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**1. Did City High termination of Paige without a hearing violate the procedural due process guaranty of the Fourteenth amendment to the United State Constitution?**

Fifth Amendment and Fourteenth Amendment applicable to the states prohibits the state from depriving any person from life, liberty or property without due process of law. Procedural due process entails that any such deprivation must be proceeded by notice and hearing. In determining the extent of the notice and hearing requirement, the court will look at the interest of the person that is being affected, balance of the individual interest against the state interest in proceeding and the feasibility of the government action in relation to the interest deprived.

**State Action**

In order for procedural due process to apply, there must be a state action. Paige was employed as a probationary teacher at City High and her employment was terminated at City High. City High is a public school run by the state. Therefore, the termination of employment by City High is a state action.

**Paige's interest affected**

In order for the due process to apply there must be a deprivation of life, liberty or property by the state. The issue here is whether Paige's employment, which was terminated, can be construed as property. The Supreme Court has held that state employment can be viewed as a property interest if there is expectation of entitlement that the benefit associated with employment will continue. Here, Paige is a probationary teacher at City High. Although she is highly regarded, her status as probationary teacher entails that he can be terminated "for any reason" upon written notice within the first year of employment. Therefore, City High will argue that Paige is not entitled to the state employment because of the provisional nature of her employment. Hence, Paige would not have developed

the expectation of entitlement that would warrant a higher notice and hearing requirement for termination of employment. However, Paige's argument will rest of the fact that her employment was terminated shortly before the one year mark, hence she relied on the expectation of entitlement that her job would continue but for the termination that was based on her voicing opposition to the legislation throughout the school year. She will argue that not only her property (entitlement) rights were deprived by the termination, but also her free speech rights were abridged because she was vocal about the legislation. However, Paige's arguments will likely fail because of the provisional nature of her employment and the employer's right to terminate the employment any time and for any reason with just a notice within a year.

#### State Interest

State X is addressing the failing schools through the legislation that imposes the 10% pay reduction. Running effective education models and avoiding failing schools is a very important public issue. The steps taken by the school in terms of the pay cut may not be the most effective way of addressing the failing schools. The teachers will argue that the pay cut is a deprivation of property that is unconstitutional. But the fact that the interest of the teachers is restored with completion of certification or termination of employment by return of the withheld money with interest will probably justify the state's efforts.

#### Feasibility of State action

Paige was terminated with a notice and no hearing. Paige will argue that state should be providing her with an opportunity for a hearing because of the termination of employment, which is a property interest. However, the state will attempt to justify the termination without a hearing opportunity based on the fact that hearing is not required, per contract, and administration of a hearing will be an additional burden on the state. Paige will likely prevail here because of the proximity of the expiration of the end of the 1 year probationary period and the fact that she would claim that her termination was also the result of state's

violation of her free speech right when she continuously spoke out against the legislation.

Overall, because Paige was a probationary employee, the city will likely prevail and prove that hearing was not required under the Procedural Due Process.

**2. How should the court rule on the State and Attorney General's motion?**

Standing

In order for the court to be able to take on a case, the plaintiff must have standing and stake in the outcome of the case. One has standing if she can prove injury-in fact, causation and redressibility. Injury in fact is demonstrated by harm that the plaintiff suffered in the suit for damages, or probability of immediate harm in the suit for injunctive relief. The causation is proven by demonstrating that the state action caused or will immediately cause the harm. Redressibility is satisfied if the successful result of the suit will adequately address the harm caused.

Bob's standing

For his injury, Bob will state that the withholding of 10% of his wages has begun. This will mean that Bob is suffering an immediate deprivation of property by the state in the form of reduction of his earned income. The state will counter argue that the reduction of pay is temporary and the funds are returned after the 2 year period ends and certification is passed or Bob is terminated. Bob will probably win his argument because although he can recoup the difference, the harm done by the pay cut is an immediate injury. There are no facts to show how the certification process will pen out at the end and the injury may not be rectified later. Hence, Bob's injury is valid for both damages and injunctive relief.

The pay cut is caused by the legislation, hence the causation of the injury is clear.

The redressibility is also apparent because the success in the case will terminate the pay cut and stop the injury.

Bob has standing to sue.

Paige's standing

Paige will likely raise both the issue of pay cut and the issue of her termination. Because the legislation provides that the pay will be reimbursed with interest at termination, Paige will likely not be able to prove that she suffered damages as she would probably receive the withheld pay back. However, Paige can raise a claim that she has an injury-in-fact because of her termination in violation of due process. The injury will be viewed as valid because of the high stake in the outcome of the case if the case is decided in her favor. The state action caused her termination and the redressibility of her claim is satisfied because of the relief of reinstatement of employment that she can possibly receive.

Paige has standing to sue.

Eleventh Amendment

Eleventh amendment prohibits any person from suing the states. However, suits against state officials and local entities are not prohibited by the Eleventh Amendment.

Here, Bob and Paige sued State X, Attorney General of State X and City High.

Per the 11th Amendment, suit against State X will not be allowed. Suit against Attorney General as the state official and City High as an entity within the state should be allowed to proceed.

The court should deny the State X and Attorney General motion to dismiss based on standing. The court should partially grant (suit against the state) and partially deny (suit against Attorney General) the motion to dismiss based on the Eleventh Amendment.

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Question #1 Final Word Count = 1223