

A clerical employee of a city water department was responsible for sending out water bills to customers. His work in this respect had always been satisfactory. The employee's sister ran in a recent election against the incumbent mayor, but she lost. The employee had supported his sister in the election campaign. After the mayor found out about this, she fired the employee solely because his support for the sister indicated that he was "disloyal" to the mayor. The city's charter provides that "all employees of the city work at the pleasure of the mayor."

Is the mayor's action constitutional?

- A. No, because public employees have a property interest in their employment, which gives them a right to a hearing prior to discharge.
- B. No, because the mayor's action violates the employee's right to freedom of expression and association.
- C. Yes, because the employee has no property interest in his job since the city charter provides that he holds the job "at the pleasure of the mayor."
- D. Yes, because the mayor may require members of her administration to be politically loyal to her.

## Explanation:

### First Amendment freedoms

<b>Expression</b>	Right to communicate information & ideas through speech or conduct
<b>Association</b>	Right to form or participate in any group or organization
<b>Press</b>	Right to publish truthful information
<b>Religion</b>	Free exercise – right to practice religion or no religion without government interference  Establishment – prohibits government from favoring particular religion or religion generally

The **First Amendment** protects a person's (including a public employee's) right to **freedom of expression and association**. Political belief and association are the core of these protected activities. As a result, the government cannot **condition public employment** on a person's **political views or affiliations** unless these factors are **essential to effective performance** of the job in question (eg, policymaking position).

Here, the mayor fired a city water department employee for "disloyalty" after the employee supported his sister in an election against the mayor. But since the employee was merely responsible for sending out water bills to customers, his political views and affiliations were irrelevant to performing his job. Therefore, the mayor's action is an unconstitutional violation of the employee's right to freedom of expression and association.

**(Choices A & C)** **Procedural due process** guarantees persons a fair opportunity to be heard when the government deprives them of life, liberty, or property. And public employees have a property interest in their employment if they can only be fired *for cause*. But since this city's employees work "at the pleasure of the mayor," they do *not* have a property interest in their jobs. Nevertheless, the mayor's action violates the First Amendment.

**(Choice D)** The mayor may only require members of her administration to be politically loyal to her if that loyalty is essential to the effective performance of the job in question—eg, chief of staff (not clerical employee).

### Educational objective:

The government cannot condition public employment on a person's political views or affiliations unless these factors are required for effective job performance.

### References

- *Rutan v. Republican Party*, 497 U.S. 62, 75–76 (1990) (holding that the government cannot base employment-related decisions on political views or affiliations unless required for effective job performance).

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