

A city's personnel handbook contains all of that city's personnel policies. One section of the handbook states that "where feasible and practicable supervisors are encouraged to follow the procedures specified in this handbook before discharging a city employee." Those specified procedures include a communication to the employee of the reasons for the contemplated discharge and an opportunity for a pre-termination trial-type hearing at which the employee may challenge those reasons.

After a year of service, the secretary to the city council was discharged without having received any communication of reasons for her contemplated discharge and without having received an opportunity for a pre-termination trial-type hearing.

The former secretary files suit in federal district court to challenge her discharge solely on constitutional grounds.

Which of the following best describes the initial burden of persuasion in that suit?

- A. The city council must demonstrate that its personnel handbook created no constitutionally protected interest in city employment or in the procedures by which such employment is terminated.
- B. The city council must demonstrate that the former secretary's termination was for good cause.
- C. The former secretary must demonstrate that she reasonably believed that she could work for the city for as long as she wished.
- D. The former secretary must demonstrate that state law creates a constitutionally protected interest in her employment or in the procedures by which her employment is terminated.

### Explanation:

The former secretary's claim raises the Fourteenth Amendment right to **procedural due process**, which requires states and municipalities to follow certain procedures when they **intentionally deprive** a person of **life, liberty, or property**. These procedures include giving persons:

- notice of the charges, proceedings, or other actions against them *and*
- a meaningful opportunity to be heard by a neutral decision-maker.

In a due process claim, the **challenging party** has the **initial burden** of showing that he/she has a protected life, liberty, or property interest at stake. Therefore, the *former secretary* must demonstrate that state law created a constitutionally protected interest in her employment or the procedures by which she was terminated **(Choice A)**.

**(Choice B)** The city council would only need to demonstrate that the former secretary's termination was for good cause if she *first* demonstrates that she has a constitutionally protected interest in her employment.

**(Choice C)** Public employees have a property interest in their jobs if they (1) have an ongoing employment contract, (2) can only be fired for cause, or (3) receive assurances of continued employment. But the former secretary's reasonable belief that she could work for the city as long as she wished would not create this interest.

### Educational objective:

Procedural due process requires the government to follow certain procedures when it intentionally deprives a person of life, liberty, or property. And in a due process claim, the challenger has the initial burden of showing that he/she has a protected interest at stake.

### References

- *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538 (1985) (holding that a state cannot terminate an employee without due process when the employee has a property right in his/her employment).

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## Procedural due process

