

App No. _____

In The
Supreme Court of the United States

ANTHONY NOVAK,

Applicant,

v.

CITY OF PARMA, OHIO, ET AL.

Respondents.

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

PATRICK JAICOMO
Counsel of Record
CAROLINE GRACE BROTHERS
ANYA BIDWELL
INSTITUTE FOR JUSTICE
901 N. Glebe Rd., Ste. 900
Arlington, VA 22203
(703) 682-9320
pjaicomo@ij.org

Counsel for Applicant

To the Honorable Brett Kavanaugh, as Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

In accordance with this Court's Rules 13.5, 22, 30.2, and 30.3, Applicant respectfully requests that the time to file his petition for a writ of certiorari be extended for 60 days, up to and including Monday, September 26, 2022. The Court of Appeals issued its opinion on April 29, 2022 (Exhibit A). Absent an extension of time, the petition would be due on July 28, 2022. The jurisdiction of this Court is based on 28 U.S.C. 1254(1).

Judgment Sought to Be Reviewed

This case presents an important question on the application of qualified immunity: Whether claimed reliance on a state statute entitles police to qualified immunity for their arrest of an individual for speech that is obviously shielded by the First Amendment. The circuit courts are split over this issue. The Fifth Circuit, for instance, holds that qualified immunity does not shield police who arrest an individual for something that a reasonably well-trained officer would have understood to violate the First Amendment. After its decision below, the Sixth Circuit holds the opposite.

In March 2016, Applicant Anthony Novak anonymously published a parody Facebook page poking fun at Respondent Parma, Ohio's official police department page. On his page, which resembled the real page, Novak published six posts lambasting the department. One post, for example, stated that the department would be

hiring new officers by asking 15 multiple-choice questions and administering a hearing test. The post noted, “Parma is an equal opportunity employer but is strongly encouraging minorities to not apply.” Other posts: prioritized a search for a black loitering suspect over a search for a white armed robbery suspect; threatened to arrest citizens who fed the homeless or let their children outside; advertised police giving “free abortions to teens using an experimental technique discovered by the Parma Police Department”; and announced a “Pedophile Reform event,” where any sex offender who could solve several puzzles and quizzes would be made an honorary Parma police officer.

Novak’s page was obvious parody, and, after learning police were criminally investigating the page, Novak took it down. It was up for a total of 12 hours.

After consulting with the city’s law director, Respondents, Lieutenant Kevin Riley and Detective Thomas Connor, determined that they could charge Novak (at the time the anonymous page’s creator) with a felony under an Ohio law criminalizing the “use of any computer * * * to disrupt * * * the function of any police * * * operations.” Ohio Rev. Code § 2902.04(B). As the basis for the charge, officials pointed to a handful of calls made to Parma PD through a non-emergency line, tattling on the page. Police received a search warrant forcing Facebook to disclose Novak’s identity and then warrants to search Novak’s apartment, seize his electronic devices, and arrest him, which they did. Novak spent four days in jail before being bailed out. Following a full criminal trial over his parody Facebook page, a jury acquitted Novak.

After his acquittal, Novak sued the police and the city for violating his First and Fourth Amendment rights. In their first appeal, police challenged the district

court's denial of qualified immunity at the motion to dismiss stage. The Sixth Circuit affirmed that denial on July 29, 2019 (Exhibit B). The court's opinion emphasized the importance of parody. Explaining that the right to ridicule the government is as American as apple pie and baseball, the court wrote that, when it comes to parody, "the law requires a reasonable reader standard, not a 'most gullible person on Facebook' standard." Moreover, "the genius of parody is that it comes close enough to reality to spark a moment of doubt in the reader's mind" and that "a parody need not spoil its own punchline by declaring itself a parody." Ultimately finding that a jury could conclude Novak's page was parody protected by clearly established law, the Sixth Circuit denied qualified immunity.

After discovery, the district court granted summary judgment to Respondents' and held that the officers were entitled to qualified immunity. Novak appealed. This time, the Sixth Circuit wrote a very different opinion. Although facts developed through discovery strengthened Novak's claims—e.g., two of the three defendants admitted in discovery that a reasonable reader would not believe Novak's pages stated actual facts, meaning it was parody—the court's tone changed. This time, it emphasized that it was *possible* that the officers reasonably believed Novak had violated the Ohio disruption statute. Although the Sixth Circuit conceded that "[w]hether Novak's satirical posts were protected parody [and therefore something that could not provide a basis for probable cause] is a question of fact," the court held that Novak's reposting of the Parma PD warning about the fake page and his deletion of comments calling the page fake presented a "difficult question." The court concluded, therefore, that the police were entitled to qualified immunity because "Novak has not identified a

case that clearly establishes deleting comments or copying the official warning is protected speech.”

Reasons Why an Extension of Time Is Warranted

Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. On May 24, 2022, Applicant retained new, *pro bono* representation for the purposes of filing a petition. The undersigned counsel were not previously involved in litigating this case, and they require additional time to familiarize themselves with the trial and appellate records and to prepare the petition. There is also the press of business on numerous other matters, and counsel have preplanned vacations from July 1 through July 10 and July 21 through July 24.

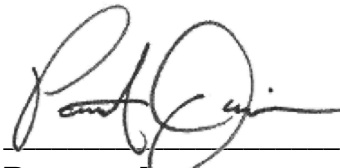
Applicant has not previously sought an extension of time from this Court.

Conclusion

Applicant requests that the time to file a writ of certiorari in the above-captioned matter be extended 60 days to and including Monday, September 26, 2022.

June 14, 2022

Respectfully submitted,



PATRICK JACOMO

Counsel of Record

CAROLINE GRACE BROTHERS

ANYA BIDWELL

INSTITUTE FOR JUSTICE

901 N. Glebe Rd., Ste. 900

Arlington, VA 22203

(703) 682-9320

pjacomo@ij.org

Counsel for Applicant