

Our Constitutional Right Of Due Process And The Fight To Preserve It

The Constitution of the United State provides that whenever the federal government or the state government tries to take a person's life, liberty or property, that person is entitled to due process of law. In general terms, due process requires that the governmental action must be conducted fairly. One of the fundamental elements of due process is the right to have the person's case heard by a judge who has no significant personal interest at stake in the outcome of the case. No person can be the judge of that person's own case.

The right to due process has existed under English law, upon which our legal system is based, for centuries and it has been preserved for us by our ancestors. Since due process restricts the power of government, the government has an incentive to restrict it. That is just human nature and we must always be vigilant in protecting our rights.

In 1983, Oregon's judges were not PERS members. The legislature had created a separate retirement plan for the judges in 1943, two years before it created PERS. With the judges not being PERS members, our due process rights were enforced every time a PERS case was decided. In 1983, 84 of Oregon's 90 legislators were PERS members and they passed a law that put all Oregon judges into PERS, effective January 1, 1984. The effect of that law was to eliminate the right to due process when the Oregon courts regarding PERS cases unless it was possible to appoint temporary, non-PERS judges to decide those cases.

I have filed a lawsuit, ***Daniel C. Re v. Public Employees Retirement System, CA No. A148575***, in the Oregon Court Of Appeals. The purpose of this lawsuit is to restore independence to Oregon's judges when they decide PERS cases and, in doing so, restoring the right of due process to all Oregonians. I feel that it is imperative to do this. If we do not protect our constitutional rights, if we are not willing to fight for them, they will be taken away. This issue affects all of us. We are obligated to pass these constitutional rights on to the generations who follow, as our ancestors passed them on to us.

What Happens Next. PERS is scheduled to file its response to my lawsuit before the end of January, 2012. When it does, I will let you know what its position is on this very important issue. Stay Tuned.

Who Is Daniel C. Re. I am an Oregon attorney who has practiced law in Bend, Oregon for over 30 years. My primary areas of practices are estate planning and estate administration. Those fields of law include the responsibilities of people who act on behalf of others. They are known as fiduciaries. All public officials, including judges and legislators, are fiduciaries. Generally, fiduciaries cannot act in a situation in which they have an interest that conflicts with the interest of the people they represent.

In my spare time, I try to make public officials comply with their fiduciary obligations.