

Webster, Brent

From: De La Garza, Henry
Sent: Monday, November 2, 2020 12:35 PM
To: Reitz, Aaron; Webster, Brent
Subject: RESEARCH: Confidential/Policy-Maker Employees *PRIVILEGED*

PRIVILEGED

This email contains legal advice and legal research.

An elected official is going to want to fill top posts in their organization with persons committed to the official's vision for the future.* Do you agree or disagree?

An elected official may want to change key lieutenants because of ideological differences.* Do you agree or disagree?

The ability to pick and choose among key advisers and high-level posts in a public organization has long been a traditional element of politics.* Do you agree or disagree?

Do you trust me?

Do you trust the Attorney General?

Are you committed to the AG's vision?

Are you committed to my vision as the new First Assistant?

You are in a position that requires a confidential relationship with me? Do you agree or disagree?.

Can you and I truly have a confidential relationship (based just on what you have said to me today)?

Support:

Per the U.S. Supreme Court, an employee responsible for formulating policy would not be protected against political firings. In a concurring opinion, Justice Stewart said that an employee whose position places him in a confidential relationship with the hiring authority also would not be protected against summarily being fired.

A "confidential" employee is "one who is privy to the discussions and information involved in the policymaking process."

If an employee is "a policymaker, then . . . his government employment could be terminated for purely political reasons without offending the First Amendment." *Fazio v. City of San Francisco*.

Elrod v. Burns, 427 U.S. 347 (1976).

Branti v. Finkel, 445 U.S. 507 (1980).

*<https://www.calpublicagencylaboremploymentblog.com/first-amendment/policymaking-employees-and-the-first-amendment/>