

A state law provides that only U.S. citizens may serve as jurors in the state courts of that state. A woman who is a lawful resident noncitizen and who has resided in the state for many years was summoned for jury duty in a state court. The woman's name was selected from a list of potential jurors that was compiled from a comprehensive list of local residents. She was disqualified from service solely because she is not a U.S. citizen.

The woman has filed an action for a declaratory judgment that the state law is unconstitutional.

Who should prevail in this action?

- A. The state, because a state may limit to U.S. citizens functions that are an integral part of the process of self-government.
- B. The state, because jury service is a privilege, not a right, and therefore it is not a liberty interest protected by the due process clause of the Fourteenth Amendment.
- C. The woman, because the Constitution gives Congress plenary power to make classifications with respect to noncitizens.
- D. The woman, because the state has not articulated a legitimate reason for prohibiting resident noncitizens from serving as jurors in the state's courts.

Explanation:

State laws 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 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 need only satisfy **rational basis scrutiny** and will be upheld unless the challenger proves that the law is not rationally related to any legitimate state interest.

Here, a state law discriminates against noncitizens by excluding them from jury service. And since jury service is a function that is an integral part of the process of self-government, the political-function exception applies. The law is rationally related to the state's legitimate interest in ensuring that only U.S. citizens have a direct effect on the functioning of the government (**Choice D**). Therefore, the state should prevail.

*Because Congress has the power to regulate immigration, federal laws that discriminate based on citizenship are subject to rational basis review under the equal protection component of the Fifth Amendment.

(Choice B) The distinction between a privilege and a right is *never* relevant to a **Fourteenth Amendment** due process challenge. Additionally, the woman's claim will be analyzed under the equal protection clause since the challenged law denies jury service to some (but not all) persons.

(Choice C) Congress has plenary power (ie, exclusive authority) to make immigration law and policy. But states can still make classifications based on citizenship so long as they are constitutional (as seen here).

Educational objective:

State laws that discriminate based on citizenship are generally subject to strict scrutiny. But under the political-function exception, rational basis scrutiny applies when such laws restrict a noncitizen's participation in government functions allowing the (1) direct formulation, execution, or review of public policy or (2) exercise of broad discretion.

References

- *Bernal v. Fainter*, 467 U.S. 216, 219–20 (1984) (holding that a state law discriminating against resident noncitizens is subject to strict scrutiny unless the political-function exception applies).

