

A city owns and operates a large public auditorium. It leases the auditorium to any group that wishes to use it for a meeting, lecture, concert, or contest. Each user must post a damage deposit and pay rent, which is calculated only for the actual time the building is used by the lessee. Reservations are made on a first-come, first-served basis.

A private organization that permits only males to serve in its highest offices rented the auditorium for its national convention. The organization planned to install its new officers at that convention. It broadly publicized the event, inviting members of the general public to attend the installation ceremony at the city auditorium. No statute or administrative rule prohibits the organization from restricting its highest offices to men.

An appropriate plaintiff sues the private organization seeking to enjoin it from using the city auditorium for the installation of its new officers. The sole claim of the plaintiff is that the use of this auditorium by the organization for the installation ceremony violates the Fourteenth Amendment because the organization disqualifies women from serving in its highest offices.

Will the plaintiff prevail?

- A. No, because the freedom of association protected by the Fourteenth Amendment prohibits the city from interfering in any way with the organization's use of city facilities.
- B. No, because this organization is not a state actor and, therefore, its activities are not subject to the provisions of the Fourteenth Amendment.
- C. Yes, because the Fourteenth Amendment prohibits such an organization from discriminating against women in any of its activities to which it has invited members of the general public.
- D. Yes, because the organization's use of the city auditorium for this purpose subjects its conduct to the provisions of the Fourteenth Amendment.

Explanation:

The Constitution (except the Thirteenth Amendment) applies to government actors. But under the **state-action doctrine**, a private actor is treated as a government actor—and similarly bound by the Constitution—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. Significant involvement exists when the government:

- has a **mutually beneficial** relationship with the private actor (eg, joint venture)
- creates a **nexus** by affirmatively facilitating or authorizing private action (eg, through a police officer acting under color of law) *or*
- is pervasively **intertwined** in the private actor's management or control.

Here, the *private* organization is not performing a traditional and exclusive government function because private groups have historically used city auditoriums for conventions **(Choice D)**. And merely leasing the auditorium does not affirmatively facilitate the organization's actions or entwine the city in the organization's management. Nor does it create a mutually beneficial relationship since the city provides uniform access to *any* group at the same rate on a first-come, first-served basis. Therefore, the organization is not a state actor subject to the Fourteenth Amendment.

(Choice A) The First Amendment—applicable to states and municipalities through the Fourteenth Amendment—prohibits some (but not all) government interference with the [freedom of association](#).

(Choice C) The fact that the private organization invited members of the general public to its activities does not make it a government actor subject to the Fourteenth Amendment [equal protection clause](#).

Educational objective:

Under the state-action doctrine, private actors are considered government actors and bound by the Constitution when (1) they perform a traditional government function or (2) the government is significantly involved in their activities—eg, more than providing access to government services or facilities.

References

- *Gilmore v. Montgomery*, 417 U.S. 556, 574 (1974) (explaining that the mere private use of government facilities does not constitute significant state involvement under the state-action doctrine).

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State-action doctrine

Traditional government function



Significant government involvement



Joint action



Nexus



Entwinement