

A private university is owned and operated by a religious organization. The university is accredited by the department of education of the state in which it is located. This accreditation certifies that the university meets prescribed educational standards. Because it is accredited, the university qualifies for state funding for certain of its operating expenses. Under this funding program, 25 percent of the university's total operating budget comes from state funds.

A professor at the university was a part-time columnist for the local newspaper. In one of her published columns, the professor argued that "religion has become a negative force in society." The university subsequently discharged the professor, giving as its sole reason for the dismissal her authorship and publication of this column.

The professor sued the university, claiming only that her discharge violated her constitutional right to freedom of speech. The university moved to dismiss the professor's lawsuit on the ground that the U.S. Constitution does not provide the professor with a cause of action in this case.

Should the court grant the university's motion to dismiss?

- A. No, because the accreditation and partial funding of the university by the state are sufficient to justify the conclusion that the state was an active participant in the discharge of the professor.
- B. No, because the U.S. Constitution provides a cause of action against any state-accredited institution that restricts freedom of speech as a condition of employment.
- C. Yes, because the action of the university in discharging the professor is not attributable to the state for purposes of the Fourteenth Amendment.
- D. Yes, because the First and Fourteenth Amendments protect the right of the university to employ only individuals who share and communicate its views.

## 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

Constitutional protections (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** *or*
- the **government is significantly involved** in the private actor's activities (more than funding or regulating).

Therefore, the professor can only sue the *private* university for violating her constitutional right to free speech if the state-action doctrine applies.

The university does not perform a traditional and exclusive government function since education has long been undertaken by private entities. And the state's accreditation and funding of the university do not involve the state in the university's *employment* decisions. But even if they did, state accreditation, funding, or regulation—no matter how substantial—does not make private conduct state action **(Choice A)**. And since the university's discharge of the professor is not attributable to the state for Fourteenth Amendment purposes, her lawsuit should be dismissed.

**(Choice B)** The Constitution does *not* provide a cause of action against any state-accredited institution that restricts freedom of speech as a condition of employment. Instead, such constitutional claims can only be asserted against private institutions if the state-action doctrine applies.

**(Choice D)** The First and Fourteenth Amendments generally bar a government actor from dismissing its [employees](#) for not sharing and communicating its views. But the professor could only sue the private university on these constitutional grounds if she could first establish that the university is a state actor.

### Educational objective:

Under the state-action doctrine, private actors are treated as government actors when they perform a traditional government function or the government is significantly involved in their activities. But government accreditation, funding, or regulation—no matter how substantial—does not trigger this doctrine.

### **References**

- *Rendell-Baker v. Kohn*, 457 U.S. 830, 841–43 (1982) (explaining that the state-action doctrine did not apply to a private school's conduct despite substantial government funding and regulations).

Copyright © 2011 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.