

A state enacted a statute requiring the state's appointed presidential electors to swear an oath that they will cast their electoral votes for the presidential and vice-presidential nominees chosen by the popular vote of the state. A provision of the statute provides that an elector who breaks this oath and votes for another candidate will be removed and replaced as an elector and fined \$1,000.

Three appointed electors in the state swore the oath as required by the statute. When the time came to cast their electoral votes, however, the electors voted for a presidential candidate who was not chosen by the state's popular vote. The state removed the electors and replaced them with alternates. The state also fined each elector \$1,000.

The three electors sued the state in state court, claiming that the statute governing presidential electors violates the United States Constitution.

How should the court rule on the constitutionality of the state statute?

- A. The provision imposing a monetary fine on the electors is an unconstitutional bill of attainder.
- B. The provision allowing the removal of electors violates their fundamental right to vote.
- C. The provision requiring electors to swear an oath violates their First Amendment right to free speech and association.
- D. The statute is constitutional in its entirety.

Explanation:

Every four years, the United States holds a presidential and vice-presidential election. When citizens cast their ballots, they are selecting members of the Electoral College. These **presidential electors** then vote to **determine the next President and Vice President**. This process is governed by the following constitutional provisions:

- Article II – grants **state legislatures the power to appoint** an allotted number of **presidential electors in any manner**.*
- Twelfth Amendment – requires electors to **meet in their states, vote separately** for President and Vice President, and **transmit sealed lists** of their votes to the U.S. Senate to be officially counted.

The power to appoint electors also permits states to place conditions on such appointments so long as the conditions do not violate another constitutional provision. Permissible conditions include requiring electors to pledge or swear an oath that they will cast their electoral vote for the candidate chosen by the popular vote. States can also punish an elector who violates the pledge or oath by removing the elector and/or imposing a monetary fine. Therefore, the state statute here is constitutional in its entirety.

*States cannot appoint as electors those who serve in the U.S. Senate or House of Representatives or who hold any other federal office.

(Choice A) A bill of attainder is an unconstitutional legislative act that declares a named person or group guilty of a crime (not seen here) and imposes punishment without a trial.

(Choice B) U.S. citizens who are 18 or older have the **fundamental right** to vote in federal, state, and local elections. However, this fundamental right does not extend to presidential electors casting electoral votes.

(Choice C) The First Amendment right to free speech and association bars the government from conditioning government employment or office on an overbroad or vague **loyalty oath**. Here, the oath is not overbroad since it focuses on how electors must vote. It is also not vague since a reasonable person would understand it.

Educational objective:

States have power to appoint presidential electors and place conditions on such appointments. Such conditions may include requiring electors to swear an oath that they will cast their electoral vote for the candidate chosen by the state's popular vote and punishing electors who violate this oath through removal and/or a monetary fine.

References

- U.S. Const. art. II, § 1, cl. 2 (appointing presidential electors).
- U.S. Const. amend. XII (electoral college voting procedure).

- *Chiafalo v. Washington*, 140 S. Ct. 2316, 2320 (2020) (holding that a state may penalize a presidential elector for breaking his/her pledge to cast a vote for the candidate who wins that state's popular vote).

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Presidential election process

