot.

**(Choice A)** The [Fifteenth Amendment](#) prohibits state and federal governments from abridging the right to vote on the basis of race, color, or previous condition of servitude. But since the state regulation here does not bar voting on any of these bases, this is not a strong argument.

**(Choice D)** The fact that the state ban imposes a burden on the right of voters to select candidate of their choice does not, on its own, provide a strong argument to challenge the constitutionality of the ban. Instead, a challenger must also show that the ban does not satisfy rational basis scrutiny.

**Educational objective:**

Severe (discriminatory) electoral regulations are subject to strict scrutiny. But ordinary (nondiscriminatory) electoral regulations (eg, ban on write-in candidates) are subject to the less stringent rational basis test.

**References**

- *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (holding that a state ban on write-in candidates is an ordinary burden subject to rational basis scrutiny).

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