

A state law imposed substantial regulations on insurance companies operating within the state with respect to their rates, cash reserves, and financial practices.

A privately owned insurance company operating within the state advertised that it wanted to hire a new data processor. After reviewing applications for that position, the company hired a woman who appeared to be well qualified. The company refused to consider the application of a man who was better qualified than the woman, because he was known to have radical political views.

The man sued the company, alleging only a violation of his federal constitutional right to freedom of expression.

Is the man likely to prevail?

- A. No, because hiring decisions are wholly discretionary and thus are not governed by the First Amendment.
- B. No, because the company is not subject to the provisions of the First and Fourteenth Amendments.
- C. Yes, because the company is affected with a public interest.
- D. Yes, because the company is substantially regulated by the state, and thus its employment decisions may fairly be attributed to the state.

Explanation:

Constitutional amendments (excluding the Thirteenth Amendment) only apply to government actors. But a **private actor** can be **treated as a government actor** and be subject to the Constitution under the **state-action doctrine**. This 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 can then be sued for violating the Constitution—including the First and Fourteenth Amendment guarantee of [freedom of expression](#).

Here, the private insurance company does not perform a traditional and exclusive government function since insurance has historically been provided by private companies. And state regulation of the company's *financial* practices does not involve the state in the company's *hiring* practices. Even if it did, government regulation and funding (however substantial) do not make private action attributable to the state (**Choice D**). As a result, the man's suit will likely fail because the company is not a state actor subject to the First and Fourteenth Amendments.

(Choice A) Discretionary government decisions (including hiring decisions) *are* governed by the First Amendment. But since the private insurance company's hiring practices are not attributable to the state, the man will not prevail.

(Choice C) Private companies or industries affected with a public interest (eg, insurance companies) are subject to government regulations for the public good. But such regulations do not amount to significant government involvement that will trigger the state-action doctrine.

Educational objective:

Under the state-action doctrine, a private actor is treated as a government actor and bound by the Constitution when the government is significantly involved in the private actor's activities. But mere government regulation or funding (no matter how substantial) does not make a private party's actions attributable to the state.

References

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

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State-action doctrine

Traditional government function



Significant government involvement



Joint action



Nexus



Entwinement