

No.

IN THE
Supreme Court of the United States

JOHN CANNICI,
Petitioner,
v.

VILLAGE OF MELROSE PARK, ILLINOIS, BOARD OF FIRE
AND POLICE COMMISSIONERS OF MELROSE PARK,
ILLINOIS, MICHAEL CAPUTO, MARK RAUZI, PASQUALE
ESPOSITO, RICHARD BELTRAME, AND RONALD SERPICO,
INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES,
Respondents.

On Application for an Extension of Time Within
Which to File a Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Seventh Circuit

**PETITIONER'S APPLICATION FOR AN
EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

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To the Honorable Elena Kagan, Associate Justice
of the Supreme Court of the United States and Circuit
Justice for the United States Court of Appeals for the
Seventh Circuit:

INTRODUCTION

Pursuant to Rule 13.6 of the Rules of this Court
and 28 U.S.C. § 2101(c), Petitioner, John Cannici,
respectfully requests a fifty-eight-day extension of
time, to and including August 10, 2018, to file a
petition for a writ of certiorari in this case. The
judgment of the United States Court of Appeals for the
Seventh Circuit was entered on March 15, 2018. A
copy of the opinion of the Court of Appeals (which is
reported at 885 F.3d 476) is attached as Appendix A.
Jurisdiction of this Court will be invoked under 28
U.S.C. § 1254(1). Unless extended by this Court, the
time for filing a petition for a writ of certiorari will
expire on June 13, 2018. This request for an extension
of time is being filed at least ten days before that date.

BACKGROUND

In this case, Mr. Cannici appealed the dismissal of two federal Constitutional claims to the United States Court of Appeals for the Seventh Circuit. The first claim was for a denial of his procedural due process rights where the issues before the court of appeals were (i) whether a public employee is entitled to procedural due process, pre-deprivation, according to the Due Process Clause of the United States Constitution, and (ii) whether the “random and unauthorized” exception to due process applies where the violation of due process occurred according to an established procedure. The second claim was for a denial of his equal protection rights where the issue was whether the Equal Protection Clause of the United States Constitution applies to the deprivation of public employment where the employment was terminated on the basis of a municipal ordinance rather than subjective criteria, and where the employee was not employed at will.

Mr. Cannici was employed as a firefighter by Respondent, Village of Melrose Park, Illinois, for

sixteen years, with an unblemished record during that time, until Respondent, Board of Fire and Police Commissioners of Melrose Park, held a hearing and decided to terminate his employment based on a residency ordinance. The legal advisor to the administrative board provided legal advice against Mr. Cannici to the prosecuting attorney, *ex parte*, and then continued to advise the administrative board through its decision to terminate Mr. Cannici's employment. Further, Mr. Cannici alleged that his similarly-situated co-workers were not prosecuted in hearings before the administrative board for purported ordinance violations if they hired the mayor for legal services.

On the due process claim, then, the issues included whether such *ex parte* communications between the legal advisor to the administrative board and the prosecuting attorney violated Mr. Cannici's due process rights, and whether available post-deprivation measures were sufficient to redress the violation of his due process rights. On the equal protection claim, the issue was whether the class-of-

one theory applied to Mr. Cannici in the context of a public employee's equal protection claim.

The district court granted Respondents motions to dismiss those federal claims, and Mr. Cannici appealed the dismissal of the due process and equal protection claims to the court of appeals, which affirmed the district court's decision. (See App. A). On Mr. Cannici's procedural due process claim, the court of appeals' decision was, at least in part, due to the post-deprivation relief available to Mr. Cannici via the pending state court case in which the termination decision was being reviewed, and the fact that the state court deferred its resolution of the procedural due process violation until after the federal appeal was decided. (See App. A at 7).

In the Circuit Court of Cook County, Illinois, Judge Neil H. Cohen stated on the record that legal counsel for the Board acted in an improper manner. Though it appears the court found that Petitioner was deprived of his due process as a result of the *ex parte* conduct of the attorney advising the administrative board that issue has not clearly been confirmed by the court.

Pursuant an Order issued by Judge Cohen on March 26, 2018, which is attached as Appendix B, the parties submitted briefs concerning the appropriate remedy due to Mr. Cannici for the deprivation of procedural due process rights he suffered, and the hearing on the remedy to be afforded to him is to be held on June 4, 2018.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a Petition for a Writ of Certiorari should be extended for fifty-eight days for these reasons:

1. Mr. Cannici's Petition for a Writ of Certiorari will invariably be impacted by Judge Cohen's ultimate decision on the appropriate remedy for Mr. Cannici's deprivation of due process. However, even if Judge Cohen orders that a remedy be provided to Mr. Cannici at the June 4 hearing, Mr. Cannici would then have less than ten days to evaluate the sufficiency of the remedy and prepare and file the Petition for a Writ of Certiorari, which is an insufficient amount of time to appropriately address

the arguments to be made to this Court in a Petition for a Writ of Certiorari.

2. Moreover, in the event that Judge Cohen decides to take the issue of the appropriate remedy to be afforded to Mr. Cannici under advisement following the June 4 hearing, then the issue of the remedy would be an open question when Mr. Cannici would be submitting his Petition for a Writ of Certiorari to this Court. In such a circumstance, the fifty-eight-day extension of time to file his Petition for a Writ of Certiorari would likely provide enough time for the remedy to be determined by Judge Cohen, and for Mr. Cannici to evaluate that remedy and appropriately factor the remedy into his Petition for a Writ of Certiorari to be filed in this Court.

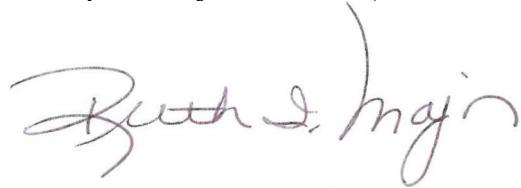
3. In view of the fact that Respondents prevailed below, the extension of time will not prejudice them in any way.

CONCLUSION

It is therefore respectfully submitted that Mr. Cannici's Application for an Extension of Time to and including August 10, 2018, within which to file a

Petition for a Writ of Certiorari in this case be
granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ruth I. Major".

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June 1, 2018