

An environmental organization's stated mission is to support environmental causes. The organization's membership is generally open to the public, but its bylaws permit its officers to refuse membership to anyone who does not adhere to the organization's mission statement.

In a recent state administrative proceeding, the organization opposed plans to begin mining operations in the mountains surrounding a small town. Its opposition prevented the mine from being opened on schedule. In an effort to force the organization to withdraw its opposition, certain residents of the town attended a meeting of the organization and tried to become members, but the officers refused to admit them. The residents sued the organization, claiming that the refusal to admit them was discriminatory and violated a local ordinance that prohibits any organization from discriminating on the basis of an individual's political views. The organization responded that the ordinance is unconstitutional as applied to its membership decisions.

Are the residents likely to prevail in their claim?

- A. No, because the membership policies of a private organization are not state action.
- B. No, because the organization's right to freedom of association allows it to refuse to admit potential members who do not adhere to its mission statement.
- C. Yes, because the action of the officers in refusing to admit the residents as members violates equal protection of the laws.
- D. Yes, because the ordinance serves the compelling interest of protecting the residents' free speech rights.

Explanation:

Freedom of association

General rule	Infringing upon right to associate <i>barred</i> unless: <ul style="list-style-type: none">• necessary to achieve compelling interest
Subversive organization	Punishing member of subversive organization <i>permitted</i> if person: <ul style="list-style-type: none">• is active member• knows of organization's illegal objectives <i>and</i>• specifically intends to further them
Loyalty oath	Requiring loyalty oath for public employment <i>permitted</i> unless: <ul style="list-style-type: none">• overbroad – infringes on constitutionally protected behavior <i>or</i>• vague – reasonable person would not understand oath
Forced inclusion	Interfering with organization's discriminatory policy <i>barred</i> unless: <ul style="list-style-type: none">• no significant burden on organization's mission <i>and</i>• necessary to achieve compelling interest
Electoral process	Imposing restriction on electoral process: <ul style="list-style-type: none">• ordinary – <i>permitted</i> if rationally related to legitimate interest• severe – <i>barred</i> unless necessary to achieve compelling interest

The First Amendment **freedom of association** allows persons to form groups to express certain viewpoints. The government interferes with this right when it **forces a group** to **accept members** who would **significantly burden** the group's ability to **express its views** or **carry out its mission**—eg, forced inclusion of a homophobe in a gay-rights organization. Such interference is only justified if it is **necessary** to achieve a **compelling government interest** unrelated to the suppression of ideas.

Here, residents allege that an environmental organization violated an ordinance prohibiting political-viewpoint discrimination when the organization refused to admit them. But the ordinance is unconstitutional **as applied** to the organization because it significantly burdens the organization's right to oppose the mining operation. And the ordinance is not necessary to achieve the government's compelling interest in protecting free speech (**Choice D**). Therefore, the residents' claim against the organization will likely fail.

(Choice A) The Constitution—excluding the Thirteenth Amendment—only applies to state (ie, government) action. Since private organizations are not state actors, their membership policies need not comply with the Constitution. But since the ordinance under which the residents sued *is* state action, the ordinance must respect the organization's constitutional rights—including its freedom of association.

(Choice C) Since the environmental organization is a private (not state) actor, its conduct is not subject to the Fourteenth Amendment's guarantee that individuals will be afforded the [equal protection](#) of the laws.

Educational objective:

Under the First Amendment freedom of association, the government cannot force a group to accept members who would significantly burden its views unless that interference is necessary to achieve a compelling government interest.

References

- Boy Scouts of Am. v. Dale, 530 U.S. 640, 659 (2000) (striking down a state law requiring the Boy Scouts to retain a gay scoutmaster since his presence seriously impacted the group's ability to advocate viewpoints).

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