

A man, who is a resident noncitizen, applied for employment as a state trooper with the state highway patrol. After the man passed a psychological examination and completed the requisite training courses, he was denied employment. The state highway patrol agency explained that the man was ineligible for employment as a state trooper pursuant to a policy that the agency had enacted six months prior. The policy disqualifies all noncitizens from employment with the state highway patrol, restricting employment to U.S. citizens.

The man has filed an action for a declaratory judgment that the agency's policy is unconstitutional as applied to him.

Which of the following best states the burden of persuasion in this action?

- A. The agency must demonstrate a rational relationship between the citizenship requirement and a legitimate state interest.
- B. The agency must demonstrate that the citizenship requirement is the least restrictive means to achieve a compelling government interest.
- C. The man must demonstrate that the citizenship requirement is not narrowly tailored to achieve a compelling state interest.
- D. The man must demonstrate that the citizenship requirement is not rationally related to a legitimate state interest.

Explanation:

State laws and policies that discriminate against lawful residents of the United States based on their citizenship can be challenged under the **Fourteenth Amendment equal protection clause**. Since citizenship is a **suspect class**, such laws and policies are generally subject to strict scrutiny review and struck down.

However, a growing exception exists for state laws that restrict a noncitizen's participation in government functions that would allow (1) direct **formulation, execution, or review of public policy** or (2) exercise of **broad discretion**—eg, serving on a jury, voting, employment as a police officer or public school teacher. Under this **political-function exception**, such laws are subject to **rational basis review** and will be upheld unless the challenger proves that the law is not rationally related to *any* legitimate state interest.

Here, the agency enacted a policy prohibiting noncitizens from employment as state troopers. State troopers are officers of the law that directly participate in the execution of public policy and exercise broad discretion, so the political-function exception applies. This means that the agency's policy is subject to rational basis review, which places the burden on the *man* to demonstrate that the citizenship requirement is not rationally related to a legitimate state interest.

(Choice A) As the challenger, the man—not the agency—bears the burden of proof under rational basis scrutiny.

(Choices B & C) When the political-function exception does not apply, state laws and policies that discriminate on the basis of citizenship are subject to strict scrutiny review. Under strict scrutiny review, the *government* has the difficult burden of demonstrating that the citizenship requirement is necessary (ie, narrowly tailored, the least restrictive means) to achieve a compelling state interest.

Educational objective:

State laws that discriminate based on citizenship are generally subject to strict scrutiny. But under the political-function exception, rational basis review applies to state laws that restrict a noncitizen's participation in certain government functions—eg, employment as a police officer.

References

- U.S. Const. amend. XIV, § 1 (equal protection clause).
- *Foley v. Connelie*, 435 U.S. 291, 300 (1978) (holding that the political-function exception is applicable to a state law restricting resident noncitizens from employment as police officers).

Equal protection challenge (citizenship)

