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APPENDIX A

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In the  
United States Court of Appeals  
For the Seventh Circuit

No. 17–1424.

JOHN CANNICI, Plaintiff–Appellant,

v.

VILLAGE OF MELROSE PARK, ILLINOIS, *et al.*,  
Defendants–Appellees.

Appeal from the United States District Court for the  
Northern District of Illinois, Eastern Division.

No. 16 C 9863 – **Elaine E. Bucklo**, *Judge*.

Argued January 19, 2018 – Decided March 15, 2018.

Before BAUER, MANION, and ROVNER, *Circuit Judges*.

BAUER, *Circuit Judge*. Defendant-appellee, the Village of Melrose Park (“the Village”), terminated plaintiff-appellant, John Cannici, a former firefighter with the Village, for violating the “Residency Requirements for Officers and Employees” (“Residency Ordinance”) found in the Village’s Code of Ordinances. Cannici filed suit against the Village claiming a violation of both his due process and equal protection rights, as well as requesting review under

the Illinois Administrative Review Act (“the Act”). The district court dismissed his due process and equal protection claims and refused to exercise supplemental jurisdiction over the remaining state law administrative review claim. Cannici now appeals.

## **I. BACKGROUND**

Cannici was a firefighter for the Village for sixteen years before the Village terminated him because of his violation of the Residency Ordinance. Cannici and his family lived in Melrose Park until 2008. In 2008, due to personal circumstances, the Cannici’s bought a home in Orland Park while retaining ownership and possession of their Melrose Park home. During the week, Cannici’s wife and two children lived in the Orland Park home, while Cannici lived in the Melrose Park home. The family spent the weekends together in one of the two homes.

In 2013, Cannici decided to rent the Melrose Park home out to the Cichon family. In an attempt to maintain residency at this home, Cannici reserved a portion of the home in the basement for his exclusive use, kept belongings in the home, maintained access to the home, paid utilities and taxes for the home, continued to receive all of his mail at this home, and used the Melrose Park address for all professional and personal matters. However, Cannici slept at the Orland Park home between June 1, 2013 and June 15, 2016.

In May 2016, the Village requested an interview with Cannici to inquire about his residency. Section 2.52 of the Village's Residency Ordinance states:

Each and every officer and employee of the [V]illage, unless exempted by this chapter, must be a resident of the [V]illage as that term has been defined herein. Each and every officer must maintain resident status during his or her term of office. Each and every employee must maintain resident status during his or her period of employment.

The Residency Ordinance defines resident as a "natural person who occupies a residence, as hereinbefore defined, as his or her principal place of residence and abode."

Upon review, the Board of Fire and Police Commissioners ("the Board") determined Cannici violated the Village's Residency Ordinance and issued a written Statement of Charges, dated June 28, 2016, seeking to terminate his employment. Before his hearing, Cannici received the written Statement of Charges and filed a motion challenging purported *ex parte* communications. This motion addressed the prosecuting attorney's communications with the Board's attorney regarding procedural requirements for scheduling an agreed hearing date and residency issues, as well as the prosecuting attorney's invitation from the Board's counsel to appear before the Board.

Cannici's attorney did not receive this same invitation. The Board denied the motion.

On August 4, 2016, the matter proceeded to a hearing, at which Cannici and his counsel were both present. Based on testimony and arguments presented at the hearing, the Board found Cannici had failed to maintain residency throughout his employment. To support this finding, the Board acknowledged Cannici established residency, but had failed to maintain residency at his Melrose Park home between June 1, 2013 and June 15, 2016.

On September 26, 2016, Cannici filed a three-count complaint in state court. Cannici sought review under the Illinois Administrative Review Act and claimed a violation of his due process and equal protection rights. The defendants<sup>1</sup> removed the case to the Northern District of Illinois and subsequently filed a motion to dismiss. On January 27, 2017, the district court granted the motion to dismiss, refused to exercise supplemental jurisdiction over the remaining state law administrative review claim and thus, remanded the case back to state court.

Cannici now appeals the district court's dismissal of his due process and equal protection claims. Specifically, Cannici claims the district court improperly labeled the Board's conduct as "random and unauthorized," and thus, improperly analyzed his

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<sup>1</sup> Cannici also filed this lawsuit against Fire Chief Richard Beltrame, Board of Fire and Police Commissioners, Michael Caputo, Mark Rauzi, and Pasquale Esposito, and Mayor Ronald Serpico.

due process claim. He further claims the district court improperly applied *Engquist* in denying his equal protection claim. For the following reasons, we affirm.

## II. DISCUSSION

We review a district court's ruling on a Rule 12(b)(6) motion to dismiss *de novo*. *LaBella Winnetka, Inc. v. Vill. of Winnetka*, 628 F.3d 937, 941 (7th Cir. 2010). In so reviewing, “[w]e construe the complaint in the light most favorable to the plaintiff, accepting as true all well-pleaded facts alleged, and drawing all possible inferences in [the plaintiff’s] favor.” *Tamayo v. Blagojevich*, 526 F.3d 1074, 1081 (7th Cir. 2008).

### A. Procedural Due Process

A procedural due process claim under § 1983 requires that the plaintiff allege “(1) deprivation of a protected interest, and (2) insufficient procedural protections surrounding that deprivation.” *Michalowicz v. Vill. Of Bedford Park*, 528 F.3d 530, 534 (7th Cir. 2008). The parties do not dispute that Cannici had a protected interest in his continued employment as a Village firefighter. The issue before us is whether the Board provided sufficient procedural protections.

To determine whether a defendant provided sufficient procedural due process, we must first determine whether the claim is based on established state procedures or on random and unauthorized acts by state employees. *Leavell v. Ill. Dep’t of Nat. Res.*, 600 F.3d 798, 804 (7th Cir. 2010). A claim based on a

deprivation from established state procedures requires more than simply the availability of post-deprivation procedures. *Id.* at 805. The state's ability to predict when a deprivation will occur provides the state the ability to provide a pre-deprivation hearing. *Id.* Conversely, a claim based on random and unauthorized acts by state officials does not have the same predictability, and thus, only requires a meaningful post-deprivation remedy. *Id.* In this instance, the plaintiff must "avail herself of state post-deprivation remedies or demonstrate that the available remedies are inadequate." *Id.* (internal citations omitted).

Cannici argues that the district court erroneously analyzed the Board's decision as random and unauthorized conduct by state officials. Cannici claims the proper focus is whether the *deprivation* is difficult to predict, not whether the *misconduct leading to* the deprivation is difficult to predict. Thus, because the deprivation occurred through a formal, established procedure, a point at which all parties knew when the deprivation would occur, the established state procedure analysis is appropriate. We do not agree with this analysis.

In *Michalowicz*, the plaintiff, a former firefighter for the defendant, brought a due process claim. 528 F.3d at 533. The basis of his claim was that the defendant deprived him of his rights by using the Board of Trustees, an allegedly biased hearing committee, rather than an independent hearing committee as proscribed by relevant statute. *Id.* at 534–35. We found the due process claim based on a

biased committee “a challenge to the ‘random and unauthorized’ actions of the state officials in question, i.e., to their unforeseeable misconduct in failing to follow the requirements of existing law.” *Id.* at 535. We reasoned that, “[b]ecause such misconduct is inherently unpredictable,” the state is obliged “to provide sufficient remedies after its occurrence, rather than to prevent it from happening.” *Id.*

While the hearing in *Michalowicz* was a post-termination hearing, we nonetheless find this case instructive. Cannici’s argument surrounding any potential bias of the Board is precisely the same unpredictable misconduct contemplated in *Michalowicz*. Thus, the district court’s application of random and unauthorized acts by the Board was not erroneous.

Furthermore, we have found time and again that the Illinois Administrative Review Act provides sufficient post-deprivation relief. *See* 735 ILCS 5/3-101 *et seq.*; *see also Michalowicz*, 528 F.3d at 535–36; *Leavell*, 600 F.3d at 806; *Stachowski v. Town of Cicero*, 425 F.3d 1075, 1078 (7th Cir. 2005). Cannici does not contend that his rights under the Act have not been afforded to him. In fact, his counsel brought to our attention that the state court judge has found the administrative review claim in his favor and deferred further proceedings pending this Court’s decision. Thus, we have no reason to believe Cannici has been deprived of his due process rights.

## **B. Equal Protection**

Cannici also claims the district court erroneously found that the Village did not violate his equal protection rights. Cannici brings this claim individually and not on the basis of membership in a protected class. He asserts the Village treated him differently than other similarly situated Village employees. Thus, we analyze under a class-of-one theory.

To prevail on a class-of-one equal protection theory, “a plaintiff must allege that he has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” *Forgue v. City of Chicago*, 873 F.3d 962, 968 (7th Cir. 2017) (citing *Engquist v. Or. Dep’t of Agric.*, 553 U.S. 591, 601–02 (2008) (internal quotations omitted)).

In *Engquist*, the Supreme Court held “the class-of-one theory of equal protection does not apply in the public employment context.” *Id.* at 598. The Court reasoned that “[t]here are some forms of state action ... which by their nature involve discretionary decisionmaking based on a vast array of subjective, individualized assessments.” *Id.* at 603–04. Employment decisions unequivocally qualify as such. *Id.* at 604. The court went on to say,

[T]he class-of-one theory of equal protection—which presupposes that like individuals should be treated alike, and that to treat them differently is to classify them in a way that must survive at least rationality review—is simply a



poor fit in the public employment context. To treat employees differently is not to classify them in a way that raises equal protection concerns. Rather, it is simply to exercise the broad discretion that typically characterizes the employer-employee relationship. A challenge that one has been treated individually in this context, instead of like everyone else, is a challenge to the underlying nature of the government action.

*Id.* at 605.

Cannici argues that equal protection claims are not inappropriate in all government employment contexts, pointing to the Court's rationalization that "the Equal Protection Clause is implicated when the government makes class-based decisions in the employment context, treating distinct *groups of individuals* categorically differently." *Id.* (emphasis added). However, we are not presented with a group of individuals here. Cannici claims, as a class of one, that the Village treated him differently than others when they decided to terminate his employment due to the Residency Ordinance, but not terminate others similarly situated. The Supreme Court has "never found the Equal Protection Clause implicated in the specific circumstance where, as here, government employers are alleged to have made an individualized, subjective personnel decision in a seemingly arbitrary or irrational manner." *Id.* Thus, Cannici's equal protection claim must fail.

Cannici also attempts to distinguish his case from *Engquist* by arguing that he was not an at-will employee, but rather two pieces of legislation are “at the heart of his claim,” the Residency Ordinance and the Fire Protection District Act. Thus, he argues the holding in *Engquist* is not applicable. We disagree.

“Congress and all the States have, for the most part, replaced at-will employment with various statutory schemes protecting public employees from discharge for impermissible reasons.” *Id.* at 606–07. “But a government’s decision to limit the ability of public employers to fire at will is an act of legislative grace, not constitutional mandate.” *Id.* at 607.

The relevant language from the Fire Protection District Act states:

[N]o officer or member of the fire department of any protection district who has held that position for one year shall be removed or discharged except for just cause, upon written charges specifying the complainant and the basis for the charges, and after a hearing on those charges before the board of fire commissioners, affording the officer or member an opportunity to be heard in his own defense.

70 ILCS 705/16.13b.

We acknowledge this section requires “just cause” for termination, rather than “no reason at all,” upon

which an at-will employee may be terminated. *See Engquist*, 553 U.S. at 606 (“The basic principle of at-will employment is that an employee may be terminated for a good reason, bad reason, or no reason at all.”) (internal quotations omitted). However, nowhere in this statute does it provide full protection from termination. Furthermore, as we previously stated, the Village afforded Cannici precisely what this statute requires: written charges, a hearing, and the opportunity to present evidence. Thus, we affirm the district court’s dismissal of Cannici’s equal protection claim.

### III. CONCLUSION

For the foregoing reasons, we AFFIRM the district court’s findings.

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APPENDIX B

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS,  
EASTERN DIVISION

No. 16 C 9863

JOHN CANNICI, Plaintiff,

v.

VILLAGE OF MELROSE PARK, ILLINOIS,  
BOARD OF FIRE AND POLICE COMMISSIONERS  
OF MELROSE PARK, ILLINOIS, MICHAEL  
CAPUTO, MARK RAUZI and PASQUALE  
ESPOSITO, Members of the Board of Fire and Police  
Commissioners of Melrose Park, RICHARD  
BELTRAME, Melrose Park Fire Chief, and  
RONALD SERPICO, Mayor of Melrose Park,  
individually and in their official capacities,  
Defendants.

Elaine E. Bucklo, United States District Judge.

**MEMORANDUM OPINION AND ORDER**

Plaintiff John Cannici (“Cannici”) brings this suit alleging that his employment as a firefighter for the Village of Melrose Park (“the Village”) was improperly terminated for violating the Village’s residency ordinance. In addition to the Village, Cannici has sued the Village’s Board of Fire and Police Commissioners (“the Board”); individual Board

members Michael Caputo, Mark Rauzi, and Pasquale Esposito (Caputo, Rauzi, and Esposito together, “the Board Members”); the Village’s Fire Chief, Richard Beltrame (“Beltrame”); and the Village’s Mayor, Ronald Serpico (“Serpico”). Cannici’s complaint seeks review of his termination under Illinois’ Administrative Review Act (“the Act”), 735 ILCS 5/3-101 *et seq.* (Count I). He also asserts claims under 42 U.S.C. § 1983, alleging violation of his right to due process (Count II) and to equal protection (Count III). Cannici originally filed suit in the Circuit Court of Cook County, Illinois. The defendants removed the case to this court and now have filed several separate motions to dismiss Counts II and III of the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.<sup>1</sup> For the reasons below, I grant the defendants’ motions and remand the remaining claim for administrative review to the Circuit Court of Cook County.<sup>2</sup>

## I.

In deciding a 12(b)(6) motion, I take all allegations in the complaint as true. *See, e.g., Lavalais v. Village*

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<sup>1</sup> Joint motions to dismiss Counts II and III have been filed by the Board and Board Members and by the Village and Beltrame. Serpico has moved to dismiss only Count III, since that is the only claim asserted against him. For purposes of this motion, it is unnecessary to distinguish between the various defendants. For simplicity, therefore, I use “defendants” to refer to them collectively.

<sup>2</sup> Cannici does not oppose remand of Count I if Counts II and III are dismissed. *See* Pl.’s Resp. to Board and Commissioners’ Motion to Dismiss, at 2 n.2.

*of Melrose Park*, 734 F.3d 629, 632 (7th Cir. 2013). Cannici's complaint alleges that he joined the Melrose Park Fire Department in 2000. In 2008, he and his wife purchased a second home in Orland Park. According to Cannici, they purchased the home so that their oldest child could attend school in Orland Park, thereby making it unnecessary for Cannici's parents, who provided daycare for the children, to commute between Orland Park and Melrose Park. Cannici's wife and children moved to the Orland Park home, but Cannici continued to live in the Melrose Park residence. The family spent time together on the weekends.

This arrangement remained in place until 2013, when Cannici agreed to rent a portion of the Melrose Park home to a family experiencing financial hardship. Although the family occupied only part of the home, Cannici began staying at the Orland Park house with his wife and children. He insists, however, that he continued to treat the Melrose Park home as his residence (by, among other things, continuing to pay taxes on the home, keeping his personal property there, and receiving his mail there).

In May 2016, Cannici was "summoned to appear at an interrogation concerning his residency." Compl. ¶ 23. On learning of this, the family living in the Melrose Park home voluntarily moved out and Cannici moved back in. In June 2016, Fire Chief Beltrame filed a "Statement of Charges" alleging that Cannici had violated the Village's residency ordinance and requesting a hearing before the Board

of Commissioners.<sup>3</sup> According to Cannici, prior to the hearing, the Board's counsel engaged in ex parte communications with the prosecuting attorney. Specifically, Cannici alleges that the Board's counsel notified the prosecuting attorney of a status hearing in the case without giving notice to Cannici's counsel. In addition, Cannici asserts that the Board's Counsel sent the prosecuting attorney case law addressing issues relevant to Cannici's case. When Cannici became aware of the communications, he filed a motion to disqualify the prosecuting attorney and to reappoint the Board's counsel. The motion was summarily denied.

The hearing on the charges against Cannici was held before the Board on August 4, 2016. Cannici submitted a brief at the hearing, arguing that since his residency in the Village had previously been established, he was not required under Illinois law to maintain a physical presence in Melrose Park, so long as he had no intention of abandoning his residency. Cannici also testified at the hearing, explaining the circumstances surrounding his decision to rent his

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<sup>3</sup> The ordinance provides:

Each and every officer and employee of the village, unless exempted by this chapter, must be a resident of the village as that term has been defined herein. Each and every officer must maintain resident status during his or her term of office. Each and every employee must maintain resident status during his or her period of employment.

home, and stating that he never had any intention of abandoning his Melrose Park residency. Neither party presented any other evidence at the hearing.

On August 24, 2016, the Board issued an order on the charges against Cannici. After reviewing the evidence in the case, the order concluded that Cannici had violated the residency ordinance and that his employment would be terminated. Cannici maintains that the Board's decision mischaracterized his testimony, disregarded the evidence, and misapplied the law. In addition, he contends that although several other Melrose Park firefighters had living arrangements similar to his own, only he was charged with violating the residency ordinance.

## II.

“A motion to dismiss under Rule 12(b)(6) does not test the merits of a claim; rather, it tests the sufficiency of the complaint.” *Galvin v. Illinois Republican Party*, 130 F. Supp. 3d 1187, 1190 (N.D. Ill. 2015) (citing *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990)). I consider the defendants' arguments for dismissal of Cannici's § 1983 due process and equal protection claims in turn.

### A. Due Process

To state a procedural due process claim under § 1983, “a plaintiff must allege (1) deprivation of a protected interest, and (2) insufficient procedural protections surrounding that deprivation.” *Michalowicz v. Vill. of Bedford Park*, 528 F.3d 530,



534 (7th Cir. 2008). The defendants do not dispute that Cannici has a protected interest in his employment. At issue is only the sufficiency of the procedural protections surrounding his termination.

Procedural due process claims are of two types: “(a) claims based on established state procedures and (b) claims based on random, unauthorized acts by state employees.” *Leavell v. Illinois Dep’t of Nat. Res.*, 600 F.3d 798, 804 (7th Cir. 2010) (quotation marks omitted). Cannici does not allege that his due process rights were violated by an established state procedure. Rather, he claims that the defendants failed to implement or abide by the procedures in a fair manner. Hence, Cannici’s due process claim is based on the “random and unauthorized actions of the state officials ... in failing to follow the requirements of existing law.” *Michalowicz*, 528 F.3d at 535 (quotation marks omitted).

Because random and unauthorized misconduct is “inherently unpredictable, the state’s obligation under the Due Process Clause [in such cases] is to provide sufficient remedies after its occurrence, rather than to prevent it from happening.” *Id.* Thus, “for a plaintiff alleging a procedural due process claim based on random and unauthorized conduct of a state actor, the plaintiff must either avail herself of state post-deprivation remedies or demonstrate that the available remedies are inadequate.” *Leavell*, 600 F.3d at 805 (quotation marks omitted).

Here, Illinois’ Administrative Review Act provides Cannici with a post-deprivation remedy. Cannici did

not previously seek review under the Act. (Rather, he seeks to do so in the instant action). Nor has he alleged that review under the Act would be an inadequate remedial measure. Courts have in fact repeatedly held that the Administrative Review Act provides a remedy for the sort of due process violations alleged here. *See, e.g., Michalowicz*, 528 F.3d at 536-37; *Leavell*, 600 F.3d at 806 (due process claim failed because adequate review was available in state court); *Stachowski v. Town of Cicero*, 425 F.3d 1075, 1078 (7th Cir. 2005) (“Stachowski could have sought administrative review of the Board’s final decision under the Illinois Administrative Review Act.... Stachowski’s failure to pursue the procedures available to him does not give rise to a due process claim.”).

Rather than addressing the state’s post-deprivation remedies, Cannici contests the adequacy of the pre-deprivation protections afforded him. He argues that based on the alleged *ex parte* communications between the Board’s attorney and the prosecuting attorney, together with what he characterizes as the Board’s one-sided decision, he was denied a meaningful opportunity to be heard. It is firmly established, however, that “when adequate post-termination protections exist, a pretermination hearing need only provide an initial check against mistaken decisions -- essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.” *Michalowicz*, 528 F.3d at 536–37 (quotation marks omitted). These requirements are satisfied here: prior to the

termination hearing, Cannici was notified of the charges against him and he had an opportunity to file a motion challenging the alleged ex parte communications between the prosecuting attorney and the Board's counsel. At the hearing, moreover, Cannici was represented by counsel, he had an opportunity to testify, and he submitted briefing on pertinent legal issues.

In short, because Cannici has neither availed himself of post-deprivation remedies nor alleged the inadequacy of those remedies, he has failed to state a procedural due process claim under § 1983.

### **B. Equal Protection**

Cannici's equal protection claim is based on the defendants' alleged selective enforcement of the Village's residency ordinance. He argues that several other members of the Village's fire department have not maintained residences in Melrose Park but, unlike him, were never charged with violating the ordinance. Cannici does not allege that he was treated unequally as a result of his membership in a protected class. Instead, his equal protection claim is based on a "class-of-one" theory. To prevail on a class-of-one equal protection claim, Cannici "must show that [he] was intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Black Earth Meat Mkt., LLC v. Vill. of Black Earth*, 834 F.3d 841, 851 (7th Cir. 2016) (quotation marks omitted).

Cannici's equal protection claim is foreclosed by the Supreme Court's decision in *Engquist v. Oregon Department of Agriculture*, 553 U.S. 591 (2008), which expressly held that the "class-of-one theory of equal protection has no place in the public employment context." *Id.* at 594 (quotation marks omitted). The Court explained that the class-of-one theory presupposes the "existence of a clear standard against which departures, even for a single plaintiff, could be readily assessed." *Id.* at 602. As the Court pointed out, however, decisions in the employment context "are quite often subjective and individualized, resting on a wide array of factors that are difficult to articulate and quantify." *Id.* at 604. While the Constitution forbids the government from treating citizens differently based on subjective, individualized considerations when it acts as legislator or regulator, the government is not subject to the same constraints when acting as proprietor or employer. *Id.* at 604. Without the ability to make these sorts of distinctions, the Court observed, governmental entities would be unable to carry about their functions. *Id.* at 607-08.

Because Cannici challenges his termination as a public employee, his class-of-one equal protection claim is precluded by *Engquist*. Cannici argues that *Engquist*'s holding is limited to employment decisions that are highly individualized and discretionary in nature. He contends that *Engquist* does not apply in his case because the Board's decision was confined to the narrow question of whether he had violated the residency ordinance. But the Seventh Circuit has made clear that "[u]nder *Engquist*, the prohibition on

class-of-one claims in the public employment context is categorical.” *Geinosky v. City of Chicago*, 675 F.3d 743, 747 (7th Cir. 2012).<sup>4</sup> Courts have consistently rejected attempts to carve out exceptions to *Engquist*’s holding in the employment context, *see, e.g., Burge v. Rogers*, No. 13 C 6399, 2014 WL 2118739, at \*1 (N.D. Ill. May 21, 2014) (“Plaintiffs argue that *Engquist* allowed the possibility that public employees may bring class-of-one equal protection claims under extraordinary circumstances, but that argument cannot be reconciled with *Geinosky*.”), and have specifically rejected such arguments based on selective enforcement of residency requirements, *see, e.g., Reiff v. Calumet City*, No. 10 C 5486, 2014 WL 4460457, at \*3 (N.D. Ill. Sept. 10, 2014); *Langmead v. Monroe Cty. Office of Sheriff*, No. 11-CV-6003-CJS, 2013 WL 3759958, at \*5 (W.D.N.Y. July 15, 2013).

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<sup>4</sup> Cannici cites the court’s remark in *Abcarian v. McDonald*, 617 F.3d 931 (7th Cir. 2010), that *Engquist* “has limited applicability when a decisionmaker’s discretion is circumscribed by constitutional or statutory provisions.” *Id.* at 939. In that passage, however, the court was referring to *Engquist*’s application in settings other than employment. To illustrate its point, *Abcarian* cited *Hanes v. Zurick*, 578 F.3d 491 (7th Cir. 2009), which involved a claim alleging that police officers had violated the plaintiff’s equal protection rights by selectively singling him out for arrest.

In sum, Cannici's class-of-one equal protection claim is barred by *Engquist*. Accordingly, Count III of his complaint is dismissed.<sup>5</sup>

III.

For the reasons discussed above, I dismiss Counts II and III of Cannici's complaint and remand his remaining claim for administrative review to the Circuit Court of Cook County.

/s/ Elaine E. Bucklo  
Elaine E. Bucklo  
United States  
District Judge

Dated: January 27, 2017

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<sup>5</sup> The Board Members additionally argue that they are entitled to quasi-judicial immunity. Because I conclude that Cannici's claims fail on the merits, I do not reach this issue.

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APPENDIX C

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IN THE CIRCUIT COURT OF COOK COUNTY,  
ILLINOIS  
County Department, Chancery Division

No. 2016 CH 12700.

John Cannici, Plaintiff,  
v.  
Village of Melrose Park, Illinois, *et al.*, Defendants.

Before the Honorable Judge Neil H. Cohen

**ORDER**

This matter coming to be heard on whether a remedy should be ordered and if so what remedy, IT IS HEREBY ORDERED:

1. The Court finds Mr. Cannici's procedural due process rights were violated;
2. The Court finds Mr. Cannici has not established he was prejudiced by the due process violation;
3. Mr. Cannici's motion for leave to take discovery is denied;
4. This matter is dismissed.

Order prepared by:

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Attorney No: 45037  
Name: Ruth Major  
Atty. for: Plaintiff  
Address: 30 W. Monroe, #1650  
City/State/Zip: Chicago, IL 60603  
Telephone: 312/893-7544

ENTERED:

/s/ Judge Neil H. Cohen

Dated: June 4, 2018



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APPENDIX D

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IN THE CIRCUIT COURT OF COOK COUNTY,  
ILLINOIS  
County Department, Chancery Division

No. 2016 CH 12700.

JOHN CANNICI, Plaintiff,

v.

VILLAGE OF MELROSE PARK, ILLINOIS,  
BOARD OF FIRE AND POLICE COMMISSIONERS  
OF MELROSE PARK, ILLINOIS, MICHAEL  
CAPUTO, MARK RAUZI and PASQUALE  
ESPOSITO, Members of the Board of Fire and Police  
Commissioners of Melrose Park, RICHARD  
BELTRAME, Melrose Park Fire Chief, and  
RONALD SERPICO, Mayor of Melrose Park,  
individually and in their official capacities,  
Defendants.

**VERIFIED COMPLAINT FOR ADMINISTRATIVE  
REVIEW AND FOR OTHER CLAIMS AND RELIEF**  
(Without Exhibits)

Plaintiff, John Cannici, (“Firefighter Cannici”), by  
his attorneys, for his Verified Complaint for  
Administrative Review against the Defendants,  
alleges as follows:

**SUMMARY OF THE CLAIMS**

1. Count I is an action for administrative review under Illinois law. Plaintiff seeks review of the Board's Order finding that Firefighter Cannici violated Section 2.52.020 of the Village's Code of Ordinances (hereinafter the "Residency Ordinance") and terminating his 16-year employment pursuant to 735 ILCS 5/3-101 et seq., because the findings were against the manifest weight of the evidence and contrary to Illinois law. The Board's decision, entitled Order on the Charges Against John Cannici, (hereinafter "Order on the Charges") is attached hereto as Exhibit 1. In reaching its decision, the Board disregarded the overwhelming evidence that Mr. Cannici did not abandon his Melrose Park residency, including his undisputed testimony, and ignored Illinois case law. It is well-settled law that once residency is established, it can only be lost if there is sufficient evidence of an intent to abandon residency and physical absence from the jurisdiction is no longer determinative. In this case, despite what the Board recognized as "voluminous evidence" that Firefighter Cannici continued to receive mail at his Melrose Park residence, voted in Melrose Park, kept his personal property in Melrose Park and leased out only a portion of his Melrose Park home on a temporary basis, the Board nevertheless disregarded

Firefighter's Cannici's testimony, and the overwhelming documentary evidence, and based its findings on mere speculation. It also outright rejected the Illinois Supreme Court's decisions on residency by requiring physical presence in the jurisdiction even though the Supreme Court of Illinois has long held physical presence is not required once residency has been established so long as there has not been an intent to abandon residency. The Order on the Charges also heavily relied on the place of residency of Firefighter Cannici's wife and children despite Illinois precedent holding such evidence is not controlling.

2. Counts II and III are claims for violations of Plaintiff's Constitutional due process and equal protection rights brought pursuant to 42 U.S.C. § 1983. Through these counts Plaintiff seeks money damages and injunctive relief. The Defendants violated Firefighter Cannici's due process rights by applying more stringent standards for residency to Firefighter Cannici than those applied to other Firefighters and Village employees as it concerns investigations of such claims as well as in connection with the enforcement of the Residency Ordinance, and by failing to comply with the Illinois Administrative Code provision governing the conduct of hearings, specifically 5 ILCS 100/10-60(a), which prohibits the

Board from communicating *ex parte* with a person or party in connection with a matter before the Board. Here, the Board's legal counsel gave special notice of a hearing to counsel for the Fire Department, but failed to provide such notice to Firefighter Cannici, and also provided legal guidance to counsel for the Fire Department, even sending him a copy of an Illinois appellate court decision addressing the standard for overturning administrative decisions in Illinois. The Board also denied Firefighter Cannici a fair hearing by ignoring evidence favorable to Firefighter Cannici, ignoring well-settled controlling case law and misrepresenting the record, among other things.

### **THE PARTIES**

3. Plaintiff John Cannici grew up in Melrose Park, Illinois. He was a firefighter with the Melrose Park Fire Department for 16 years, from June of 2000 until August 24, 2016 when his employment was involuntarily terminated. He is a resident of Melrose Park, Illinois, which is located in Cook County, Illinois.
4. Defendant The Village of Melrose Park is a suburb of Chicago and is located in Cook County, Illinois.
5. Defendant The Board of the Fire and Police Commissioners of Melrose Park,

Illinois is the administrative agency under Illinois law. It is responsible for conducting administrative hearings in accordance with its Rules and Regulations, the Municipal Code of the Village of Melrose Park and due process. At the time Firefighter Cannici's employment was terminated, it was comprised of three members: Defendants Michael Caputo, Mark Rauzi and Pasquale Esposito.

6. Defendant Richard Beltrame is the Fire Chief for Melrose Park. He is a resident of Cook County. He is the highest ranking officer of the Melrose Park Fire Department.
7. Defendant Ronald Serpico is the Mayor of Melrose Park. He is a resident of Cook County. He is the highest ranking officer of Melrose Park.

### **JURISDICTION AND VENUE**

8. The Circuit Court of Cook County has jurisdiction to hear this complaint for review pursuant to 735 ILCS 5/3-104. Venue is proper as the hearing was held in Melrose Park, Illinois which is in Cook County.

### **FACTUAL BACKGROUND**

- A. **Firefighter Cannici's Residency in Melrose Park**

9. Firefighter Cannici spent the vast majority of his childhood and adult life living in Melrose Park.
10. After graduating from college, Firefighter Cannici chose a career working for the Melrose Park Fire Department and continued to live in Melrose Park. At the time of his termination, he had been a firefighter for Melrose Park for 16 years.
11. In 2000, Firefighter Cannici bought his own home in Melrose Park on Broadway Avenue. In 2002, he married and continued to live in the Broadway home in Melrose Park with his wife.
12. In 2003, Firefighter Cannici listed the Broadway home in Melrose Park for sale and then looked for and found a new home in Melrose Park on Norwood Street. This would be the third house in Melrose Park in which Firefighter Cannici lived.
13. When Firefighter Cannici and his wife had their first child, Marco, in 2004, they continued to live in Melrose Park. They remained in Melrose Park through the birth of their second child, Annabella, in 2006 and for two years following. During this time, when the Cannicis were unavailable due to work, the Cannici children were cared for by Ms. Cannici's parents who reside in Orland Park, Illinois.
14. Taking the children to their grandparents' home was not difficult for

Ms. Cannici, as she owns and operates a hair salon in Orland Park, which is her full time occupation. The arrangements worked well because the children were not in school and, accordingly, once dropped off at the grandparents' home they remained there until picked up by one of their parents.

**B. Firefighter Cannici's Family Moved to Orland Park but He Remained Living in Melrose Park for Years After Their Move**

15. In 2008, as Firefighter Cannici's first child was approaching school age, the Cannicis were confronted with a dilemma shared by many households across the country. Specifically, figuring out how to get their older child, who lived with his parents and sister in Melrose Park, to and from school in Melrose Park every morning, and then to his grandparents' home in Orland Park after school every afternoon.
16. The grandparents would be the ones primarily responsible for picking up the children from grammar school because of the time school typically ends. It would be difficult for the grandparents to travel 45 minutes or more each way between Orland Park and Melrose Park to pick up the older child from school, and for the first few years it would mean the younger child would make the trip twice each day,

- once in the morning and later to pick up her older brother from school.
17. The Cannicis determined that the most practical option was for Ms. Cannici and the children to live in a home in the Orland Park area while Firefighter Cannici lived in the Melrose Park home. Ms. Cannici and the children could visit the Melrose Park home on the weekends and Mr. Cannici could visit the Orland Park home as well.
  18. In 2008, the Cannicis purchased a home in Orland Park at which time Ms. Cannici and the children moved in. Though his family lived in Orland Park, Firefighter Cannici remained in his Melrose Park home for the next five years.
  19. During this time period, Firefighter Cannici received many offers to rent his house but turned down each of the offers. He listed his home for sale at one point and at the same time began a search for another smaller home in Melrose Park. When he saw the price comparison between what he was listing his house for and what he could buy for less money he decided it made more sense to keep the Norwood home.

**C. Firefighter Cannici Allows a Family in Distress to Live in His Melrose Park Home Only Until They Can Get Through a Difficult Period in Their Lives but Consistently**



**Recognized the Melrose Park Home as His  
Place of Residence**

20. In 2013, Firefighter Cannici was contacted by a neighbor, also a Melrose Park resident, about the neighbor's sister and her family (the "Cichons") who had recently lost a newborn child and were going through financial difficulties. The family was expecting the birth of another child. Firefighter Cannici was asked whether he would be willing to allow the family to live in the Melrose Park home with him for a temporary period of time. After careful consideration, Firefighter Cannici agreed to help out but determined it would be easier for the family to live in the house alone. Because of their troubles, Firefighter Cannici charged them rent at a rate significantly lower than what he could have received from other potential renters in the preceding five years.
21. While renting, he continued to treat the Melrose Park home as his residence. He made it clear in the lease that the leasing was temporary and did not extend the lease after the first year. He also only leased out a portion of the home, reserving the remainder of the home for his use. He kept personal belonging in the home, ensured that he could access the home by putting a specific provision in the lease confirming his right to do so,

paid the utilities for the Melrose Park home, paid the taxes for the Melrose Park home, received all of his mail at the Melrose Park home, and confirmed the Melrose Park address as his home in all of his professional and personal matters, including in his children's school documents, his drivers' license, his teaching license, his insurance papers, his automobile city sticker and his voters' registration. Indeed, he continued to vote in all elections after 2013 in Melrose Park. Firefighter Cannici presented substantial testimonial and documentary evidence at the hearing confirming that he has consistently recognized the Melrose Park home as his residence including while he was renting part of the home to the Cichons.

22. When the initial lease expired and the family did not move out, Firefighter Cannici did not renew the lease. The plan was that the family would leave when they identified suitable housing.

**D. Firefighter Cannici Resided in Melrose Park and was Living in the Melrose Park Home at the Time This Charge was Filed but the Charge Falsely Stated He was Not**

23. In May of 2016, Firefighter Cannici was summoned to appear at an interrogation concerning his residency. At that time, Firefighter Cannici notified the family to

whom he was renting part of the Norwood Home that he was being investigated due to their presence in his home. The family was taken aback and sorry for his situation since he had been helping them. They said they would move out of the home and then did in fact move out of the home.

24. Since June of 2016, Firefighter Cannici has been living at the Melrose Park home and his family has visited him there as well.
25. At all times relevant to this Complaint, Firefighter Cannici was covered by the Fire Protection District Act, 70 ILCS 705/1 *et seq.*
26. Section 16.13b of the Fire Protection District Act provides, *inter alia*, that “no officer or member of the fire department of any protection district who has held that position for one year shall be removed or discharged except for just cause, upon written charges specifying the complainant and the basis for the charges, and after a hearing on those charges before the board of fire commissioners, affording the office or member an opportunity to be heard in his own defense.” 70 ILCS 705/16.13b.
27. Section 16.13b of the Fire Protection District Act provides, *inter alia*, that “if written charges are brought against an office or member, the board of fire commissioners shall conduct a fair and

impartial hearing of the charges.” 70 ILCS 705/16.13b.

28. After learning that Firefighter Cannici was living at the Melrose Park home, the Village nevertheless filed charges against him seeking to terminate his long-term employment with the Village’s Fire Department.
29. Though living in the Melrose Park home, the Village contended that he was not a resident of Melrose Park in the Statement of Charges.
30. In the Statement of Charges, filed after Firefighter Cannici notified Fire Chief Beltrame that he was living in his Melrose Park home, the Fire Chief nevertheless falsely stated that Firefighter Cannici has “not slept in the Norwood House for many years.” (Statement of Charges attached hereto as Exhibit 2, paragraph 12). He knew at the time the Statement of Charges was filed that Firefighter Cannici was living in his Melrose Park home.
31. The Residency Ordinance requires that an employee of the Village must be a “resident.” Resident is defined as a “natural person who occupies a residence, as hereinbefore defined, as his or her principal place of residence and abode.”
32. The Residency Ordinance requires that the employee maintain “residency status.”

33. The Residency Ordinance does not define the term “residency status.”
34. The Residency Ordinance does not define the term “residency.”
35. Under the Residency Ordinance, the penalty for violation is specifically set forth in Section 2.52.110 under the heading “Violation-Penalty”.
36. The penalty for violation of the Residency Ordinance is “suspension without pay.”
37. The “penalty” of suspension without pay under the Residency Ordinance may only be in place until the employee is in compliance with the Residency Ordinance or is discharged.
38. The Village never suspended Firefighter Cannici without pay.
39. Discharge under the Residency Ordinance is only permitted when an employee “fails to meet or comply” with the residency requirements. Section 2-52-060(E).
40. The Village discharged Firefighter Cannici even though he was living in his Melrose Park home at the time of the discharge.

**E. The Board, Through Its Counsel, Engaged in Improper *Ex Parte* Communications with Counsel for the Fire Department About this Matter After the Charges were Filed but Prior to the Hearing and the Board Took No Action to Correct the Problem**

41. After filing the Statement of Charges, Fire Chief Beltrame's attorney who was prosecuting the charges, communicated repeatedly *ex parte* with legal counsel for the Board concerning this matter.
42. Counsel for Fire Chief Beltrame was invited by counsel for the Board to appear before the Board on the first date this matter was scheduled although Firefighter Cannici's counsel was not provided with the same personal notice of the meeting and accordingly was not present.
43. Following Fire Chief Beltrame's counsel's *ex parte* meeting with the Board, counsel for the Board and counsel for the Fire Chief continued to discuss this matter *ex parte*.
44. Counsel for the Board even sent, *ex parte*, an appellate decision explaining the standard for overturning administrative decisions to counsel for Chief Beltrame.
45. Upon learning of the ongoing *ex parte* communications, which Firefighter Cannici considered improper, Firefighter Cannici filed a Motion to Dismiss or in the Alternative for Reappointment of Counsel to the Board and Disqualification of Prosecutor. (A copy of the Motion to Dismiss or in the Alternative for Reappointment of Counsel to the Board and

- Disqualification of Prosecutor is attached hereto as Exhibit 3).
46. The Motion to Dismiss or in the Alternative for Reappointment of Counsel to the Board and Disqualification of Prosecutor was denied by the Board without a hearing and without explanation.

**F. In Reaching Its Decision, the Board Disregarded Uncontroverted Evidence Supportive of Firefighter Cannici's Position, Disregarded Well-Settled Illinois Law, Misstated the Evidence and Relied on Speculation That was Contrary to Evidence in the Record**

47. At the hearing on the charges, Firefighter Cannici submitted a brief to the Board. (A copy of the Brief in Support of Firefighter John Cannici is attached as Exhibit 4).
48. In his brief, Firefighter Cannici explained Illinois law on residency issues, including the following quote from *Maksym v. Board of Election Com'rs of City of Chicago*, 242 Ill. 2d 303 (2011): The two required elements are: (1) physical presence, and (2) an intent to remain in that place as a permanent home. Once residency is established, the test is no longer physical presence but rather abandonment, the presumption is that residency continues, and the burden of proof is on the contesting party

to show that residency has been abandoned. Both the establishment and abandonment of a residence is largely a question of intent, and while intent is shown primarily from a candidate's acts, a candidate is absolutely competent to testify as to his intention, though such testimony is not necessarily conclusive.

49. Despite being briefed on the law, in its Order on the Charges Against John Cannici, the Board acknowledged that Firefighter Cannici had established residency, but then based its termination decision in large part on the fact that he did not sleep in his Melrose Park home for three years. (See Ex. 1, pp. 2-5).
50. The Order on the Charges also contains intentional misstatements of the record.
51. The Order on the Charges states, *inter alia*, "Cannici claims that the termination of the lease was coincidental to the residency investigation." (Ex. 1, p. 4).
52. Firefighter Cannici never testified that the termination of the lease was coincidental to the residency investigation.
53. Firefighter Cannici testified just the opposite. He testified as follows:  
Q: And the reason why you terminated that lease is because you were aware that your residency was being investigated, isn't it?



A: I mentioned it to them, and they said that they don't want to cause me any problems, that I've helped them enough. And they said, We're going to leave the house. And, you know, so they left the house.

(Report of Proceedings, August 4, 2016, p. 28, lines 8-15, attached hereto as Exhibit 5).

54. As to any coincidences concerning the departure of the Cichons, Firefighter Cannici testified that the fact they actually moved out of his home the day of his interrogation was coincidental. (Ex. 5, p. 59, lines 19-23).
55. The Order on the Charges also states that Firefighter Cannici made an "admission that he was not residing in the Melrose Park while he rented the home to the Cichons." (Ex. 1, p. 4).
56. Firefighter Cannici did not testify that he was not a resident of Melrose Park while he rented the home to the Cichons.
57. Firefighter Cannici testified that he never had any intention of *not* maintaining his residency in Melrose Park while the Cichons were living in the Norwood home. (Ex. 5, p. 57, lines 16-23).
58. Firefighter Cannici testified that he never had any intention of *not* maintaining his residency in Melrose Park while the Cichons were living in

the Norwood home. (Ex. 5, p. 57, lines 16-23).

- 59. Firefighter Cannici testified that the neighbor approached him concerning the Cichons about the time of the Rahm Emmanuel case concerning residency issues. (Ex. 5, p. 40, lines 14-15).
- 60. Firefighter Cannici testified that he read up on the case to determine what he could do to help out this family and maintain his residency. (Ex. 5, p. 40, lines 15-18).
- 61. Firefighter Cannici's testimony confirms he wanted to comply with Illinois law.
- 62. The Board, with no supporting evidence, found that Firefighter Cannici's efforts to know the law were so that he could "avoid the Village's residency ordinance." (Ex. 1, p. 5).
- 63. There was no evidence presented to the Board that Firefighter Cannici looked into the law regarding residency for any reason other than to ensure he was in compliance with the law.
- 64. There was no evidence presented at the hearing before the Board showing that Firefighter Cannici had ever been reprimanded or disciplined for being untruthful in his 16 years as a Firefighter for Melrose Park.
- 65. There was no evidence presented at the hearing before the Board contradicting any of Firefighter Cannici's testimony before the Board.

- 66. There was no evidence presented at the hearing before the Board contradicting the documentary evidence presented at the hearing before the Board by Firefighter Cannici.
- 67. Firefighter Cannici was the only witness called to testify at the hearing before the Board.

**G. Defendants Applied a Different Standard to Firefighter Cannici Than They Did to Other Village Employees**

- 68. Defendants are aware of other employees of the Village, including employees of the Fire Department, whose families live in towns other than Melrose Park but who have not had charges brought against them for violations of the Village's residency ordinance.
- 69. Upon information and belief, the wife and children of Firefighter Pasquale Fioccola, who is Board member Pasquale Esposito's nephew, do not reside in Melrose Park.
- 70. Defendant Pasquale Esposito voted to terminate the employment of Firefighter Cannici.
- 71. The Order on the Charges, signed by Defendant Esposito repeatedly states in the Findings and Decision section information concerning the residency of Firefighter Cannici's wife and children.

- (Ex. 1, paragraph 10 (wife purchased a home in Orland Park), paragraph 13 (wife and children moved to Orland Park), paragraph 14 (Cannici children attend Orland Park school), paragraph 15 (Cannici's wife registered to vote in Orland Park), paragraph 16 (Cannici's wife lists Orland Park as her residence).
72. The Residency Ordinance does not require that the spouse or children of a Melrose Park employee reside in Melrose Park.
73. The children and wife of Firefighter August Taddeo do not even live in the State of Illinois. His family lives in Wisconsin.
74. Firefighter August Taddeo's children have attended middle school and high school in Wisconsin.
75. Firefighter August Taddeo does not own a home in Melrose Park.
76. Firefighter August Taddeo owns a home in the City of Lake Geneva, Walworth County, Wisconsin.
77. Firefighter August Taddeo owns a business in Wisconsin which is registered in Wisconsin.
78. Firefighter August Taddeo's vehicles are registered to the home he owns in Wisconsin.
79. Firefighter August Taddeo claims he lives with his parents in Melrose Park.
80. Firefighter August Taddeo has not been targeted for termination.

81. The Mayor of the Village, Defendant Serpico, even assisted in representing a Fire Department employee who sold his home in Melrose Park and bought a home in another town even while remaining an employee of the Melrose Fire Department. He was aware that the Village was taking action against Firefighter Cannici while turning a blind eye to other Village employees in similar situations.
82. Captain Kenneth Greifelt and his wife Carlene Buvak Greifelt have registered one of their vehicles to a home on Ashland Avenue in River Forest, Illinois.
83. Captain Kenneth Greifelt and his wife list their residence as the Ashland home in River Forest, Illinois.
84. Since Defendant Serpico (Mayor of Melrose Park) served as Captain Kenneth Greifelt's attorney in selling his Melrose Park home in 2009, Captain Kenneth Greifelt has not owned a home in Melrose Park.
85. Captain Kenneth Greifelt has not been terminated as has Firefighter Cannici.
86. Captain Kenneth Greifelt remains a Captain with the Melrose Park Fire Department.
87. Counsel for the Fire Department was advised that the families of Captain Kenneth Greifelt, Firefighter August Taddeo and Firefighter Pasquale Pioccola do not live in Melrose Park.

88. Counsel for Fire Department was advised that Captain Kenneth Greifelt does not own property in Melrose Park but rather owns property and lives in River Forest.
89. In at least the last five years, Firefighter Cannici is the only Firefighter to be terminated based on the Residency Ordinance.

### **COUNT I – ADMINISTRATIVE REVIEW**

90. Firefighter Cannici repeats and reasserts the allegations of paragraphs 1 through 89 as if fully restated herein.
91. The Order on the Charges Against John Cannici were mailed on August 25, 2016.
92. The Order on the Charges Against John Cannici shown in Exhibit 1 constitutes a final administrative decision of Defendant The Board of Fire and Police Commissioners of Melrose Park, Illinois (the “Board”).
93. The Verified Complaint for Administrative Review and For Other Claims and Relief was timely filed within 35 days after service of the final administrative decision in accordance with 735 ILCS 5/3-101 *et seq.*
94. The decision of the Board should be reversed for one or more of the following reasons:
  - a. it is contrary to law;
  - b. it is an abuse of discretion;

- c. it is against the manifest weight of the evidence; and
  - d. the Board did not comply with the Illinois Administrative Act's, 735 ILCS 5/3-101 *et seq.* in conducting the hearing.
95. Defendant Board maintained a record of the entire proceedings in this cause which should be filed with this Court for review.
96. Pursuant to 735 ILCS 5/3-105, counsel for Firefighter Cannici has attached an Affidavit providing the name and last known address of each Defendant upon whom service shall be made. (Affidavit in accordance with 735 ILCS 5/3-105 attached hereto as Exhibit 6).

**WHEREFORE**, Plaintiff John Cannici respectfully requests the entry of judgment in his favor and against the Board of Fire and Police Commissioners of Melrose Park, Illinois as follows:

- A. That the decision of the Board of Fire and Police Commissioners of Melrose Park, Illinois be reviewed and reversed;
- B. That Plaintiff John Cannici be awarded compensatory damages including but not limited to back pay to cover the period of termination;
- C. That Plaintiff John Cannici be reinstated to his position as a firefighter with the Village of Melrose Park at the rate of pay and benefits he would have but for the termination;
- D. Such other relief as this Court deems just.

**COUNT II – VIOLATION OF FEDERAL  
DUE PROCESS RIGHTS (PROCEDURAL)  
(Defendants Board, Caputo, Rauzi, Esposito and  
Beltrame)**

97. Firefighter Cannici repeats and reasserts the allegations of paragraphs 1 through 96 as if fully restated herein.
98. 42 U.S.C. § 1983 provides that “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”
99. The 14th Amendment to the U.S. Constitution provides that “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”
100. Defendants Board, Caputo, Rauzi, Esposito and Beltrame terminated Firefighter Cannici’s employment with



knowledge that the attorney prosecuting the matter had engaged in *ex parte* discussions with the Board, through counsel.

101. Defendant Beltrame brought charges to terminate Firefighter Cannici's employment, and Defendants Board, Caputo, Rauzi, and Esposito terminated Firefighter Cannici's employment, by disregarding controlling legal precedent, ignoring undisputed testimony and evidence that was favorable to Firefighter Cannici, relying on speculation that was contrary to the undisputed evidence admitted at the hearing, and by misrepresenting the evidence in the case in its decision to terminate Plaintiff's employment.
102. The Defendants' conduct described herein was done with malice or reckless disregard for Firefighter Cannici's Constitutional rights.
103. As a direct and proximate result of Defendants' conduct, Firefighter Cannici has suffered damages, including but not limited to, lost wages, lost benefits, loss of future employment commensurate with his experience and professional standing, loss of status and self-esteem, incidental damages, great expense, and pain and suffering in the form of emotional distress, embarrassment, and humiliation.

**WHEREFORE,** Plaintiff Firefighter Cannici respectfully requests the entry of judgment in his favor and against Defendants as follows:

- A. An award of compensatory damages in an amount to be proven at trial;
- B. An award of punitive damages as to the individual Defendants;
- C. An award of prejudgment interest;
- D. An award to Plaintiff for reasonable attorneys' fees and costs; and
- E. All other relief this Court deems just.

**COUNT III – VIOLATION OF FEDERAL  
EQUAL PROTECTION RIGHTS  
(All Defendants)**

- 104. Firefighter Cannici repeats and reasserts the allegations of paragraphs 1 through 103 as if fully restated herein.
- 105. 42 U.S.C. § 1983 provides that “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”
- 106. The actions of the Defendants, while acting under the color of state law,

- denied Firefighter Cannici equal protection of the laws, as provided for in the 14th Amendment to the U.S. Constitution.
107. Defendants have engaged in a pattern of selectively investigating and enforcing the Residency Ordinance.
  108. The Defendants' conduct described herein was done with malice or reckless disregard for Firefighter Cannici's Constitutional rights.
  109. As a direct and proximate result of Defendants' conduct, Firefighter Cannici has suffered damages, including but not limited to, lost wages, lost benefits, loss of future employment commensurate with his experience and professional standing, loss of status and self-esteem, incidental damages, great expense, and pain and suffering in the form of emotional distress, embarrassment, and humiliation.

**WHEREFORE,** Plaintiff Firefighter Cannici respectfully requests the entry of judgment in his favor and against Defendants as follows:

- A. An award of damages for back pay, front pay, and other equitable relief;
- B. An award of compensatory damages in an amount to be proven at trial;
- C. An award of punitive damages as to the individual Defendants;
- D. An award of prejudgment interest;

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- E. An award to Plaintiff for reasonable attorneys' fees and costs; and
- F. All other relief this Court deems just.

**JURY DEMAND**

Plaintiff demands trial by jury on all issues so triable.

Respectfully Submitted,

**JOHN CANNICI**

By: /s/ Ruth I Major  
One of His Attorneys

Dated: September 26, 2016

Ruth I. Major  
The Law Offices of Ruth I. Major, PC  
30 W. Monroe, Suite 1650  
Chicago, IL 60603  
Telephone: 312.893.7544  
rmajor@major-law.com

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**VERIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

By: /s/ John Cannici

Dated: September 23, 2016

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APPENDIX E

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IN THE CIRCUIT COURT OF COOK COUNTY,  
ILLINOIS

County Department, Chancery Division

No. 2016 CH 12700.

JOHN CANNICI, Plaintiff,

v.

VILLAGE OF MELROSE PARK, ILLINOIS, *et*  
*al.*, Defendants.

Excerpt from the Transcript of Proceedings before  
the Honorable Judge Neil H. Cohen

May 7, 2018 at 10:03 a.m.

Present:

LAW OFFICES OF RUTH I. MAJOR, P.C.,  
30 West Monroe Street, Suite 1650,  
Chicago, Illinois 60603,  
312-893-7544, by:  
MS. RUTH I. MAJOR,  
rmajor@major-law.com,  
appeared on behalf of the Plaintiff;

LANER MUCHIN,  
515 North State Street, Suite 2800,  
Chicago, Illinois 60654,  
312-467-9800, by:

MR. JEFFREY S. FOWLER,  
jfowler@lanermuchin.com,  
appeared on behalf of the  
Village of Melrose Park and  
Richard Beltrame;

HARTIGAN & O'CONNOR, P.C.,  
53 West Jackson Boulevard, Suite 460,  
Chicago, Illinois 60604,  
312-235-8880, by:  
MR. PATRICK O'CONNOR,  
patoconnor@hartiganlaw.com,  
appeared on behalf of the Board of Fire  
and Police Commissioners of Melrose Park,  
Michael Caputo, Mark Rauzi and  
Pasquale Esposito.

REPORTED BY: Karen L. Pileggi, CSR, RMR, CRR.  
CSR License No. 84-3404

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MS. MAJOR: To be clear on a couple of issues,  
we believe there is a pending civil rights action in  
front of you and that's the due process claim that is  
here, and we believe that's what we brought to this  
Court and we believe the 7th Circuit has indicated  
that they believe it's going to be addressed.

Just for the record, we do –

THE COURT: Just for the record, again, I  
don't care about what the 7th Circuit believes. I am  
not run by the 7th Circuit. I don't care.

You told the 7th Circuit I made certain findings. I'm not going to argue the point with you, but perhaps their decision is based upon the assertions you made.

As you can see with my response today, I am taking your position as a given fact for purposes of the oral argument about what the remedy should be.

I didn't say that I found it necessarily, but let's assume I made a strong case in your favor that it's wrong for someone to have an ex parte conversation with a board that has to make a decision about what's going to happen.

I don't think there's any question about that, even though the Village of Melrose Park does. My question is, what's the remedy?

I'd like you to understand something. I don't care what the 7th Circuit says. So you keep talking to me about the 7th Circuit like they are Godlike positions. This is state court.

MS. MAJOR: I understand.

THE COURT: I don't think you do because you keep referring to them like I should bow to them.

Judge Rovner is one of my good friends. I love her to death. She doesn't tell this Court what to do.

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