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IN THE  
Supreme Court of the United States

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George Berka,  
*Petitioner,*

v.

City of Middletown,  
*Respondent.*

**On a Petition for a Writ of Certiorari  
to the Connecticut Appellate Court**

**PETITION FOR A WRIT OF CERTIORARI**

Appearances:

For the Petitioner:

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For the Respondent:

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June 6<sup>th</sup>, 2018

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## **QUESTION PRESENTED**

Did the Connecticut Department of Public Health act improperly, and deny the Petitioner his right to due process, by failing to inform him on how to properly appeal its decision to the Connecticut Superior Court?

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## TABLE OF AUTHORITIES

1. SC 170476, "Petition for Certification", Filed: 04-18-2018, Disposed: 05-16-2018
2. AC 39579, "George Berka v. City of Middletown", Filed: 08-31-2016, Disposed: 04-17-2018
3. MMX-CV16-5008777-S, "George Berka v. City of Middletown", Filed: 02-09-2016, Disposed: 07-15-2016

## INTRODUCTION

This case pertains to two legal orders that the Health Department of the City of Middletown, Connecticut (Local Health), had issued to the Petitioner, George Berka, pertaining to his property at 5 Maple Place in Middletown. The orders, which had been issued in October and November of 2014, outlined several alleged violations of local health and housing standards. The central issue that had prompted the Petitioner to initially appeal the matter was a disagreement between the Petitioner and the City over maximum occupancy, and the habitability of certain rooms within the home. The Petitioner had promptly appealed the orders to the Connecticut Department of Public Health (the Health Department). Two hearings were held on the matter at the Health Department in February and November of 2015, and the Petitioner did not prevail in either of them. After the Health Department had informed the Petitioner in January of 2016 that their final decision was not in his favor, the Petitioner had appealed the matter to the Connecticut Superior Court in February of 2016. A brief hearing was held on the matter at the Superior Court in July of 2016. The case was dismissed primarily because the Petitioner had failed to name the Health Department as a party to the appeal, and to serve them. This was required because the matter had been heard at the Health Department prior to being appealed to the Superior Court, and because failure to name and serve the Health Department had “deprived the Superior Court of subject matter jurisdiction”.

## STATEMENT OF THE CASE

The Petitioner had subsequently appealed the matter to the Connecticut Appellate Court in August of 2016, on the grounds that the Health Department had a reasonable obligation to inform him on how to properly appeal its final decision to the Superior Court. This still remains the central issue in this case, which, to this day, has not been fully answered. The Petitioner believes that the Health Department had a reasonable obligation to inform him on how to continue his appeals process because they were the “last party” that he had dealt with, and because the appeals process had technically still not been exhausted for him at that point. As the last party in the process, the Health Department had an obligation to “hand the Petitioner off” to the next party (the Superior Court), with brief instructions on how to get there. This was the precedent that had been set when the process began, when the City had first issued the two legal orders to the Petitioner. The orders had contained instructions on how to appeal them to the Health Department, which the Petitioner had followed, in order to be granted a hearing there. Then, after the Health Department had held its first hearing on the matter, and informed the Petitioner that their first decision was not in his favor, it again provided him with instructions on how to request a review of this decision. These instructions had simply stated that the Petitioner was entitled to a review of the decision, and that he needed to request this review in writing. The Petitioner had again followed these instructions, and was granted the review. After the review, the Health Department had issued its second and final decision on the matter, which was, again, not in the Petitioner’s favor. The Health Department had then informed the Petitioner of this final decision in a letter it called the “Final Memorandum of Decision”. (Note: All

documents and communications associated with this matter are available upon request.)

And this was where communications between the Petitioner and the Health Department had ceased, and the Health Department had considered the matter “closed”. However, the appeals process had still not technically ended for the Petitioner at this point. The next step in the process would have been an appeal to the Superior Court. This would have required drafting an “Application” or a “Complaint” to outline the matter, filling out a Summons form, and serving the documents on the City via a State Marshal. It would have also required setting a return date on the Summons of less than two months after the service of process, and on a Tuesday, and, in this case, also naming the Health Department as a defendant in the matter, in addition to the City, and serving them. Finally, it would have required filing the documents with the Clerk of the Superior Court, and paying the filing fee. These requirements should have been communicated to the Petitioner by the Health Department in a brief set of instructions, perhaps no longer than one page, which should have been included in the Department’s “Final Memorandum of Decision”. And this is where the Petitioner believes the Health Department had failed him. By not providing him with these instructions, it had effectively “cut his appeals process short”, when it was still technically not over, and therefore violated his right to full due process of law. The Appellate Court, instead of addressing this central issue, had focused on whether the Petitioner’s failure to name and serve the Health Department had deprived the Superior Court of subject matter jurisdiction. It had determined that, because of changes made to Section 4-183 of the Connecticut General Statutes over the last 30 or

so years, the Petitioner was no longer required to actually name the Health Department as a party to the appeal, but was, nevertheless, required to still serve them. In its final opinion on the matter, the Appellate Court had therefore upheld the judgment of the Superior Court, and dismissed the Petitioner's appeal because the Petitioner had failed to serve the process upon the Health Department. The Connecticut Supreme Court had then denied the Petitioner's request for certification.

But the Petitioner believes that the central question in his case, which forms the "heart of the issue", still went unanswered. Therefore, he hereby respectfully poses it to the United States Supreme Court, as follows: "Should the Connecticut Health Department have provided the Petitioner with brief instructions on how to continue appealing his case to the Connecticut Superior Court?"

## **OPINIONS BELOW**

The opinions of the Connecticut Appellate Court (AC 39579) and the Connecticut Superior Court (MMX-CV16-5008777-S) in this matter are listed in the Appendix. They are also available on line at the Connecticut Judicial Branch web site.

## **JURISDICTION**

The Connecticut Appellate Court had entered its judgment on April 18<sup>th</sup>, 2018, and the Connecticut Supreme Court had denied a petition for certification on May 16<sup>th</sup>, 2018. Therefore, this Court's jurisdiction is hereby invoked under 28 U.S.C. § 1254 (1).

## **STATUTORY PROVISIONS INVOLVED**

Section 4-183 of the Connecticut General Statutes, which pertains to appealing the decisions of administrative agencies to the Connecticut Superior Court, is relevant to this matter. Also relevant are general internal procedures at Connecticut administrative agencies, which pertain to the finalizing and closing of individual appeals. The Petitioner believes that these procedures should be amended to briefly instruct appellants on how to continue appealing their matters to the Connecticut Superior Court.

## **REASON FOR GRANTING THE PETITION**

The Petitioner believes that this Court should grant this petition for the following reason:

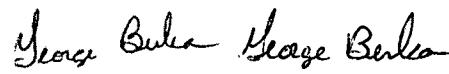
This matter is of somewhat significant public importance because it poses a key question of whether existing procedures at Connecticut administrative agencies violate the public's right to due process, by failing to inform appellants of their right to continue appealing their matters to the Connecticut Superior Court, and by failing to provide them with brief instructions on how to do so. The appeals of many appellants were possibly "cut short" by the agencies' failure to provide these instructions, and a review of their cases by the Superior Court was subsequently denied to them. This may have been a violation of their right to full due process of law, because some of them may have possibly prevailed in their appeals at the Superior Court. This issue is of particular importance for self-represented appellants, many of whom find themselves drawn into these matters with no legal training, are forced to "run a difficult gauntlet",

and are often denied access to full due process of law because of legal technicalities they should not be expected to know. Providing especially these appellants with brief instructions, at the administrative agency level, on how to continue their appeals process to the Superior Court, would be an important step toward helping safeguard their right to due process, and would not create an undue burden on the agencies.

## CONCLUSION

In light of the above, the Petitioner hereby requests this Court to grant his Petition for a Writ of Certiorari.

Respectfully submitted,



George Berka  
George Berka,  
Petitioner

June 6<sup>th</sup>, 2018