

# CASEBRIEFS

The Understanding Video Lecture  
Series™

State Action

# STATE ACTION REQUIREMENT

- Virtually all of the rights and liberties guaranteed by the Constitution to individuals are protected only against interference by the government. Meaning, you can't sue private persons for interfering with your constitutional rights.

# For example

- Tim runs an internet based message board for a very popular rock band. The band has set forth rules about restricted topics, ie, no death threats, no talking about the band's family or personal life. Tim gets a letter from a member of the message board, Paul, accusing Tim, and the band, of infringing upon their First Amendment Free Speech rights. Does Paul have a claim?

# Answer: No

- Tim, as a private individual, and the rock band, are not government entities. Therefore, there is no state action, so Paul doesn't have a claim against Tim or the band.



# State Involvement

- If the State is sufficiently involved, it can count as State Action. When looking at government grants, or government contributions, look to how much control that involvement gives the government.

# Let's try an example

Andy Cornett was well-known as a philanthropist. To ensure that his name would be long remembered, he planned to build the crown jewel of museums. He mentioned his plans to Mike, his longtime friend and governor of Massamont, an eastern state. Mike decided that the museum would bolster the economy and stature of wherever it was located and told Andy that if Andy put the museum in Massamont, he would arrange for the state to purchase the land and grant it to the museum. Andy agreed and the museum was built.

Andy appointed Adolph, an amateur painter, to be curator of Cornett Hall. Adolph was of German descent and was ashamed of Germany's actions during World War II. To assuage his own conscience, Adolph refused to hire anyone that he believed to be of German descent. Henry applied for a job at the museum, but Adolph refused to hire him because of his German background. Henry discovered Adolph's rationale, and he brings suit against the museum.

What is the likely result?

# State Action?

- Does the state giving land count as state action? Probably not sufficient. The state needs to have some element of control.



# Exception

- The 13th Amendment, which prohibits involuntary servitude, applies to private persons as well.
- This also extends to “the badges” of slavery, i.e., discrimination, and means, for example, that a privately owned apartment building can not discriminate when leasing.



# Another Exception

- Is the state delegating a normal state action to a private entity? For example, fire fighters, police, etc.? If delegated to a private firm, that firm steps into the shoes of the government.



# Another Example

City does not provide a fire department for its residents, but licenses various private companies to offer protection from fire inside the city limits for a profit. One of these businesses is Fire Protection Agency (FPA), which has about 1,000 customers who pay a monthly fee in exchange for a smoke alarm/radio transmitter device that will detect most fires and brings FPA's fire fighters to the scene within a few minutes of the alarm. These alarms can be manually activated, and FPA maintains an emergency phone number for reports of fire. It is FPA's policy to discontinue service to any customer who makes more than two false reports of fire (by manually activating the alarm or by phone).

Customer, an FPA customer, purchased a new toaster oven and discovered that whenever he tried to toast bread in the toaster his smoke alarm would send a signal to the local FPA's station that his house was on fire (this did not happen when he tried to toast other things, like cookies or bananas).

# Cont'd

Several false alarms were sent in this manner before Customer realized what was causing the problem and obtained a replacement oven that did not activate the smoke alarm with bread (or any other item he chose to toast). A few days later, Customer was surprised when an FPA's technician arrived to remove the smoke alarm/transmitter from his home.

Customer tried to explain to the technician and later in several phone calls, letters, and visits to the main offices that he had not purposefully activated the alarm, but FPA refused to reinstate his service.

# Answer Choices

If Customer brings an action to reinstate his service on the grounds that his rights to due process were violated by the discontinuance of service without any notice or hearing, Customer will probably:

- A. Lose, because FPA has no constitutional obligation to give him notice or a hearing in connection with the termination of fire protection service.
- B. Lose, because the city has no constitutional duty to provide him with fire protection, can cut off service at will, and FPA enjoys the same privileges as a government operated fire department.
- C. Win, because the fact that a private company provides an essential government service does not relieve the government from its obligation to afford its citizens due process of law.
- D. Win, because persons may not be deprived of fundamental rights without due process of law regardless of the nature of the organization engaging in the adverse action.

# Answer A

- C would normally be correct, this private service is performing what is normally a government function. However, because the gov't contracts with MULTIPLE firms, there is no government action, thus no constitutional issue.

