

Insurance is provided in a state only by private companies. Although the state insurance commissioner inspects insurance companies for solvency, the state does not regulate their rates or policies. An insurance company charges higher rates for burglary insurance to residents of one part of a county in the state than to residents of another section of the same county because of the different crime rates in those areas.

A resident of that county was charged the higher rate by the insurance company because of the location of her residence. She sues the insurance company, alleging that the differential in insurance rates unconstitutionally denies her the equal protection of the laws.

Will the resident's suit succeed?

- A. No, because the constitutional guarantee of equal protection of the laws is not applicable to the actions of these insurance companies.
- B. No, because there is a rational basis for the differential in insurance rates.
- C. Yes, because the higher crime rate in the resident's neighborhood demonstrates that the county police are not giving persons who reside there the equal protection of the laws.
- D. Yes, because the insurance rate differential is inherently discriminatory.

Explanation:

State-action doctrine

Traditional government function

- Private actor performs traditional & exclusive government function (eg, running elections)

Significant government involvement

- Government & private actor have *mutually beneficial* relationship (eg, joint activity or venture)
- Government creates *nexus* by affirmatively facilitating or authorizing private action (eg, police officer acting under color of law)
- Government is *pervasively intertwined* in private entity's management or control

The Constitution (excluding the Thirteenth Amendment) only applies to government actors. But in rare circumstances, a **private actor** is **viewed as a government actor** (and subject to the Constitution) under the **state-action doctrine**. This doctrine applies when:

- the private actor performs a **traditional and exclusive government function** *or*
- the **government is significantly involved** in the private actor's activities.

Therefore, the resident can only challenge the private insurance company's **discriminatory conduct** on **equal protection** grounds if the state-action doctrine applies.

Here, the company does not perform a traditional and exclusive government function since insurance has historically been provided by private entities. And though the state inspects all insurance companies for solvency, it does not regulate their rates and policies. But even if it did, state regulation (however substantial) does not amount to *significant* government involvement since this an *ordinary* government activity. Therefore, the resident's suit will fail because equal protection guarantees do not apply to the company's actions.

(Choice B) Equal protection challenges undergo rational basis review when the challenged action does not impact a fundamental right or **protected class**. But since the insurance company's actions cannot be challenged on equal protection grounds, it does not matter whether there is a rational basis for the insurance rate differential.

(Choices C & D) The higher crime rate in the resident's neighborhood may demonstrate that county police are not giving neighborhood residents the equal protection of the laws. And the insurance rate differential is inherently discriminatory. But these facts are irrelevant in this suit against a *private* insurance company.

Educational objective:

The state-action doctrine applies when (1) a private actor performs a traditional and exclusive government function or (2) the government is significantly involved in the private

actor's activities. The private actor is then treated as a government actor and bound by the Constitution.

References

- Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 52 (1999) (holding that private insurance companies are not government actors unless there is proof of significant government involvement in their activities).

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