

The owner of a local road-paving company has for several years provided road repair and maintenance services for a small town under an annual contract. The owner's price is usually lower than the prices of other bidders because the owner's equipment and personnel are located in the town.

In a recent town mayoral election, the owner supported the candidate challenging the incumbent mayor. The owner's paving trucks carried bumper stickers promoting the challenger. When the incumbent mayor saw the owner in a local restaurant, the mayor said, "You'd better get those bumper stickers off your trucks or you'll never pave another road in this town again." The owner refused to comply. The incumbent mayor won the election.

When the road construction projects for the next year were put out to bid, the owner of the local paving company was again the lowest bidder. The mayor, however, vetoed the selection and chose a contractor from farther away, at a much higher price. State law does not require selection of the lowest bidder.

Is the mayor's selection of the other contractor constitutional?

- A. No, because the mayor's action in choosing a higher-cost bidder over a lower-cost bidder has no rational basis.
- B. No, because the mayor's action is a violation of the owner's right to freedom of expression and association.
- C. Yes, because state law does not require selection of the lowest bidder.
- D. Yes, because the mayor can require those who work for the town to support its current administration to ensure that the work is consistent with the administration's policies.

Correct

Collecting Statistics

01 min, 57 secsTime Spent

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## **Explanation:**

### **First Amendment freedoms**

<b>Expression</b>	Right to communicate information & ideas through speech or conduct
<b>Association</b>	Right to form or participate in any group or organization
<b>Press</b>	Right to publish truthful information
<b>Religion</b>	Free exercise – right to practice religion or no religion without government interference  Establishment – prohibits government from favoring particular religion or religion generally

The **First Amendment** protects a person's—including a government employee's or government contractor's—right to **freedom of expression and association**. Political belief and association are the core of these protected activities. As a result, the government cannot **condition hiring a government employee or contractor** on his/her **political views or affiliations** unless such views or affiliations are **essential to effective performance** of the applicable work (eg, political policymaking).

Here, the mayor threatened the owner with loss of road repair and maintenance service projects unless the owner stopped supporting the mayor's electoral challenger. The mayor followed through on this threat by vetoing the selection of the owner's company even though the company was the lowest bidder. The owner's political views are irrelevant to performing the road repair and maintenance projects. Therefore, the mayor's selection of the other contractor is an unconstitutional violation of the owner's right to freedom of expression and association.

**(Choice A)** The mayor's decision to choose the other contractor over the owner is unconstitutional because it was based on the owner's support of the mayor's challenger—not because the decision had no rational basis.

**(Choice C)** The fact that state law does not require the selection of the lowest bidder simply means that the mayor can choose a higher bidder. But the mayor cannot violate the First Amendment by conditioning that selection on the bidder's political views or affiliations (as seen here).

**(Choice D)** The mayor may require those who work for the town to support the mayor's administration to ensure that the work is consistent with the administration's policies—but only if that support is essential to the effective performance of the job in question (eg, chief of staff, press secretary).

### **Educational objective:**

The government cannot condition hiring a government employee or contractor based on his/her political views or affiliations unless these factors are required for effective job performance.

### **References**

Rutan v. Republican Party, 497 U.S. 62, 75–76 (1990) (holding that the government cannot base employment-related decisions on political views or affiliations unless required for effective job performance).

Bd. of Cty. Comm'rs, Wabaunsee Cty., Kan. v. Umbehr, 518 U.S. 668, 684–85 (1996) (explaining that First Amendment protections apply to government contractors).

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