

Smucker's Out of a Jam: Sixth Circuit Says Being a Federal Contractor Does Not Make You a State Actor

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If you take on a federal contract, does that make you a state actor? No, according to a unanimous Sixth Circuit panel in [*Ciraci v. J.M. Smucker Company*](#).

The Facts

During World War II, the Army included Smucker's apple butter in its ration kits, resulting in a federal contractor relationship that has "stuck" ever since. As a federal contractor, in 2021 Smucker's was subject to President Biden's Executive Order 14042, which required employees working on certain federal contracts to get a COVID-19 vaccination. After Smucker's released the company's vaccine mandate, four Smucker's employees requested religious exemptions and were denied. Subsequently, the now former employees brought suit under the Free Exercise Clause, arguing the denial of their religious exemption impinged on their First Amendment rights.

The Court's Decision

The district court and the Sixth Circuit concluded that the plaintiffs could not sue Smucker's for such a constitutional violation because Smucker's was not a government actor. The Sixth Circuit addressed whether the federal government contract was enough to "stick" Smucker's with government actor status. According to the court, Smucker's "does not perform a traditional, exclusive public function; it has not acted jointly with the government or entwined itself with it; and the government did not compel [Smucker's] to deny anyone an exemption."

In the words of the opinion, "making jam is simply not a government function." Without a closer nexus to the government than merely operating a federal contract, Smucker's should be considered a private actor. A private company's compliance with a federal mandate does not in itself create state action. No state action, no denial of freedom of religion.

Takeaways

Although federal contractors may be "out of a jam" from a Constitutional law perspective, we should all keep in mind the following:

- **Title VII** – Private employers with at least 15 employees are *still subject* to Title VII's prohibition against religious discrimination. In the vaccine context, that means you, as a private employer, must determine whether granting or denying a religious exemption (from COVID-19 vaccination or otherwise) imposes an undue hardship. If you are a federal contractor covered by Title VII, evaluate whether you should deny any requested religious exemptions carefully.
- **State laws and constitutions may apply** – Don't forget that each state has its own respective laws regarding religious (or other) exemption procedures.
- **ADA and GINA** – Denying an employee a vaccine exemption could also implicate the Americans with Disabilities Act or the Genetic Information Non-Discrimination Act.

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