

The legislature of State B enacted a statute requiring that all law enforcement officers in that state be United States citizens. A lawfully admitted noncitizen became a permanent resident five years before the enactment of this statute. He sought employment as a forensic pathologist in the state coroner's office. He was denied that job solely because he was not a citizen. The resident noncitizen thereupon brought suit in federal district court against appropriate state officials seeking to invalidate this citizenship requirement on federal constitutional grounds.

Which of the following is the strongest ground upon which to attack this citizenship requirement?

- A. The requirement constitutes an ex post facto law as to previously admitted noncitizens.
- B. The requirement denies noncitizens equal protection of the laws guaranteed by the Fourteenth Amendment.
- C. The requirement denies noncitizens the right to employment in violation of the privileges or immunities clause of the Fourteenth Amendment.
- D. The requirement deprives noncitizens of a fundamental right to employment without the due process of law under the Fourteenth Amendment.

Explanation:

Fourteenth Amendment protections

Clause	Applicability
Equal protection	Discriminatory treatment of similarly situated people
Due process	Substantive – deprivation of life, liberty, or property without adequate <i>justification</i> Procedural – deprivation of life, liberty, or property without adequate <i>process</i>
Privileges or immunities*	Interference with rights of national citizenship

*Rarely a correct answer.

Citizenship requirements (as seen here) are discriminatory since they **deny resident noncitizens benefits** or opportunities that are generally **available to U.S. citizens**. As a result, laws with this requirement can be attacked on **equal protection** grounds. And since citizenship is a **suspect class** (triggering strict scrutiny review), these laws are rarely upheld.

(Choice A) An **ex post facto law** typically refers to a criminal statute that retroactively imposes punishment. Although federal and state governments are barred from passing such laws, State B's statute is civil (not criminal) in nature and has no retroactive effect—ie, there is no requirement that noncitizens currently holding law enforcement positions be terminated.

(Choice C) The Fourteenth Amendment privileges or immunities clause only protects citizens (not noncitizens or corporations) from unreasonable state interference with the narrowly defined rights of **national citizenship**.

(Choice D) A state law that impacts a **fundamental right** can be challenged on Fourteenth Amendment due process (or equal protection) grounds. But since employment is not a fundamental right, State B's citizenship requirement cannot be attacked on this basis.

Educational objective:

Citizenship requirements are discriminatory since they deny resident noncitizens benefits or opportunities that are generally available to citizens. As a result, they are strictly scrutinized (and rarely upheld) on equal protection grounds.

References

- Cabell v. Chavez-Salido, 454 U.S. 432, 437 (1982) (explaining that a resident noncitizen can challenge citizenship requirement for public employment).

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