

QUESTION 4

State X has a valid contract with public school teachers providing a fixed salary schedule. State X recently passed legislation to address its failing public schools. Now, when a school falls below established standards, each teacher at that school has 10% of his or her salary withheld each pay period for a maximum of two years. The withholding ends, and the money is returned with interest, upon the completion of a ten-hour certification program or termination of employment.

City High is a public school in State X where salary withholding has begun.

Bob has been a teacher at City High for the past three years. Paige is a highly-regarded probationary teacher at City High. A probationary teacher may be terminated for any reason upon written notice within the first year of employment.

Bob and Paige have been outspoken opponents of the State X law and its application to City High, appearing at various community and school board meetings throughout the school year.

Shortly before the end of Paige's first year of employment, City High served her with written notice terminating employment, and refunded the money withheld with interest.

Bob and Paige have sued State X, the Attorney General of State X, and City High in federal court seeking damages and injunctive relief. State X and the Attorney General have moved to dismiss the suit based on standing and the Eleventh Amendment.

1. Did City High's termination of Paige without a hearing violate the procedural due process guaranty of the Fourteenth Amendment to the United States Constitution? Discuss.
2. How should the court rule on the State and the Attorney General's motion? Discuss.

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Equal Protection

Through the Fourteenth Amendment, the rights and privileges of the Constitution are binding upon state action. Accordingly, State X is subject to procedural due process requirements.

Procedural Due Process

Governments cannot deprive individuals of their life, liberty, or property without due notice of their right to a proper hearing. In the case at hand, Paige can claim a significant property interest in her continued career as a teacher at City High. State X will argue that Paige was always subject to the potential termination in her limited contract, that as a provisional employee Paige had no real property interests, and that Paige never requested a hearing. Even if that is the case, State X had a duty to notify her of that right in writing. Paige, a government employee, was entitled to a hearing on her termination with notice, which cannot be waived by an employment contract.

State X did not expressly provide a reason as to why Paige was terminated, but the circumstances favor Paige's potential argument that the termination was strictly retaliatory for speaking against the new law at public forums. Paige was a highly-regarded teacher, and was not apparently disciplined or threatened with termination until speaking out against the new law. Government employees cannot be discharged unless the government shows the termination is rationally related to a legitimate government interest. Preventing employees from properly criticizing public policy or otherwise retaliating against them for such criticism, and subsequently terminating their employment contracts does not conform with procedural due process. Although State X is legally entitled to terminate a government employee, it must afford them at least the opportunity of a hearing to make their case as why they cannot lawfully be terminated.

Motion to Dismiss

Standing

In order for a litigant to have standing to sue, they must have suffered an injury traceable to the defendant's violation of law. State X and the attorney general will argue that the very policy Bob and Paige are contesting is the law, and no such violation has occurred. State X and the attorney general will argue that the state is entitled to contract, regulate, and discipline employees. State X and the attorney general will argue that Bob's refusal to complete its effectively mandatory certification program is resulting in the disciplinary lien. Paige cannot argue an injury as she was returned the withheld money with interest and terminated in accordance with her employment contract. State X and the attorney general will make the case that the withheld salary portion is ultimately returned to the teachers -- with interest -- and no injury has occurred as such.

Bob and Paige will argue that the State's failure to pay their salaries in full constitutes damages, and that the statute does not guarantee return of the withheld money as a teacher may not be able to complete the certification program. In any event, the state may not deprive a person of their property without just compensation. In Paige's case, she was also terminated after contesting the statute. Given the circumstances, the court is unlikely to dismiss the action for lack of standing.

11A Immunity

The Eleventh Amendment sovereign immunity clause shields states from lawsuits for remedies at law, and lawsuits by a state against another state, but not equitable actions. It does not extend to the state's agencies which actively enter into contracts or otherwise directly regulates the people.

State X will argue that it has sovereign immunity from Bob and Paige's damages claim under the Eleventh Amendment. But in this case, it is directly contracting

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with public school teachers, and may accordingly be subject to damages litigation. On the other hand, State X can argue that its contract is really with the schools or unions themselves, and not in privity with Bob and Paige. If the court finds that the only valid contracts are between State X and City High, as well as City High and Bob & Paige, the court may grant the state's motion to dismiss on those grounds.

That leaves the Attorney General and City High as defendants. Neither party is exempt from legal action under the Eleventh Amendment. In the case of Attorney General, it executes the laws and contracts on behalf of the state, and is subject to litigation based upon those actions.

City High, the actual employer of Bob & Paige, is not immune to litigation under the Eleventh Amendment.

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