

In the Supreme Court of the United States

ANGELA BORRELL,

Applicant,

v.

ARTHUR F. RICHER & GEISINGER MEDICAL CENTER,

Respondent.

**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 THIRD CIRCUIT**

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicant Angela Borrell respectfully requests a 58-day extension of time, to and including Friday, April 6, 2018, within which to file a petition for a writ of certiorari in this case.

The United States Court of Appeals for the Third Circuit issued its decision on August 30, 2017. A timely-filed petition for rehearing en banc was denied on November 9, 2017. Unless extended, the time to file a petition for a writ of certiorari will expire on February 7, 2018. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257. The opinion of the Third Circuit is available in the Federal Reporter at 870 F.3d 154.

A copy of the opinion is attached, as is the order denying rehearing en banc.

1. Applicant was enrolled in a degree program jointly run by a public university, Bloomsburg University, and a private hospital, Geisner Medical Center.

The jointly-employed director of the program dismissed her from the program, ending both her coursework at Bloomsburg and clinical training at Geisner. Slip Op. at 7. The question that will be presented in the petition is whether, in dismissing the applicant, the director acted under the color of state law.

2. Following her dismissal, applicant brought a Section 1983 lawsuit, claiming that defendants infringed her due process rights. In particular, applicant asserted that she was denied the right to sufficient pre-deprivation process prior to her termination from the program. Slip Op. at 7.

The district court granted summary judgment in applicant's favor as to liability. It reasoned that the director of the program acted under color of state law in dismissing her, and that the conduct blatantly violated her constitutional rights. Slip Op. at 7-8. A jury subsequently awarded applicant damages. *Id.* at 8.

3. The Third Circuit reversed, concluding that defendants had not acted under the color of state law.

The Third Circuit set out to answer a false dichotomy: it queried whether the program director was "wearing his Geisinger hat or his Bloomsburg hat when he decided to terminate Borrell." Slip Op. 10. But that analysis is in direct conflict with this Court's holding in *Brentwood Academy v. Tennessee Secondary School Athletic Association*, 531 U.S. 288 (2001). In *Brentwood*, the Court held that entwinement of public and private entities is sufficient to "support a conclusion that an ostensibly private organization ought to be charged with a public character and judged by constitutional standards." *Id.* at 302.

In addition to contravening this Court's decision in *Brentwood*, the Third Circuit's analysis also created a split among the circuits. The Second and Ninth Circuits have correctly understood *Brentwood* to hold that public-private engagement alone compels the legal conclusion of state action. See *Horvath v. Westport Library Ass'n*, 362 F.3d 147, 153-154 (2d Cir. 2004) ("the argument that the Library is a public entity 'is overborne by the pervasive entwinement of public institutions and public officials in its composition and workings, and there is no substantial reason to claim unfairness in applying constitutional standards to it'" (quoting *Brentwood* at 298)); *Lee v. Katz*, 276 F.3d 550, 554 (9th Cir. 2002) ("in *Brentwood*, the Court determined that the nominally private entity whose conduct was challenged was a State actor solely on the basis that the entity was entwined with the State").

4. The resolution of this question is tremendously important. In its opinion, the Third Circuit itself acknowledged that this issue "has important ramifications for private hospitals that partner with public universities." Slip Op. 3. But the impact of the Third Circuit's decision is much more substantial. Public-private partnerships (P3s) permeate the education, transportation, information technology, utilities, and natural resource management sectors. Travis Pearl, *5 Examples of Public-Private Partnerships (P3) in Action* (Oct. 23, 2013), <https://goo.gl/YyXTbp>. And these partnerships are becoming only more common as federal, state, and local agencies use P3s "as a means to reduce operating budgets by turning operations and maintenance responsibilities over to private companies." *Id.*

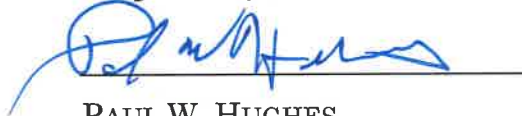
5. Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. Undersigned counsel has several other matters with proximate

due dates, including: a reply in support of a petition for writ of certiorari due on January 24, 2018, in *Murco Wall Products v. Galier*, No. 17-733 (S. Ct.); an oral argument on February 6, 2018, in *Capital Security Systems, Inc. v. NCR Corp.*, Nos. 17-1396 & 17-2368 (Fed. Cir.); a brief in opposition due on February 9, 2018, in *Kansas v. Garcia*, No. 17-834 (S. Ct.); and a brief of appellant due on February 9, 2018, in *Tropp v. Matal*, No. 17-2503 (Fed. Cir.).

For the foregoing reasons, the application for a 58-day extension of time, to and including Friday, April 6, 2018, within which to file a petition for a writ of certiorari should be granted.

January 22, 2018

Respectfully submitted.



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