

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. ____

JOSEPH A. KENNEDY,
Applicant,

v.

BREMERTON SCHOOL DISTRICT,
Respondent.

**APPLICATION TO THE HON. ANTHONY KENNEDY
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 NINTH CIRCUIT**

Pursuant to Supreme Court Rule 13(5), Joseph A. Kennedy hereby moves for an extension of time of 30 days, to and including May 25, 2018, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be April 25, 2018.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Ninth Circuit rendered its decision on August 23, 2017 (Exhibit 1), and denied a timely petition for rehearing on January 25, 2018 (Exhibit 2). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case involves the exceptionally important question whether public school teachers and coaches forfeit their First Amendment rights when they are on the job and in view of students. Joseph Kennedy worked as an assistant football coach at Bremerton High School (“BHS”). At the conclusion of BHS football games,

Kennedy would walk to midfield to shake hands with the opposing team. Once BHS players began walking toward the stands, Kennedy would kneel, close his eyes, and pray a brief, quiet prayer of 15 to 30 seconds. BHS suspended Kennedy because his actions violated the school’s blanket ban on “demonstrative religious activity, readily observable to (if not intended to be observed by) students and the attending public.”

3. Kennedy asserted that BHS had violated his First Amendment rights by punishing him for engaging in protected speech. The Ninth Circuit, however, concluded that Kennedy’s speech was not protected because his brief post-game prayer was speech pursuant to his ordinary job duties as a coach. Though this Court has rejected “the suggestion that employers can restrict employees’ rights by creating excessively broad job descriptions,” *Garcetti v. Ceballos*, 547 U.S. 410, 424-25 (2006), the Ninth Circuit held that Kennedy’s job duties included not only coaching football, but also “modeling good behavior while acting in an official capacity in the presence of students and spectators.” Thus, in the Ninth Circuit, when a public school fires a teacher or coach for any on-duty “demonstrative communication” that a student observes—including a brief, silent prayer—the First Amendment has nothing to say about it.

4. Between now and the current due date of the petition, Counsel of Record, Paul D. Clement, has substantial briefing and oral argument obligations, including argument in *WesternGeco LLC v. ION Geophysical Corp.*, No. 16-1011 (U.S.), *Veterans Tech. LLC v. United States*, No. 16-cv-1489 (Fed. Cl.); reply briefs in *WesternGeco LLC v. ION Geophysical Corp.*, No. 16-1011 (U.S.), and *Ultra Petroleum Corp., et al.*

v. Ad Hoc Comm. of Unsecured, et al., No. 17-20793 (5th Cir.); and a brief in opposition in *Right Field Rooftops, LLC, et al. v. Chi. Cubs Baseball Club, LLC, et al.*, No. 17-1074 (U.S.).

5. Applicant requests a modest extension for counsel to research the extensive factual record and complex legal issues presented in this case to prepare a petition that fully addresses the important and far-reaching issues raised by the decision below and frames those issues in a manner that will be most helpful to the Court.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including May 25, 2018, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,



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April 9, 2018