

A state statute permits a person's name to appear on the general election ballot as a candidate for statewide public office if the person pays a \$100 filing fee and provides proof from the State Elections Board that he or she was nominated in the immediately preceding primary election by one of the state's two major political parties. It also permits the name of an independent candidate or a candidate of a smaller party to appear on the general election ballot if that person pays a filing fee of \$1,000 and submits petitions signed by at least 3% of the voters who actually cast ballots for the office of governor in the last state election. The state maintains that these filing requirements are necessary to limit the size of the election ballot, to eliminate frivolous candidacies, and to help finance the high cost of elections.

Historically, very few of the state's voters who are members of racial minority groups have been members of either of the two major political parties. Recently, a new political party has been formed by some of these voters.

Which of the following constitutional provisions would be most helpful to the new political party as a basis for attacking the constitutionality of this state statute?

- A. The First Amendment.
- B. The Thirteenth Amendment.
- C. The Fourteenth Amendment.
- D. The Fifteenth Amendment.

Explanation:

State-election restrictions

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

States have the power to regulate their own elections. But **electoral regulations** (as seen here) must comply with two constitutional provisions:

- First Amendment **freedom of association** – protecting the right to freely engage in group expression *and*
- Fourteenth Amendment **equal protection** – requiring that similarly situated people be treated equally.

If an electoral regulation is challenged under either constitutional provision, the standard for evaluating that regulation depends on whether the burden imposed is ordinary (triggering rational basis review) or severe (triggering strict scrutiny). And since the First Amendment is applied to the states *through* the Fourteenth Amendment, the Fourteenth Amendment would be most helpful in attacking this state statute **(Choice A)**.

(Choice B) The Thirteenth Amendment prohibits both government and private actors from engaging in slavery or involuntary servitude—neither of which is at issue here.

(Choice D) The Fifteenth Amendment prohibits both state and federal governments from denying any citizen the right to vote on account of race, color, or previous condition of servitude. Here, the statute places a higher burden on independent and small-party candidates seeking ballot access—but it does not deny anyone the right to vote.

Educational objective:

State electoral regulations must comply with the First Amendment freedom of association (applicable through the Fourteenth Amendment) and Fourteenth Amendment equal protection clauses. The standard for reviewing such regulations depends on whether the burden imposed is ordinary (rational basis) or severe (strict scrutiny).

References

- *Burdick v. Takushi*, 504 U.S. 428, 433–34 (1992) (explaining that the level of scrutiny of an election law depends on the extent to which it burdens First and Fourteenth Amendment rights).

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