

For many years, a city owned and operated a reservoir that supplied the city's residents with water. Based on a finding that private entities were more efficient operators of such facilities than public entities, the city sold the reservoir to a privately owned company. The city council granted the company a non-exclusive franchise to supply water to residents of the city.

After it had operated the water system for a year, the company determined that a city resident had fallen three months behind in the payment of his water bill. The company terminated the resident's water service on the basis of a company policy that provides for the summary termination of service to customers who fall more than two months behind in the payment of their bills. The policy does not provide customers an opportunity for a hearing before the termination of service.

The resident sued the company in an appropriate court, asking for injunctive relief and damages. The resident claimed only that he had been deprived of property without due process of law in violation of the Fourteenth Amendment.

How should the court rule?

- A. Dismiss the action, because the company is not a state actor for purposes of the Fourteenth Amendment. (33%)
- B. Dismiss the action, because the resident has not proffered payment of any of his arrearage to the company and therefore has no right to continued water service. (13%)
- C. Order the company to give the resident an opportunity for a hearing, because the Fourteenth Amendment applies to private entities performing public functions. (49%)
- D. Order the company to give the resident an opportunity for a hearing, because the Fourteenth Amendment applies to private franchises granted by public entities. (2%)

Incorrect

Correct answer A

33% Answered correctly

01 min, 16 secs Time Spent

2023 Version

Explanation:

Constitutional requirements (excluding the Thirteenth Amendment) only apply to government conduct. But under the **state-action doctrine**, a **private actor** is **considered a government actor**—and bound by the Constitution—when:

the private actor performs a **traditional and exclusive government function** (eg, eminent domain) *or*

the **government is significantly involved** in the private actor's activities, which requires more than funding, licensing, regulating, or granting a franchise.

Therefore, the resident can challenge the *private* company's decision to terminate his water service on **procedural due process** grounds only if the state-action doctrine applies.

Here, the company does not perform a traditional and exclusive government function because residential water service has historically been undertaken by private entities. And though the city council granted a non-exclusive franchise to the company to supply water to city residents, granting a franchise is insufficient to convert private conduct into state action **(Choice D)**. As a result, the company is not a state actor for purposes of the Fourteenth Amendment, and the court should dismiss the resident's action.

(Choice B) The fact that the resident has not paid his arrears and therefore has no right to continued water service is not a basis to dismiss the resident's action. The court should instead dismiss the action because the company is a *private* actor that was not required to provide the resident with due process of law before terminating his water service.

(Choice C) The Fourteenth Amendment applies to private entities performing public functions—but only when those functions have traditionally and exclusively been performed by government (not seen here).

Educational objective:

Under the state-action doctrine, private action is treated as government action when (1) the private actor performs a traditional and exclusive government function or (2) the government is significantly involved in the private actor's activities.

References

Jackson v. Metro. Edison Co., 419 U.S. 345, 352–53 (1974) (explaining the state-action doctrine did not apply to a private utility company because providing utility services is not a traditional and exclusive government function).

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State-action doctrine

Traditional government function



Significant government involvement



Joint action



Nexus



Entwinement