

No. _____

**In the
Supreme Court of the United States**

DENISE A. CANZONERI,

Applicant,

v.

PRESCOTT UNIFIED SCHOOL DISTRICT NO. 1, ET AL.,

Respondents.

**APPLICATION TO THE HONORABLE ELENA KAGAN
FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

**On Application for an Extension of Time to File a Petition for a Writ of
Certiorari to United States Court of Appeals for the Ninth Circuit**

Michael J. Pérez*

Evan C. Flores*

John D. Vaughn

Counsel of Record

PEREZ VAUGHN & FEASBY INC.

600 B. St., Suite 2100

San Diego, CA 92101

(619) 741-0282

vaughn@pvflaw.com

flores@pvflaw.com

April 3, 2025

** Supreme Court Bar Admission Pending*

APPLICATION

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

Pursuant to Supreme Court Rule 13(5), DENISE A. CANZONERI (“Applicant”) respectfully requests that the time to file a petition for a writ of certiorari in this matter be extended for 45 days, up to and including May 29, 2025. The Ninth Circuit Court of Appeals entered its original judgment in Case No. 21-16615 on November 20, 2024. Applicant timely filed a petition for rehearing *en banc*, and the Ninth Circuit denied the petition on January 3, 2025. The Ninth Circuit issued a formal mandate on January 13, 2025. In its mandate, the Ninth Circuit ordered that the new date of judgment would be January 13, 2025. Unless extended, the time for filing a petition for a writ of certiorari would expire on April 14, 2025. Under this Court’s Rule 13.5, this application is being filed at least ten (10) days before that date. This Court’s jurisdiction would be invoked under 28 U.S.C. § 1254(1). A copy of the opinion of the Ninth Circuit is attached at App.1, a copy of the order denying rehearing *en banc* is attached at App.7, and a copy of the mandate setting the judgment date is attached at App.8.

BACKGROUND

1. For twenty-three years, Denise Canzoneri (“Applicant”) was employed as a librarian by the Prescott Unified School District (“District”). In 2019, Applicant attended a school board meeting afterhours in her personal capacity to voice her concerns about multiple issues regarding the library, including the misuse of public funds. The next day, she was placed on administrative leave and told her employment would not be renewed as a consequence of her speech. She was further instructed that

while on leave she was not allowed to have any contact with any District employees, students, or parents of students unless explicitly permitted by the District.

2. Applicant subsequently brought claims against the District and several of its employees (“Individual Defendants”) involved with the above-described conduct. Applicant alleged, among other claims, First Amendment retaliation and suppression of her free speech rights. After Applicant filed a first amended complaint (“FAC”), the District and Individual Defendants filed a motion to dismiss. The United States District Court of Arizona found, in pertinent part, that the Individual Defendants were entitled to qualified immunity.

3. On review, the Ninth Circuit reversed in part as to issues not before this Court but affirmed the district court’s finding of qualified immunity. The Ninth Circuit noted that certain facts alleged in the FAC could provide an “alternative justification” for the disciplinary actions. The Ninth Circuit arrived at this conclusion despite Applicant’s claim that the disciplinary actions were a direct response to her decision to draw attention to the misuse of public funds at the school board meeting. The Ninth Circuit thereby held that qualified immunity applied because it was not clearly established “that government employees must disregard a valid motive for disciplinary action given the presence of outside protected speech.”

REASONS FOR GRANTING AN EXTENSION OF TIME

In support of this request, Applicant states as follows:

1. This case presents two important questions that warrant this Court’s review. The first question is whether a court can frame its analysis of the second

prong of qualified immunity (the “clearly established” prong) based upon unfavorable inferences drawn from facts at the motion to dismiss stage, instead of in a light most favorable to the nonmoving party. The second question is whether, in First Amendment retaliation employment cases, the “clearly established” prong of qualified immunity requires a plaintiff to provide factually analogous cases separately for each and every one of the *Pickering/Garcetti* balancing test factors.

2. The proper framing of the “clearly established” prong of qualified immunity within First Amendment retaliation cases continues to create both inter-circuit and intra-circuit conflicts among courts of appeals. A grant of Applicant’s petition for a writ of certiorari would provide an opportunity for the United States Supreme Court to provide much-needed clarity on qualified immunity and the scope of the “clearly established” analysis required in First Amendment relation cases.

3. In light of the facts and extraordinary circumstances set forth below, Applicant respectfully requests additional time to fully prepare a petition for a writ of certiorari that thoroughly sets forth these complicated and important issues.

4. Applicant did not retain legal representation for writ of certiorari purposes until less than two weeks ago. This was due in part to Applicant’s uncertainty as to whether she could finance any further legal representation.

5. Lead counsel for Applicant, Michael J. Pérez, whose application to be barred with the Supreme Court is currently pending and is anticipated to be counsel of record once admitted, was struck with unexpected health issues last week related to a heart attack.

6. Counsel for Applicant also had substantial briefing and case obligations for several matters in the past few weeks, with more deadlines approaching as well, including attending a civil subpoena appearance in New York City in *HIG v. Audax*, Case No. N23C-10-212 MAA CCLD (Del. Super.), a Rule 12(b)(6) motion in *Mauzy v. Mauzy*, Case No. 3:25-cv-00344-CAB-BLM (S.D. Cal.), negotiations in *Diaz v. Skyou*, Case No. 37-2023-00012187-CU-BC-CTL (Cal. Super.), the deposition of the president of Arizona State University in *Cohen v. Arizona Board of Regents*, Case No. 2:21-cv-01178-GMS (D. Ariz.), an opposition to a motion for summary judgment in *McNamara v. Tamarack Capital Advisers, L.P.*, Case No. 37-2022-00032779-CU-BC-CTL (Cal. Super.), and outstanding discovery obligations in several other matters.

For these reasons, the requested 45-day extension is necessary to afford counsel time to prepare and file a petition that would be helpful to the Court.

April 3, 2025

Respectfully submitted,



John D. Vaughn

Michael J. Pérez
Evan C. Flores
John D. Vaughn
Counsel of Record
PEREZ VAUGHN & FEASBY INC.
600 B. St., Suite 2100
San Diego, CA 92101
(619) 741-0282
vaughn@pvflaw.com
flores@pvflaw.com

Counsel for Applicant Denise A. Canzoneri