



Executive Chamber, City of Providence, Rhode Island

Vincent A. Cianci, Jr.
MAYOR

November 13, 1980

Mr. Clement Cesaro
Director
Department of Public Works
Providence, RI 02905

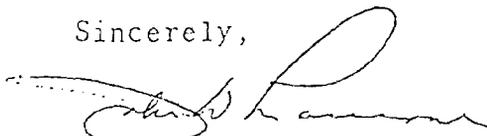
Dear Mr. Cesaro:

Will you please provide me with the following information per order of the Mayor.

1. Quantity of salt and sand presently on hand.
2. Anticipated quantity needed for snow removal this season.
3. Snow removal contracts presently negotiated and additional expected to be negotiated.

Your prompt response is expected.

Sincerely,


JOHN D. MANCONE
Administrative Assistant

JDM:CS

EXHIBIT 1

City Ex 1
Edmund J. Cianci
Notary Public
12/1/80



Executive Chamber, City of Providence, Rhode Island

Vincent A. Cianci, Jr.
MAYOR

*City E&J
Elaine Y. Gennie
Notary Public
12/11/80*

November 14, 1980

Clemente Cesaro, Director
Department of Public Works
700 Allens Avenue
Providence, Rhode Island 02905

Dear Mr. Cesaro:

On November 12, 1980, I directed Mr. John Mancone to find out from you certain information relative to snow removal and sanding. Mr. Mancone has sent me a copy of the letter he sent to you on November 13 requesting this information. To date, neither Mr. Mancone nor I have received any response from you concerning this matter.

I am hereby directing you to inform me immediately, in writing, as to the following;

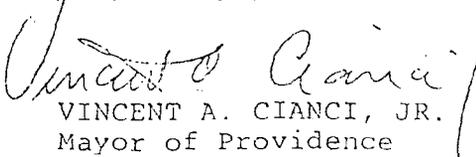
1. The inventory on hand of salt and sand which was not used last year, together with the location of same.
2. Please inform me of your plans to order salt and sand and the amount of salt and sand needed for the coming winter season.
3. Your arrangements regarding the rental of private snow removal equipment and operators of same.
4. Your plan of deployment of personnel and vehicles for snow removal and sanding.
5. Additionally, it is my understanding that you have expressed a concern for the need of welders to repair snow removal equipment. It is my understanding that, in the past, this welding service was performed by private contractors. You are also ordered to furnish to me, in writing, your plans for engaging private contractors to do welding, or, in the alternative, your plan to authorize City personnel to do the same.

EXHIBIT 2

I am hereby ordering that the above information be given to me by 4:30 P. M. on Monday, November 17, 1980.

Once I have received your written response, I will review the same and will notify you of my approval or disapproval thereof.

Very truly yours,


VINCENT A. CIANCI, JR.
Mayor of Providence

VAC



Executive Chamber, City of Providence, Rhode Island

Vincent A. Cianci, Jr.
MAYOR

*City Ex 3
Blaine Y Grenier
Notary Public
12/1/80*

November 18, 1980

Clement Cesaro, Director
Department of Public Works
700 Allens Avenue
Providence, Rhode Island 02905

Dear Mr. Cesaro:

You are hereby notified that, pursuant to the provisions of Section 4:30 of the City Charter of the City of Providence, I am suspending you as Director of Public Works for cause.

The reasons for your suspension are:

- (1) That you are guilty of insubordination for failing to respond to and carry out my orders.
- (2) In that your refusal to send out snow removal vehicles has endangered the public safety; and
- (3) Neglect of duty by refusing to furnish to me a detailed plan for snow removal after demand.

A copy of the specific charges will be presented to you at the same time as they are presented to the Council.

Until the City Council makes a decision on these charges, you are hereby ordered off 'Public Works' premises and you are to return to the Deputy Director all City property including motor vehicles in your possession.

Very truly yours,

VINCENT A. CIANCI, JR.
Mayor of Providence

VAC

EXHIBIT A

*City Ex. Officer
Blawie
Notary Public
12/1/80*

United States District Court

FOR THE
DISTRICT OF RHODE ISLAND

CIVIL ACTION FILE NO. _____

80-0593

CLEMENT J. CESARO

Plaintiff

VINCENT A. CIANCI, JR., in his capacity as
Mayor of the City of Providence, and individually;
and STEPHEN NAPOLITANO, in his capacity as
Treasurer of the City of Providence; and the
CITY OF PROVIDENCE

Defendant

SUMMONS

SERVED 11-21-80
By *Joseph M. Salvo*
DEPUTY U. S. MARSHAL

A TRUE COPY ATTEST:

Joseph M. Salvo
DEPUTY U. S. MARSHAL

To the above named Defendant : VINCENT A. CIANCI, JR. in his capacity as
Mayor of the City of Providence, and individually
You are hereby summoned and required to serve upon

William Y. Chaika, Esq.

plaintiff's attorney, whose address is 925 Reservoir Avenue, Cranston, R. I. 02910

an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

Rosanne Kozior
Clerk of Court.
Deputy Clerk.

Date: November 18, 1980

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

United States District Court

FOR THE
DISTRICT OF RHODE ISLAND

CIVIL ACTION FILE NO. _____

80-0593

CLEMENT J. CESARO

Plaintiff

SUMMONS

v.
VINCENT A. CIANCI, JR., in his capacity as
Mayor of the City of Providence, and individually;
and STEPHEN NAPOLITANO, in his capacity as
Treasurer of the City of Providence; and the
CITY OF PROVIDENCE

Defendant

To the above named Defendant : VINCENT A. CIANCI, JR. in his capacity as
Mayor of the City of Providence, and individually
You are hereby summoned and required to serve upon

William Y. Chaika, Esq.

plaintiff's attorney , whose address 925 Reservoir Avenue, Cranston, R. I. 02910

an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

Suzanne Kizior

Clerk of Court.
Deputy Clerk.

Date: November 18, 1980

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the _____ day of _____, 19 _____,

I received this summons and served it together with the complaint herein as follows:

MARSHAL'S FEES
Travel _____ \$ _____
Service _____

United States Marshal.
By _____
Deputy United States Marshal.

Subscribed and sworn to before me, a _____ this
day of _____, 19 _____
[SEAL] _____

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No. _____

United States District Court
FOR THE
DISTRICT OF RHODE ISLAND

CLEMENT J. CESARO

v.

VINCENT A. CIANCI, JR.
et al

SUMMONS IN CIVIL ACTION

Returnable not later than _____ days
after service.

William Y. Chaikattorney for Plaintiff

United States District Court

FOR THE
DISTRICT OF RHODE ISLAND

CIVIL ACTION FILE NO. _____

CLEMENT J. CESARO

Plaintiff

SUMMONS

VINCENT A. CIANCI, JR., in his capacity as
Mayor of the City of Providence, and individually;
and STEPHEN NAPOLITANO, in his capacity as
Treasurer of the City of Providence; and the
CITY OF PROVIDENCE

Defendant

To the above named Defendant : VINCENT A. CIANCI, JR. in his capacity as
Mayor of the City of Providence, and individually
You are hereby summoned and required to serve upon

William Y. Chaika, Esq.

plaintiff's attorney , whose address 925 Reservoir Avenue, Cranston, R. I. 02910

an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

Clerk of Court.

Deputy Clerk.

Date: November 18, 1980

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CLEMENT J. CESARO

VS.

C. A. NO.

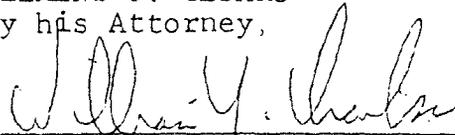
VINCENT A. CIANCI, JR., in his
capacity as Mayor of the City of
Providence, and individually; and
STEPHEN NAPOLITANO, in his capacity
as Treasurer of the City of
Providence; and the
CITY OF PROVIDENCE

80-0593

APPLICATION FOR TEMPORARY RESTRAINING ORDER

Plaintiff applies to the Court, upon the verified complaint herein and the affidavit of Clement J. Cesaro attached hereto, for a temporary restraining order against the above-named defendants, their agents, servants, attorneys, and privies, pending the hearing and decision of plaintiff's motion for temporary restraining order, enjoining them from terminating or attempting to terminate, alter, change or in any way affect plaintiff's current employment status as Director of Public Works, or from depriving him from any of the compensation rights prerequisite and any privileges associated with said office and position.

CLEMENT J. CESARO
By his Attorney,



William Y. Chaika
925 Reservoir Avenue
Cranston, Rhode Island 02910
November 18, 1980

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CLEMENT J. CESARO

VS.

C. A. NO.

VINCENT A. CIANCI, JR., in his
capacity as Mayor of the City of
Providence, and individually; and
STEPHEN NAPOLITANO, in his
capacity as Treasurer of the
City of Providence; and the
CITY OF PROVIDENCE

80-0593

C O M P L A I N T

1. This action is brought pursuant to 42 U.S.C. § 1983, 1988 and the First and Fourteenth Amendments to the Constitution of the United States. Jurisdiction is founded in 28 U.S.C. § 1331 and 1343 (1) (2) (3) and (4) and the aforementioned statutory and constitutional provisions. Plaintiff further invokes the pendent jurisdiction of this Court to consider claims arising under State Law.

2. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$10,000.00.

PARTIES

3. The plaintiff, Clement J. Cesaro, is a citizen of the United States and a resident of Lincoln, Rhode Island.

4. The defendant Vincent A. Cianci, Jr. in his capacity as Mayor of the City of Providence and individually is a resident of the City of Providence, Rhode Island. The defendant Stephen Napolitano in his capacity as Treasurer of the City of Providence is a resident of the City of Providence, Rhode Island. The defendant City of Providence is a municipal corporation within the State of Rhode Island and is sued herein through its City Treasurer, Stephen Napolitano, and at all times relevant hereto employed all of the respective

named defendants in their official capacities as herein set forth.

5. At all times relevant hereto and in all their actions described herein, defendants were all acting under color of law and pursuant to their authority as officers, agents, servants and employees of the said City of Providence. The defendant, Vincent A. Cianci, Jr. is sued in his individual capacity as well.

STATEMENT OF FACTS

6. The plaintiff has been a long time employee of the City of Providence in various capacities. For a period of approximately four years beginning in approximately January of 1975 the plaintiff became employed as an associate engineer IV for the Division of Public Buildings at which time he enjoyed civil service status as a classified employee.

7. In January of 1979 the plaintiff was appointed for a two year term (Sec. 5.23 Providence City Charter) as Director of Public Works for the City of Providence by the Mayor and approved by the City Council, and has been serving in this capacity, fulfilling his duties faithfully ever since.

8. At all times mentioned, the plaintiff has continually served in the above mentioned offices until the event herein complained of took place. However, as a result of a Federal Court suit brought by the instant plaintiff against the same defendants in Civil Action No. 80-0345, which action is still pending, the plaintiff had to obtain redress for violations of First Amendment constitutional rights inflicted upon the plaintiff by the defendants. A copy of the complaint in Civil Action No. 80-0345 (absent the attached Exhibits thereto) is attached hereto, incorporated by reference herein, and marked as Exhibit A.

9. A Memorandum and Order dated July 15, 1980 in said Civil Action No. 80-0345 in the District Court for the United States for the District of Rhode Island is also attached hereto, incorporated by reference herein, and marked as Exhibit B.

10. The action of the City Council for the City of Providence, ^{/rejected the defendant Mayor's charges} after hearing, at which hearing the defendant Vincent A. Cianci, Jr. produced no evidence to sustain any charges against the plaintiff, effectively rescinded and/or revoked the suspension order and restored the plaintiff to his full status as Director of the Department of Public Works for the City of Providence.

11. Since the plaintiff's vindication, as aforesaid, the plaintiff has been diligently fulfilling all of the responsibilities of the Department of Public Works.

12. The plaintiff has, however, been openly critical of defendant Mayor Vincent A. Cianci, Jr. of various policies and actions of the Mayor.

13. The plaintiff has been singled out and discriminated against by defendant Mayor Vincent A. Cianci, Jr. for his open, free exercise of his right of freedom of speech as guaranteed by the First Amendment of the United States Constitution in that ever since the Federal Court for the District of Rhode Island has previously interceded on plaintiff's behalf in the previously mentioned Federal United States District Court case, continually, by himself and through his authorized agents and servants, harassed the plaintiff and interfered with the normal running of the Department of Public Works for and on behalf of the people of the City of Providence.

14. The defendant Mayor Vincent A. Cianci, Jr. has interfered with the plaintiff's normal functions and operations as Director of the Department of Public Works in numerous and sundry manners:

a) He has thrown the Department of Public Works into a turmoil with two substantial lay-off notices affecting approximately 300 employees of the City of Providence. Of these, the Department of Public Works has been singled out for an inordinate amount of lay-offs (143 out of 474 employees plus attempted to transfer 36 more from the Department), disregarding the contractual rights of the employees of the City of Providence, and such conduct has interfered with the health, safety and welfare against the public interest.

b) The defendant Mayor Vincent A. Cianci, Jr. has attempted to fire or lay-off four of plaintiff's division heads, all of which are essential to the running of the Department of Public Works. The positions are all budgeted for in all proposed budgets, including the defendant Mayor's.

c) One of plaintiff's Department heads, Silvio DiBello, by Charter of the City of Providence, is appointed by plaintiff, and by Charter is to serve at plaintiff's pleasure. The defendant Mayor Vincent A. Cianci, Jr. has no right or color of law to fire, suspend, or lay-off said department head, and in spite of the same singled him out in the defendant's retaliation efforts against the plaintiff as well as against said department head for his open, vocal criticism of the defendant Mayor Vincent A. Cianci, Jr. and for his open, notorious vocal support of defendant Mayor Vincent A. Cianci, Jr.'s opponent in the recent gubernatorial election.

d) The defendant Mayor Vincent A. Cianci, Jr. has made irrational and unreasonable requests of plaintiff, containing unreasonable limits for performance in regarding the obtaining of requested information.

e) The defendant Mayor Vincent A. Cianci, Jr. through his administrative aide refused to allow the plaintiff to make reasonable preparations for the November 17th and 18th, 1980 snowstorm. A copy of a memo refusing the plaintiff's

request to reinstate laid off mechanics to maintain and repair and install "spreaders" required for sanding and salting operations in snow and ice storms is attached hereto, incorporated by reference herein and marked as Exhibit C.

15. On the 18th day of November, 1980, the defendant Mayor Vincent A. Cianci, Jr. caused to have served upon the plaintiff a purported suspension notice, a copy of which is attached hereto, incorporated by reference herein and marked as Exhibit D. The alleged reasons for plaintiff's suspension are said to be:

"1) That you are guilty of insubordination for failing to respond to and carry out my orders.

2) In that your refusal to send out snow removal vehicles has endangered the public safety; and

3) Neglect of duty by refusing to furnish to me a detailed plan for snow removal after demand."

16. The plaintiff alleges that the reasons alleged for plaintiff's suspension are totally false and without any foundation based in fact or in law. The allegations for the suspension are merely a coverup in the defendant Vincent A. Cianci, Jr.'s vendetta against the plaintiff because of plaintiff's open, notorious and frequent valid criticisms of the defendant Mayor Vincent A. Cianci, Jr. in the past. They are also as a result of plaintiff's refusal to associate with the defendant Mayor in his unsuccessful quest for Governor of the State of Rhode Island in the November, 1980 gubernatorial election.

17. The open controversy between the plaintiff and the defendant Vincent A. Cianci, Jr. has been consistently in the media over the last several weeks. In the reports in the said media, both the plaintiff and the defendant Mayor have been openly critical of each other.

18. The defendant Vincent A. Cianci, Jr.'s actions

as evidenced by the suspension notice of November 18, 1980 are a pure fictitious coverup for his attempt to retaliate against the plaintiff for the plaintiff's open and notorious exercise of his First Amendment protected rights of freedom of speech and expression and freedom of association.

19. The plaintiff has in his exercise of his right of freedom of speech and expression, ^{been} conscientious in his efforts to tell the truth, the whole truth and nothing but the truth concerning various misstatements, deceits and misrepresentations made by defendant Vincent A. Cianci, Jr. The plaintiff felt that he not only had a right to exercise said right of freedom of speech and expression, but a duty to inform the public concerning the contents of his statements. All of plaintiff's utterances relate directly to the orderly function of the Department of Public Works in an effort to serve the City of Providence and the people of said City of Providence.

COUNT I

20. The plaintiff herein incorporates all matters herein before alleged in paragraphs 1 through 19 as fully as if the same were set forth herein verbatim.

21. The suspension of the plaintiff without pay (pursuant to Section 4.30 of the Charter of the City of Providence) as Director of Public Works violates rights protected by the First and Fourteenth Amendments to the Constitution of the United States in that such suspension order was in retaliation against the plaintiff for the plaintiff's public expressions of his disagreements with the defendant Mayor Vincent A. Cianci, Jr. and his administrative aids in matters of public interest concerning the Department of Public Works of the City of Providence.

COUNT II

22. The plaintiff herein incorporates all matters herein before alleged in paragraphs 1 through 21 as fully as if the same were set forth herein verbatim.

23. The suspension of the plaintiff without pay as Director of Public Works of the City of Providence violates rights protected by the First and Fourteenth Amendments to the Constitution of the United States as interpreted by the United States Supreme Court in ELROD V. BURNS, 427 US 347, 96 S.Ct., 2673, 49 L Ed.2d 547, and BRANTI V. FINKEL AND TABAKMAN, -US-, 63 L Ed 2d 574, 100 Supreme Court, in that such suspension was motivated by purely political reasons and in no way which if unless redressed by this court places severe restrictions on the First Amendment Freedoms of Political Belief and Association which the plaintiff is guaranteed to enjoy.

COUNT III

24. The plaintiff herein incorporates all matters herein before alleged in paragraphs 1 through 23 as fully as if the same were set forth herein verbatim.

25. The plaintiff has a property interest in his office as Director of Public Works of the City of Providence under applicable law (See 5.23 of the Charter of the City of Providence), and said position is protected from deprivation without the application of principals of procedural and substantive due process under the Fourteenth Amendment to the Consitution of the United States.

26. The deprivation of the plaintiff's employment in said office violated procedural due process rights protected under said Fourteenth Amendment in that:

a) the plaintiff was afforded no prior warning or notice that his continued employment would be considered during the course of the cumbersome and time

consuming suspension proceedings during which he would be without pay.

b) Pursuant to said Providence City Charter no hearing can be had until at least 10 days after the next regular Council meeting.

1) The Charter as such is violative of Plaintiff's fundamental due process right of a prior hearing before any suspension.

c) The defendants deprived the plaintiff of his property interest in his continued tenure in office as Director of Public Works by suspending him from that office without pay and without just cause, all in violation to his right of substantive due process under said Fourteenth Amendment.

d) The acts of the defendant under color of law to suspend the plaintiff from his position without pay was arbitrary, capricious and irrational and based upon accusations and innuendos deliberately delivered to the press and the media in furtherance of the defendant Vincent A. Cianci, Jr.'s political aspirations; all done with the intent to deceive and mislead the public as well as to cause irreparable and irreparable harm to the plaintiff in retaliation for the critical public comments made by the plaintiff about the defendant.

WHEREFORE, that this Honorable Court temporarily restrain and preliminarily and permanently enjoin the defendants in their official capacities and the defendant Vincent A. Cianci, Jr. in his individual capacity as well from suspending, terminating, or in any way depriving the plaintiff of his position in office as Director of Public Works, and/or from depriving him of any of the compensation, rights, and other privileges associated with said office and position until the City Council can decide the matter.

2. That this Court issue its order commanding that the City of Providence restore the plaintiff to the

payroll of the said City of Providence retroactively to the date of his reported suspension.

3. That this Court award compensatory damages against the defendants to the plaintiff in the sum of ONE MILLION DOLLARS (\$1,000,000.00).

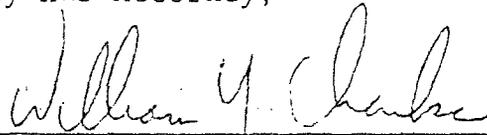
4. That this Court award punitive damages against the defendant, City of Providence, and defendant Vincent A. Cianci, Jr., individually as well as in his official capacity in the amount of FIVE MILLION DOLLARS (\$5,000,000.00).

5. That this Court award counsel fees in accordance with 42 U.S.C. § 1988.

6. That the Court award the plaintiff his costs.

7. That the Court grant such other relief as in the premises it may deem mete.

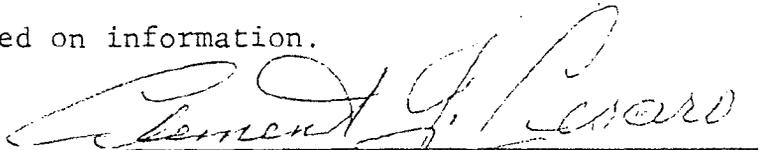
CLEMENT J. CESARO
By his Attorney,



William Y. Chaika
925 Reservoir Avenue
Cranston, Rhode Island 02910
November 18, 1980
943-5070

A F F I D A V I T

I, CLEMENT J. CESARO, the plaintiff in the above action have read the foregoing complaint, and all the matters therein alleged as true are true in fact, and that the matters therein stated to be true on my information and belief I believe to be true based on information.


Clement J. Cesaro

Subscribed and sworn to before me this 18th day of November, 1980.


Notary Public
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CLEMENT J. CESARO

VS.

VINCENT A. CIANCI, JR., in his
capacity as Mayor of the City of
Providence, and individually; and
STEPHEN NAPOLITANO, in his
capacity as Treasurer of the
City of Providence; and the
CITY OF PROVIDENCE

C. A. NO. 80-0345

C O M P L A I N T

1. This action is brought pursuant to 42 U.S.C. § 1983, 1988 and the First and Fourteenth Amendments to the Constitution of the United States. Jurisdiction is founded in 28 U.S.C. § 1331 and 1343 (1) (2) (3) and (4) and the aforementioned statutory and constitutional provisions. Plaintiff further invokes the pendent jurisdiction of this Court to consider claims arising under State Law.

2. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$10,000.00.

Parties

3. The plaintiff, Clement J. Cesaro, is a citizen of the United States and a resident of Lincoln, Rhode Island.

4. The defendant Vincent A. Cianci, Jr. in his capacity as Mayor of the City of Providence and individually is a resident of the City of Providence, Rhode Island. The defendant Stephen Napolitano in his capacity as Treasurer of the City of Providence is a resident of the City of Providence, Rhode Island. The defendant City of Providence is a municipal corporation within the State of Rhode Island and is sued herein through its City Treasurer, Stephen Napolitano, and at all times relevant hereto employed all of the respective

Exhibit A (1)

named defendants in their official capacities as herein set forth.

5. At all times relevant hereto and in all their actions described herein, defendants were all acting under color of law and pursuant to their authority as officers, agents, servants and employees of the said City of Providence. The defendant, Vincent A. Cianci, Jr. is sued in his individual capacity as well.

STATEMENT OF FACTS

6. The plaintiff has been a long time employee of the City of Providence in various capacities. For a period of approximately four years beginning in approximately January of 1975 the plaintiff became employed as an associate engineer IV for the Division of Public Buildings at which time he enjoyed civil service status as a classified employee.

7. In January of 1979 the plaintiff was appointed for a two year term (Sec. 5.23 Providence City Charter) as Director of Public Works for the City of Providence by the Mayor and approved by the City Council, and has been serving in this capacity, fulfilling his duties faithfully ever since.

8. At all times mentioned, the plaintiff has continually served in the above mentioned offices until the event herein complained of took place.

9. Beginning in the Fall and early Winter of 1979 the defendant, Vincent A. Cianci, Jr. has been troubled by numerous references made in the media and in the press about alleged unusual amounts of overtime and payroll monies spent by the City of Providence in the Department of Public Works of the City of Providence.

10. At the time the defendant Vincent A. Cianci, Jr. was and continues to campaign for state-wide elective office as the Republican candidate for Governor in the 1980 November elections.

11. In responding to the questions raised by the media and the press, the defendant on or about the 6th day of December 1979 issued executive order number 15, a copy of which is attached hereto, incorporated by reference herein, and marked as Exhibit A. Said executive order number 15 was shortly followed by executive order number 16, dated December 14, 1979, a copy of which is attached hereto, incorporated by reference herein, and marked as Exhibit B. These public utterances are in direct conflict with his actual actions and were meant for public consumption and deception.

12. The said executive orders were issued as a response to the pressure placed upon the defendant Vincent A. Cianci, Jr. adverse to his political ambitions and not as a result of any investigation of the Department of Public Works. Said executive orders were issued for the sole purpose of attempting to salvage the said Vincent A. Cianci Jr.'s political ambitions with the November 1980 gubernatorial election in mind.

13. Since the time of the said executive orders, the defendant Vincent A. Cianci, Jr. has continued, as he has in the past, with authorizing orally and in writing, by himself or through his immediate aides, consistent use of the Department of Public Works' payroll as a vehicle to award overtime hours to his political allies and those he deems as potential supporters in his November 1980 quest for the governorship of the State of Rhode Island.

14. In spite of the said executive orders and the said Vincent A. Cianci, Jr.'s statements to the media and press ever since the date of said executive orders, the said Mayor of the City of Providence has been authorizing

the use of overtime and payroll positions for his political allies for his own political ends.

15. As a result of said actions by the said defendant, Vincent A. Cianci, Jr., excessive funds have been expended by the City of Providence to those who have been given preferential overtime treatment by the Mayor. These abuses were brought to the plaintiff's attention and the plaintiff refused to sign a payroll in early May of 1980. At about the same time, the plaintiff publically wrote and gave notice to the members of the City Council of the events that had been brought to his knowledge concerning the Department of Public Works. The matters which were brought to the attention of the Council by the plaintiff include abuses on the payroll of the plaintiff's department in re matters of payment for overtime where overtime was questioned, the payment for personnel whose working hours could not be proven, the use of the department's payroll f o r employees who actually work or are alleged to work for other departments, etc.; a copy of said letter to the Council embodying the complaint made by the plaintiff to said Council and to the public at that time is attached hereto, incorporated by reference herein, and marked as Exhibit C. (letter dated June 11, 1980 and supplement to Council), pages C 1 - 16.

16. In addition, since the date of the said executive orders numbered 15 and 16, the defendant Vincent A. Cianci, Jr. orally authorized the plaintiff to reward various public works employees notwithstanding the said executive orders by directing the plaintiff to allow them to work overtime, and also interfered directly with the functioning of the plaintiff's office by directly authorizing certain employees certain powers and privileges totally undermining the plaintiff's ability to run, maintain and be responsible for the normal day-to-day operations of the Department for which he was appointed to control.

17. Throughout this period of time, from mid December to late June, more and more public disclosure concerning the amounts of money paid by the City of Providence to the Department of Public Works employees has been receiving attention in the media and the press. The said media and the press has pointedly charged that there must be certain gross abuses, inefficiencies and exorbitant sums of money which have apparently, to the press, been totally uncontrolled and all of which has become a matter of great embarrassment to the defendant Vincent A. Cianci, Jr.

18. In the last sixty days prior to the institution of this complaint, there have been numerous quotations of these alleged abuses and shortcomings that have drawn the attention of the press and the media. The defendant Vincent A. Cianci, Jr. and his top administrative assistant have consistently pointed an accusing finger upon the plaintiff. That the plaintiff, to keep the public informed and to speak out, called a press conference on matters of public concern and importance, during which he criticized the defendant Vincent A. Cianci, Jr. of the inconsistencies between his public postures and private utterances to the plaintiff.

19. The plaintiff Clement J. Cesaro is a Democrat and has become openly critical on numerous occasions of the defendant Vincent A. Cianci, Jr. concerning the said Vincent A. Cianci, Jr.'s interference with the Department of Public Works for his own political gains.

20. Finally, on Thursday, July 10, 1980 there appeared in the Editorial section of the Providence Journal

an editorial in essence challenging Mayor Vincent A. Cianci, Jr. concerning the inconsistencies of his actual actions in relationship to the aforementioned executive orders.

Said editorial challenged the Mayor as follows:

"If Mr. Cesaro (Plaintiff) is to blame, as City Solicitor Glantz charges, why does the Mayor not replace him? If the Administration's hands are clean, why does the Mayor not prove it by conducting a thorough house cleaning at PWD and ending this abomination? If the Mayor hopes to purify his campaign for Governor and confront his opponent from a position of strength, he will not do so with PWD and police scandals held at arm length. . ."

(a full copy of said editorial is attached, incorporated by reference herein, and marked as Exhibit D).

21. As a result of said editorial, the defendant Vincent A. Cianci, Jr. knowing that the plaintiff was not guilty of misfeasance or malfeasance of office, and knowing that abuses concerning payroll at the Public Works Department rest solely on himself and his aides, the defendant intentionally, wilfully and maliciously knowing the same to be false and with the sole intention of salvaging his political future in an attempt to keep himself viable as the Republican Candidate for Governor in the November 1980 election, attempted to take the first step necessary to suspend the plaintiff from his position as Director of Public Works on Thursday, July 10, 1980 without just cause.

22. At no time prior to the first public disclosure by the plaintiff of the abuses concerning the payroll at the Department of Public Works did the Mayor ever have any comment about the plaintiff's faithful performance of his duties as Director of the Department of Public Works. Furthermore, it was only the plaintiff's exercise of his right of freedom of speech to the public, the press,

the media, and the Providence City Council, setting forth the truthful, documented records, facts, conditions and circumstances as they then existed, did the defendant Vincent A. Cianci, Jr. and his top aides ever attack the plaintiff and then only in an attempt to salvage their political aims, ambitions and aspirations. The plaintiff, during the course of his employment as Director of Public Works, has been publically outspoken on matters of public interest in the administration of the affairs of the City of Providence as they affect the operation of the Department of Public Works.

23. The plaintiff is a Democrat and is known by the defendant Vincent A. Cianci, Jr. as such.

24. The defendant's statements throughout concerning the plaintiff were false, misleading and known to be such by the defendant Vincent A. Cianci, Jr.

25. That the plaintiff in the exercise of free speech in a public form in commenting about the Department's problems did not interfere with the maintaining of discipline or the harmony among co-workers, but on the contrary promoted a better working relationship among other employees.

26. Some of the inconsistencies between the defendant Vincent A. Cianci, Jr.'s public postures and private utterances to the plaintiff are documented by the attached 47 page packet, incorporated by reference herein and marked as Exhibit E 1 - E-14.

COUNT I

27. The plaintiff herein incorporates all matters herein before alleged in paragraphs 1 through 26 as fully as if the same were set forth herein verbatim.

28. The suspension of the plaintiff without pay as Director of Public Works violates rights protected by the First and Fourteenth Amendments to the Constitution of

Exhibit A (7)

the United States in that such suspension without pay was motivated by a desire to squelch the plaintiff's public expressions of his disagreement with the defendant Mayor Vincent A. Cianci, Jr. and his administrative aides in matters of public interest concerning the Department of Public Works of the City of Providence.

COUNT II

29. The plaintiff herein incorporates all matters herein before alleged in paragraphs 1 through 26 as fully as if the same were set forth herein verbatim.

30. The suspension of the plaintiff without pay as Director of Public Works of the City of Providence violates rights protected by the First and Fourteenth Amendments to the Constitution of the United States as interpreted by the United States Supreme Court in ELROD V. BURNS, 427 US 347, 96 S.Ct., 2673, 49L Ed.2 547, and BRANTI V. FINKEL AND TABAKMAN, -US-, 63 L Ed 2d 574, 100 Supreme Court, in that such suspension without pay was motivated by purely political reasons and in no way which if unless redressed by this court places severe restrictions on the First Amendment Freedoms of Political Belief and Association which the plaintiff is guaranteed to enjoy.

COUNT III

31. The plaintiff herein incorporates all matters herein before alleged in paragraphs 1 through 26 as fully as if the same were set forth herein verbatim.

32. The plaintiff has a property interest in his office as Director of Public Works of the City of Providence under applicable law (See 5.23 of the Charter of the City of Providence), and said position is protected from deprivation without the application of principals of procedural and substantive due process under the Fourteenth Amendment to the Consitution of the United States.

33. The deprivation of the plaintiff's employment in said office violated procedural due process rights protected under said Fourteenth Amendment in that:

a) the plaintiff was afforded no prior warning or notice that his continued employment would be considered during the course of the cumbersome and time consuming suspension proceedings during which he would be without pay.

b) The defendant Vincent A. Cianci, Jr. has not as yet given the plaintiff formal or informal charges in a specific form. Furthermore, pursuant to Chapter 4.30 of the Providence City Charter the defendant does not have to deliver the same to the plaintiff until sometime immediately prior to the next regular meeting of the Providence City Council (the first Thursday of August, 1980). Pursuant to said Providence City Charter no hearing can be had until at least 10 days after the next regular Council meeting.

1) The Charter as such is violative of Plaintiff's fundamental due process right of a prior hearing before any suspension.

c) The defendants deprived the plaintiff of his property interest in his continued tenure in office as Director of Public Works by suspending him from that office without pay and without just cause, all in violation to his right of substantive due process under said Fourteenth Amendment.

d) The acts of the defendant under color of law to suspend the plaintiff from his position without pay was arbitrary, capricious and irrational and based upon accusations and innuendos deliberately delivered to the press and the media in furtherance of the defendant Vincent A. Cianci, Jr.'s political aspirations; all done with the intent to deceive and mislead the public as well as to cause irreparable and irremediable harm to the plaintiff in retaliation for the critical public comments made by the plaintiff about the defendant.

COUNT IV

34. The plaintiff realleges and incorporates herein the allegations of paragraphs 1 through 26 by reference as fully as if the same were set forth verbatim.

35. The unjust suspension of the plaintiff from his office of Director of Public Works without pay implies that the plaintiff engaged in opprobrious, immoral, improper or illegal conduct as a public official and gravely reflects on his ability to secure and obtain reemployment. Accordingly, said suspension without pay deprives him of a liberty interest protected by the Fourteenth Amendment to the Constitution of the United States without due process.

WHEREFORE, that this Honorable Court temporarily restrain and preliminarily and permanently enjoin the defendants in their official capacities and the defendant Vincent A. Cianci, Jr. in his individual capacity as well from suspending, terminating, or in any way depriving the plaintiff of his position in office as Director of Public Works, and/or from depriving him of any of the compensation, rights, and other privileges associated with said office and position, until the City Council can decide the matter.

2. That this Court issue its order commanding that the City of Providence restore the plaintiff to the payroll of the said City of Providence retroactively to the date of his reported suspension without pay.

3. That this Court award compensatory damages against the defendants to the plaintiff in the sum of ONE MILLION DOLLARS (\$1,000,000.00).

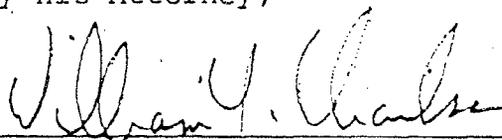
4. That this Court award punitive damages against the Defendant, City of Providence and Defendant Vincent A. Cianci, Jr., individually as well as in his official capacity in the amount of FIVE MILLION DOLLARS (\$5,000,000.00).

5. That this Court award counsel fees in accordance with 42 U.S.C. § 1988.

6. That the Court award the plaintiff his costs.

7. That the Court grant such other relief as in the premises it may deem meet.

CLEMENT J. CESARO
By his Attorney,



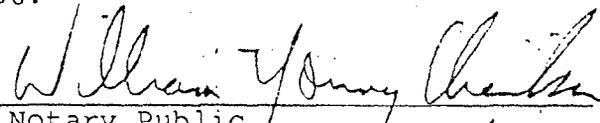
William Y. Chaika
925 Reservoir Avenue
Cranston, Rhode Island 02910
July 14, 1980
943-5070

A F F I D A V I T

I, CLEMENT J. CESARO, the plaintiff in the above action have read the foregoing complaint, and all the matters therein alleged as true are true in fact, and that the matters therein stated to be true on my information and belief I believe to be true based on information.


Clement J. Cesaro

Subscribed and sworn to before me this 12th day
of July, 1980.


Notary Public
Notary Public

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

CLEMENT J. CESARO)
)
 v.) Civil Action No. 80-0345.
)
 VINCENT A. CIANCI, JR., in)
 his capacity as Mayor of the)
 City of Providence, and)
 individually; and STEPHEN)
 NAPOLITANO, in his capacity)
 as Treasurer of the City of)
 Providence; and the CITY OF)
 PROVIDENCE)

MEMORANDUM AND ORDER

This matter came before the Court on the motion of plaintiff, Clement J. Cesaro, for an order temporarily restraining defendants Vincent A. Cianci, Jr., Stephen Napolitano, and the City of Providence ("the defendants") from, among other things, terminating or otherwise changing Cesaro's employment status as Director of Public Works of the City of Providence.

In support of Cesaro's Motion for Temporary Restraining Order, plaintiff has submitted a verified complaint with exhibits attached and a supporting memorandum of law. The

Exhibit B (1)

factual allegations of Cesaro's verified complaint are complex, and need not be detailed here. Basically, Cesaro alleges that employment practices within the Department of Public Works have become a matter of intense public interest and discussion at a time when defendant Cianci is campaigning as the Republican candidate for governor. As a result of, heightened public scrutiny of the Department of Public Works, plaintiff, who is a Democrat, has allegedly felt compelled to speak out publicly in his own defense by means of a public letter to the City Council of Providence and by a news conference. (Complaint ¶¶ 15, 18). In his public statements Cesaro has openly criticized Cianci and his administration. (Complaint ¶¶ 18, 19).

In paragraph 22 of plaintiff's complaint, Cesaro alleges^{1/}:

At no time prior to the first public disclosure by the plaintiff of the abuses concerning the payroll at the Department of Public Works did the Mayor ever have any comment about the plaintiff's faithful performance of his duties as Director of the Department of Public Works. Furthermore, it was only after the plaintiff's exercise of his right of freedom of speech to the public, the press, the media, and the Providence City Council, setting forth the truthful, documented records, facts, conditions and circumstances as they then existed, did the defendant Vincent A.

Cianci, Jr. and his top aides ever attack the plaintiff and then only in an attempt to salvage their political aims, ambitions and aspirations. The plaintiff, during the course of his employment as Director of Public Works, has been publically [sic] outspoken on matters of public interest in the administration of the affairs of the City of Providence as they affect the operation of the Department of Public Works.

A conference in chambers was held on plaintiff's Motion for Temporary Restraining Order on July 14, 1980. At that time, counsel for defendants argued that a temporary restraining order in this action is inappropriate; that Cesaro's rights to due process were fully safeguarded by relevant provisions of the Providence City Charter; that temporary relief would abrogate the lawful provisions of the City Charter and make removal of Cesaro impossible; that Cesaro was within the class of employees protected by less stringent first amendment standards than would ordinarily apply^{2/}; and that in the peculiar context of this case, granting Cesaro's motion for temporary relief would impinge on defendants' first amendment rights.

While I am sensitive to the important issues which defendants raise, plaintiff's verified complaint alleges that defendants' acts are in reprisal for the exercise of

Exhibit B (3)

his rights of free expression. The high level of protection which the Constitution accords first amendment rights compels me to grant the temporary relief which Cesaro seeks. ²See, e.g., Pilkington v. Bevilacqua, 439 F.Supp. 465 (D.R.I. 1977), aff'd, 590 F.2d 386 (1st Cir. 1979). "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976) (Plurality Opinion, Brennan, J.).

I do not believe that granting temporary relief will cause significant injury to the defendants or to the public. The harm the city will suffer from allowing Cesaro -- who has been in office since January, 1979 -- to serve a few more days is small compared to the plaintiff's loss of first amendment rights for even a short time.

Defendants' assert that granting preliminary relief to Cesaro would short-circuit the procedures of section 4.30 of the Providence City Charter and make Cesaro's removal for cause impossible. While I admit that this is a question of first impression, it does not seem to me that counsel's position is necessarily correct. I am granting plaintiff's motion for temporary relief solely to protect important first amendment rights which Cesaro alleges will be violated

Exhibit B (4)

by defendants' actions. To the extent that defendants seek to terminate plaintiff for reasons other than his exercise of first amendment rights, I specifically acknowledge that they remain free to do so, within the constraints of the due process clause. I note, however, that it is my responsibility to determine the true reason for discharge, and I am required to protect Cesaro's first amendment rights if I find his suspension or discharge is an improper reprisal for protected expression. See Pilkington, supra. The record before me raises the possibility that defendants may have such a motive. In order to protect Cesaro until a factual hearing may be had on the issues raised by plaintiff's complaint, defendants shall be restrained from enforcing any actions taken pursuant to section 4.30 of the Providence City Charter. This order does not prohibit the mayor from filing charges against Cesaro with the City Council, nor does it prohibit the City Council from considering those charges and reaching a decision thereon. After a factual hearing by this Court, if Cesaro has been terminated by the City Council and it appears that Cesaro's termination is not improperly motivated or that Cesaro is not entitled to the rigorous protection ordinarily granted speech, then defendants shall be free to enforce any action already taken under

Exhibit B (5)

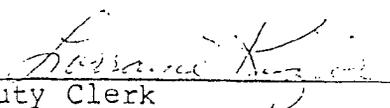
relevant charter provisions.^{3/} In the interim, Cesaro may, despite his suspension, continue to act as Director of Public Works with the same compensation rights and privileges which he enjoyed prior to July 10, 1980.

ORDER

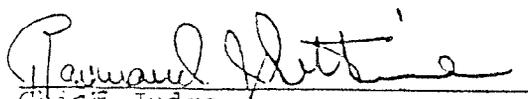
Consistent with the foregoing, it is hereby ordered that defendants Vincent A. Cianci, Jr., Stephen Napolitano, and the City of Providence are temporarily restrained from enforcing any action which alters, changes, or in any way affects plaintiff's status as Director of Public Works or the compensation and privileges to which he is entitled.

The matter is assigned for hearing on preliminary injunction on July 25, 1980 at 9:00 a.m. unless sooner resolved by action of the City Council. The Court also advises the aforesaid date is dependent on this Court's trial calendar.

By Order,


Deputy Clerk

Enter:


Chief Judge

July 15, 1980

Exhibit B (6)

FOOTNOTES

- 1/ Cesaro also alleges that defendants have deprived him of procedural due process, and perhaps substantive due process as well. (See Complaint ¶¶ 31-35). Because I believe the first amendment issues are dispositive, I do not reach these other claims at this time.
- 2/ See Pickering v. Board of Education, 391 U.S. 568, 570 n.3 (1970) (distinguishing "policy-making" and "confidential" employees).
- 3/ In short, this order does not negate the validity of Cesaro's suspension or subsequent actions taken pursuant to the Providence City Charter; it merely restrains enforcement of such actions until the Court has an opportunity to consider the important first amendment issues which plaintiff raises.



Executive Chamber, City of Providence, Rhode Island

Vincent A. Cianci, Jr.
MAYOR

November 14, 1980

Clement Cesaro, Director
Department of Public Works
700 Allens Avenue
Providence, Rhode Island 02905

Dear Mr. Cesaro:

This letter is written to confirm the telephone call made by Mr. John Mancone, at my directive, on November 14, 1980, in regard to the fact that you are not authorized to call any laid-off employees back to work on Saturday, November 15, 1980, except those laid-off employees who normally work a six day week.

Very truly yours,

VINCENT A. CIANCI, JR.
Mayor of Providence

VAC

305
2/11
J

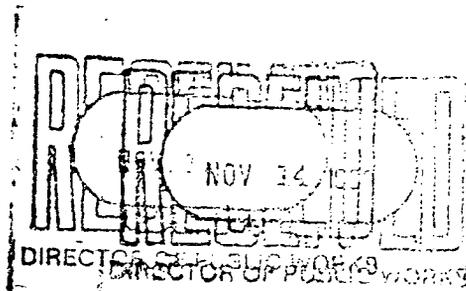


Exhibit ~~B~~ C



Executive Chamber, City of Providence, Rhode Island

Vincent A. Cianci, Jr.
MAYOR

November 18, 1980

Clement Cesaro, Director
Department of Public Works
700 Allens Avenue
Providence, Rhode Island 02905

Dear Mr. Cesaro:

You are hereby notified that, pursuant to the provisions of Section 4.30 of the City Charter of the City of Providence, I am suspending you as Director of Public Works for cause.

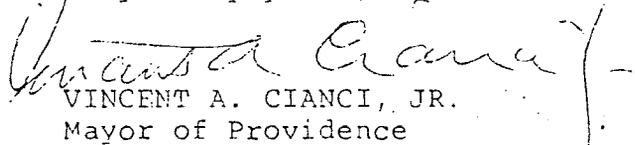
The reasons for your suspension are:

- (1) That you are guilty of insubordination for failing to respond to and carry out my orders.
- (2) In that your refusal to send out snow removal vehicles has endangered the public safety; and
- (3) Neglect of duty by refusing to furnish to me a detailed plan for snow removal after demand.

A copy of the specific charges will be presented to you at the same time as they are presented to the Council.

Until the City Council makes a decision on these charges, you are hereby ordered off Public Works' premises and you are to return to the Deputy Director all City property including motor vehicles in your possession.

Very truly yours,


VINCENT A. CIANCI, JR.
Mayor of Providence

VAC

Exhibit ~~1~~ D

*City Ex 5
Planned Progress
Notary Public
12/1/80*

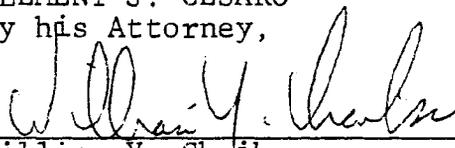
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CLEMENT J. CESARO :
VS. : C. A. NO.
VINCENT A. CIANCI, JR., in his :
capacity as Mayor of the City of :
Providence, and individually; and :
STEPHEN NAPOLITANO, in his capacity :
as Treasurer of the City of :
Providence; and the :
CITY OF PROVIDENCE :

APPLICATION FOR TEMPORARY RESTRAINING ORDER

Plaintiff applies to the Court, upon the verified complaint herein and the affidavit of Clement J. Cesaro attached hereto, for a temporary restraining order against the above-named defendants, their agents, servants, attorneys, and privies, pending the hearing and decision of plaintiff's motion for temporary restraining order, enjoining them from terminating or attempting to terminate, alter, change or in any way affect plaintiff's current employment status as Director of Public Works, or from depriving him from any of the compensation rights prerequisite and any privileges associated with said office and position.

CLEMENT J. CESARO
By his Attorney,



William Y. Chaika
925 Reservoir Avenue
Cranston, Rhode Island 02910
November 18, 1980

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CLEMENT J. CESARO :
 :
VS. : C. A. NO.
 :
VINCENT A. CIANCI, JR., in his :
capacity as Mayor of the City of :
Providence, and individually; and :
STEPHEN NAPOLITANO, in his :
capacity as Treasurer of the :
City of Providence; and the :
CITY OF PROVIDENCE :

C O M P L A I N T

1. This action is brought pursuant to 42 U.S.C. § 1983, 1988 and the First and Fourteenth Amendments to the Constitution of the United States. Jurisdiction is founded in 28 U.S.C. § 1331 and 1343 (1) (2) (3) and (4) and the aforementioned statutory and constitutional provisions. Plaintiff further invokes the pendent jurisdiction of this Court to consider claims arising under State Law.

2. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$10,000.00.

PARTIES

3. The plaintiff, Clement J. Cesaro, is a citizen of the United States and a resident of Lincoln, Rhode Island.

4. The defendant Vincent A. Cianci, Jr. in his capacity as Mayor of the City of Providence and individually is a resident of the City of Providence, Rhode Island. The defendant Stephen Napolitano in his capacity as Treasurer of the City of Providence is a resident of the City of Providence, Rhode Island. The defendant City of Providence is a municipal corporation within the State of Rhode Island and is sued herein through its City Treasurer, Stephen Napolitano, and at all times relevant hereto employed all of the respective

named defendants in their official capacities as herein set forth.

5. At all times relevant hereto and in all their actions described herein, defendants were all acting under color of law and pursuant to their authority as officers, agents, servants and employees of the said City of Providence. The defendant, Vincent A. Cianci, Jr. is sued in his individual capacity as well.

STATEMENT OF FACTS

6. The plaintiff has been a long time employee of the City of Providence in various capacities. For a period of approximately four years beginning in approximately January of 1975 the plaintiff became employed as an associate engineer IV for the Division of Public Buildings at which time he enjoyed civil service status as a classified employee.

7. In January of 1979 the plaintiff was appointed for a two year term (Sec. 5.23 Providence City Charter) as Director of Public Works for the City of Providence by the Mayor and approved by the City Council, and has been serving in this capacity, fulfilling his duties faithfully ever since.

8. At all times mentioned, the plaintiff has continually served in the above mentioned offices until the event herein complained of took place. However, as a result of a Federal Court suit brought by the instant plaintiff against the same defendants in Civil Action No. 80-0345, which action is still pending, the plaintiff had to obtain redress for violations of First Amendment constitutional rights inflicted upon the plaintiff by the defendants. A copy of the complaint in Civil Action No. 80-0345 (absent the attached Exhibits thereto) is attached hereto, incorporated by reference herein, and marked as Exhibit A.

9. A Memorandum and Order dated July 15, 1980 in said Civil Action No. 80-0345 in the District Court for the United States for the District of Rhode Island is also attached hereto, incorporated by reference herein, and marked as Exhibit B.

10. The action of the City Council for the City of Providence, ^{/rejected the defendant Mayor's charges} after hearing, at which hearing the defendant Vincent A. Cianci, Jr. produced no evidence to sustain any charges against the plaintiff, effectively rescinded and/or revoked the suspension order and restored the plaintiff to his full status as Director of the Department of Public Works for the City of Providence.

11. Since the plaintiff's vindication, as aforesaid, the plaintiff has been diligently fulfilling all of the responsibilities of the Department of Public Works.

12. The plaintiff has, however, been openly critical of defendant Mayor Vincent A. Cianci, Jr. of various policies and actions of the Mayor.

13. The plaintiff has been singled out and discriminated against by defendant Mayor Vincent A. Cianci, Jr. for his open, free exercise of his right of freedom of speech as guaranteed by the First Amendment of the United States Constitution in that ever since the Federal Court for the District of Rhode Island has previously interceded on plaintiff's behalf in the previously mentioned Federal United States District Court case, continually, by himself and through his authorized agents and servants, harassed the plaintiff and interfered with the normal running of the Department of Public Works for and on behalf of the people of the City of Providence.

14. The defendant Mayor Vincent A. Cianci, Jr. has interfered with the plaintiff's normal functions and operations as Director of the Department of Public Works in numerous and sundry manners:

a) He has thrown the Department of Public Works into a turmoil with two substantial lay-off notices affecting approximately 300 employees of the City of Providence. Of these, the Department of Public Works has been singled out for an inordinate amount of lay-offs (143 out of 474 employees plus attempted to transfer 36 more from the Department), disregarding the contractual rights of the employees of the City of Providence, and such conduct has interfered with the health, safety and welfare against the public interest.

b) The defendant Mayor Vincent A. Cianci, Jr. has attempted to fire or lay-off four of plaintiff's division heads, all of which are essential to the running of the Department of Public Works. The positions are all budgeted for in all proposed budgets, including the defendant Mayor's.

c) One of plaintiff's Department heads, Silvio DiBello, by Charter of the City of Providence, is appointed by plaintiff, and by Charter is to serve at plaintiff's pleasure. The defendant Mayor Vincent A. Cianci, Jr. has no right or color of law to fire, suspend, or lay-off said department head, and in spite of the same singled him out in the defendant's retaliation efforts against the plaintiff as well as against said department head for his open, vocal criticism of the defendant Mayor Vincent A. Cianci, Jr. and for his open, notorious vocal support of defendant Mayor Vincent A. Cianci, Jr.'s opponent in the recent gubernatorial election.

d) The defendant Mayor Vincent A. Cianci, Jr. has made irrational and unreasonable requests of plaintiff, containing unreasonable limits for performance in regarding the obtaining of requested information.

e) The defendant Mayor Vincent A. Cianci, Jr. through his administrative aide refused to allow the plaintiff to make reasonable preparations for the November 17th and 18th, 1980 snowstorm. A copy of a memo refusing the plaintiff's

request to reinstate laid off mechanics to maintain and repair and install "spreaders" required for sanding and salting operations in snow and ice storms is attached hereto, incorporated by reference herein and marked as Exhibit C.

15. On the 18th day of November, 1980, the defendant Mayor Vincent A. Cianci, Jr. caused to have served upon the plaintiff a purported suspension notice, a copy of which is attached hereto, incorporated by reference herein and marked as Exhibit D. The alleged reasons for plaintiff's suspension are said to be:

"1) That you are guilty of insubordination for failing to respond to and carry out my orders.

2) In that your refusal to send out snow removal vehicles has endangered the public safety; and

3) Neglect of duty by refusing to furnish to me a detailed plan for snow removal after demand."

16. The plaintiff alleges that the reasons alleged for plaintiff's suspension are totally false and without any foundation based in fact or in law. The allegations for the suspension are merely a coverup in the defendant Vincent A. Cianci, Jr.'s vendetta against the plaintiff because of plaintiff's open, notorious and frequent valid criticisms of the defendant Mayor Vincent A. Cianci, Jr. in the past. They are also as a result of plaintiff's refusal to associate with the defendant Mayor in his unsuccessful quest for Governor of the State of Rhode Island in the November, 1980 gubernatorial election.

17. The open controversy between the plaintiff and the defendant Vincent A. Cianci, Jr. has been consistently in the media over the last several weeks. In the reports in the said media, both the plaintiff and the defendant Mayor have been openly critical of each other.

18. The defendant Vincent A. Cianci, Jr.'s actions

as evidenced by the suspension notice of November 18, 1980 are a pure fictitious coverup for his attempt to retaliate against the plaintiff for the plaintiff's open and notorious exercise of his First Amendment protected rights of freedom of speech and expression and freedom of association.

19. The plaintiff has in his exercise of his right of freedom of speech and expression, ^{been}conscientious in his efforts to tell the truth, the whole truth and nothing but the truth concerning various misstatements, deceits and misrepresentations made by defendant Vincent A. Cianci, Jr. The plaintiff felt that he not only had a right to exercise said right of freedom of speech and expression, but a duty to inform the public concerning the contents of his statements. All of plaintiff's utterances relate directly to the orderly function of the Department of Public Works in an effort to serve the City of Providence and the people of said City of Providence.

COUNT I

20. The plaintiff herein incorporates all matters herein before alleged in paragraphs 1 through 19 as fully as if the same were set forth herein verbatim.

21. The suspension of the plaintiff without pay (pursuant to Section 4.30 of the Charter of the City of Providence) as Director of Public Works violates rights protected by the First and Fourteenth Amendments to the Constitution of the United States in that such suspension order was in retaliation against the plaintiff for the plaintiff's public expressions of his disagreements with the defendant Mayor Vincent A. Cianci, Jr. and his administrative aids in matters of public interest concerning the Department of Public Works of the City of Providence.

COUNT II

22. The plaintiff herein incorporates all matters herein before alleged in paragraphs 1 through 21 as fully as if the same were set forth herein verbatim.

23. The suspension of the plaintiff without pay as Director of Public Works of the City of Providence violates rights protected by the First and Fourteenth Amendments to the Constitution of the United States as interpreted by the United States Supreme Court in ELROD V. BURNS, 427 US 347, 96 S.Ct., 2673, 49L Ed.2 547, and BRANTI V. FINKEL AND TABAKMAN, -US-, 63 L Ed 2d 574, 100 Supreme Court, in that such suspension was motivated by purely political reasons and in no way which if unless redressed by this court places severe restrictions on the First Amendment Freedoms of Political Belief and Association which the plaintiff is guaranteed to enjoy.

COUNT III

24. The plaintiff herein incorporates all matters herein before alleged in paragraphs 1 through 23 as fully as if the same were set forth herein verbatim.

25. The plaintiff has a property interest in his office as Director of Public Works of the City of Providence under applicable law (See 5.23 of the Charter of the City of Providence), and said position is protected from deprivation without the application of principals of procedural and substantive due process under the Fourteenth Amendment to the Consitution of the United States.

26. The deprivation of the plaintiff's employment in said office violated procedural due process rights protected under said Fourteenth Amendment in that:

a) the plaintiff was afforded no prior warning or notice that his continued employment would be considered during the course of the cumbersome and time

consuming suspension proceedings during which he would be without pay.

b) Pursuant to said Providence City Charter no hearing can be had until at least 10 days after the next regular Council meeting.

1) The Charter as such is violative of Plaintiff's fundamental due process right of a prior hearing before any suspension.

c) The defendants deprived the plaintiff of his property interest in his continued tenure in office as Director of Public Works by suspending him from that office without pay and without just cause, all in violation to his right of substantive due process under said Fourteenth Amendment.

d) The acts of the defendant under color of law to suspend the plaintiff from his position without pay was arbitrary, capricious and irrational and based upon accusations and innuendos deliberately delivered to the press and the media in furtherance of the defendant Vincent A. Cianci, Jr.'s political aspirations; all done with the intent to deceive and mislead the public as well as to cause irreparable and irreparable harm to the plaintiff in retaliation for the critical public comments made by the plaintiff about the defendant.

WHEREFORE, that this Honorable Court temporarily restrain and preliminarily and permanently enjoin the defendants in their official capacities and the defendant Vincent A. Cianci, Jr. in his individual capacity as well from suspending, terminating, or in any way depriving the plaintiff of his position in office as Director of Public Works, and/or from depriving him of any of the compensation, rights, and other privileges associated with said office and position until the City Council can decide the matter.

2. That this Court issue its order commanding that the City of Providence restore the plaintiff to the

payroll of the said City of Providence retroactively to the date of his reported suspension.

3. That this Court award compensatory damages against the defendants to the plaintiff in the sum of ONE MILLION DOLLARS (\$1,000,000.00).

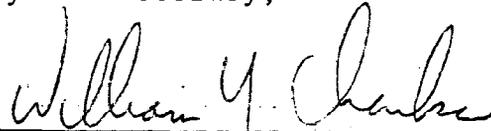
4. That this Court award punitive damages against the defendant, City of Providence, and defendant Vincent A. Cianci, Jr., individually as well as in his official capacity in the amount of FIVE MILLION DOLLARS (\$5,000,000.00).

5. That this Court award counsel fees in accordance with 42 U.S.C. § 1988.

6. That the Court award the plaintiff his costs.

7. That the Court grant such other relief as in the premises it may deem mete.

CLEMENT J. CESARO
By his Attorney,



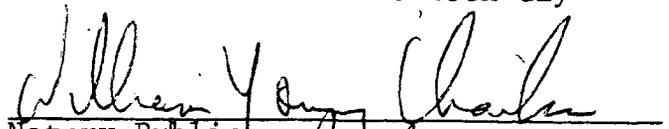
William Y. Chaika
925 Reservoir Avenue
Cranston, Rhode Island 02910
November 18, 1980
943-5070

A F F I D A V I T

I, CLEMENT J. CESARO, the plaintiff in the above action have read the foregoing complaint, and all the matters therein alleged as true are true in fact, and that the matters therein stated to be true on my information and belief I believe to be true based on information.


Clement J. Cesaro

Subscribed and sworn to before me this 18th day of November, 1980.


Notary Public
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CLEMENT J. CESARO

VS.

VINCENT A. CIANCI, JR., in his
capacity as Mayor of the City of
Providence, and individually; and
STEPHEN NAPOLITANO, in his
capacity as Treasurer of the
City of Providence; and the
CITY OF PROVIDENCE

C. A. NO. 80-0345

C O M P L A I N T

1. This action is brought pursuant to 42 U.S.C. § 1983, 1988 and the First and Fourteenth Amendments to the Constitution of the United States. Jurisdiction is founded in 28 U.S.C. § 1331 and 1343 (1) (2) (3) and (4) and the aforementioned statutory and constitutional provisions. Plaintiff further invokes the pendent jurisdiction of this Court to consider claims arising under State Law.

2. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$10,000.00.

Parties

3. The plaintiff, Clement J. Cesaro, is a citizen of the United States and a resident of Lincoln, Rhode Island.

4. The defendant Vincent A. Cianci, Jr. in his capacity as Mayor of the City of Providence and individually is a resident of the City of Providence, Rhode Island. The defendant Stephen Napolitano in his capacity as Treasurer of the City of Providence is a resident of the City of Providence, Rhode Island. The defendant City of Providence is a municipal corporation within the State of Rhode Island and is sued herein through its City Treasurer, Stephen Napolitano, and at all times relevant hereto employed all of the respective

Exhibit A (1)

named defendants in their official capacities as herein set forth.

5. At all times relevant hereto and in all their actions described herein, defendants were all acting under color of law and pursuant to their authority as officers, agents, servants and employees of the said City of Providence. The defendant, Vincent A. Cianci, Jr. is sued in his individual capacity as well.

STATEMENT OF FACTS

6. The plaintiff has been a long time employee of the City of Providence in various capacities. For a period of approximately four years beginning in approximately January of 1975 the plaintiff became employed as an associate engineer IV for the Division of Public Buildings at which time he enjoyed civil service status as a classified employee.

7. In January of 1979 the plaintiff was appointed for a two year term (Sec. 5.23 Providence City Charter) as Director of Public Works for the City of Providence by the Mayor and approved by the City Council, and has been serving in this capacity, fulfilling his duties faithfully ever since.

8. At all times mentioned, the plaintiff has continually served in the above mentioned offices until the event herein complained of took place.

9. Beginning in the Fall and early Winter of 1979 the defendant, Vincent A. Cianci, Jr. has been troubled by numerous references made in the media and in the press about alleged unusual amounts of overtime and payroll monies spent by the City of Providence in the Department of Public Works of the City of Providence.

10. At the time the defendant Vincent A. Cianci, Jr. was and continues to campaign for state-wide elective office as the Republican candidate for Governor in the 1980 November elections.

11. In responding to the questions raised by the media and the press, the defendant on or about the 6th day of December 1979 issued executive order number 15, a copy of which is attached hereto, incorporated by reference herein, and marked as Exhibit A. Said executive order number 15 was shortly followed by executive order number 16, dated December 14, 1979, a copy of which is attached hereto, incorporated by reference herein, and marked as Exhibit B. These public utterances are in direct conflict with his actual actions and were meant for public consumption and deception.

12. The said executive orders were issued as a response to the pressure placed upon the defendant Vincent A. Cianci, Jr. adverse to his political ambitions and not as a result of any investigation of the Department of Public Works. Said executive orders were issued for the sole purpose of attempting to salvage the said Vincent A. Cianci Jr.'s political ambitions with the November 1980 gubernatorial election in mind.

13. Since the time of the said executive orders, the defendant Vincent A. Cianci, Jr. has continued, as he has in the past, with authorizing orally and in writing, by himself or through his immediate aides, consistent use of the Department of Public Works' payroll as a vehicle to award overtime hours to his political allies and those he deems as potential supporters in his November 1980 quest for the governorship of the State of Rhode Island.

14. In spite of the said executive orders and the said Vincent A. Cianci, Jr.'s statements to the media and press ever since the date of said executive orders, the said Mayor of the City of Providence has been authorizing

the use of overtime and payroll positions for his political allies for his own political ends.

15. As a result of said actions by the said defendant, Vincent A. Cianci, Jr., excessive funds have been expended by the City of Providence to those who have been given preferential overtime treatment by the Mayor. These abuses were brought to the plaintiff's attention and the plaintiff refused to sign a payroll in early May of 1980. At about the same time, the plaintiff publically wrote and gave notice to the members of the City Council of the events that had been brought to his knowledge concerning the Department of Public Works. The matters which were brought to the attention of the Council by the plaintiff include abuses on the payroll of the plaintiff's department in re matters of payment for overtime where overtime was questioned, the payment for personnel whose working hours could not be proven, the use of the department's payroll f o r employees who actually work or are alleged to work for other departments, etc.; a copy of said letter to the Council embodying the complaint made by the plaintiff to said Council and to the public at that time is attached hereto, incorporated by reference herein, and marked as Exhibit C. (letter dated June 11, 1980 and supplement to Council), pages C 1 - 16.

16. In addition, since the date of the said executive orders numbered 15 and 16, the defendant Vincent A. Cianci, Jr. orally authorized the plaintiff to reward various public works employees notwithstanding the said executive orders by directing the plaintiff to allow them to work overtime, and also interfered directly with the functioning of the plaintiff's office by directly authorizing certain employees certain powers and privileges totally undermining the plaintiff's ability to run, maintain and be responsible for the normal day-to-day operations of the Department for which he was appointed to control.

17. Throughout this period of time, from mid December to late June, more and more public disclosure concerning the amounts of money paid by the City of Providence to the Department of Public Works employees has been receiving attention in the media and the press. The said media and the press has pointedly charged that there must be certain gross abuses, inefficiencies and exorbitant sums of money which have apparently, to the press, been totally uncontrolled and all of which has become a matter of great embarrassment to the defendant Vincent A. Cianci, Jr.

18. In the last sixty days prior to the institution of this complaint, there have been numerous quotations of these alleged abuses and shortcomings that have drawn the attention of the press and the media. The defendant Vincent A. Cianci, Jr. and his top administrative assistant have consistently pointed an accusing finger upon the plaintiff. That the plaintiff, to keep the public informed and to speak out, called a press conference on matters of public concern and importance, during which he criticized the defendant Vincent A. Cianci, Jr. of the inconsistencies between his public postures and private utterances to the plaintiff.

19. The plaintiff Clement J. Cesaro is a Democrat and has become openly cirtical on numerous occasions of the defendant Vincent A. Cianci, Jr. concerning the said Vincent A. Cianci, Jr.'s interference with the Department of Public Works for his own political gains.

20. Finally, on Thursday, July 10, 1980 there appeared in the Editorial section of the Providence Journal

an editorial in essence challenging Mayor Vincent A. Cianci, Jr. concerning the inconsistencies of his actual actions in relationship to the aforementioned executive orders.

Said editorial challenged the Mayor as follows:

"If Mr. Cesaro (Plaintiff) is to blame, as City Solicitor Glantz charges, why does the Mayor not replace him? If the Administration's hands are clean, why does the Mayor not prove it by conducting a thorough house cleaning at PWD and ending this abomination? If the Mayor hopes to purify his campaign for Governor and confront his opponent from a position of strength, he will not do so with PWD and police scandals held at arm length. . ."

(a full copy of said editorial is attached, incorporated by reference herein, and marked as Exhibit D).

21. As a result of said editorial, the defendant Vincent A. Cianci, Jr. knowing that the plaintiff was not guilty of misfeasance or malfeasance of office, and knowing that abuses concerning payroll at the Public Works Department rest solely on himself and his aides, the defendant intentionally, wilfully and maliciously knowing the same to be false and with the sole intention of salvaging his political future in an attempt to keep himself viable as the Republican Candidate for Governor in the November 1980 election, attempted to take the first step necessary to suspend the plaintiff from his position as Director of Public Works on Thursday, July 10, 1980 without just cause.

22. At no time prior to the first public disclosure by the plaintiff of the abuses concerning the payroll at the Department of Public Works did the Mayor ever have any comment about the plaintiff's faithful performance of his duties as Director of the Department of Public Works. Furthermore, it was only the plaintiff's exercise of his right of freedom of speech to the public, the press,

the media, and the Providence City Council, setting forth the truthful, documented records, facts, conditions and circumstances as they then existed, did the defendant Vincent A. Cianci, Jr. and his top aides ever attack the plaintiff and then only in an attempt to salvage their political aims, ambitions and aspirations. The plaintiff, during the course of his employment as Director of Public Works, has been publically outspoken on matters of public interest in the administration of the affairs of the City of Providence as they affect the operation of the Department of Public Works.

23. The plaintiff is a Democrat and is known by the defendant Vincent A. Cianci, Jr. as such.

24. The defendant's statements throughout concerning the plaintiff were false, misleading and known to be such by the defendant Vincent A. Cianci, Jr.

25. That the plaintiff in the exercise of free speech in a public form in commenting about the Department's problems did not interfere with the maintaining of discipline or the harmony among co-workers, but on the contrary promoted a better working relationship among other employees.

26. Some of the inconsistencies between the defendant Vincent A. Cianci, Jr.'s public postures and private utterances to the plaintiff are documented by the attached 67 page packet, incorporated by reference herein and marked as Exhibit E 1 - E44.

COUNT I

27. The plaintiff herein incorporates all matters herein before alleged in paragraphs 1 through 26 as fully as if the same were set forth herein verbatim.

28. The suspension of the plaintiff without pay as Director of Public Works violates rights protected by the First and Fourteenth Amendments to the Constitution of

the United States in that such suspension without pay was motivated by a desire to squelch the plaintiff's public expressions of his disagreement with the defendant Mayor Vincent A. Cianci, Jr. and his administrative aides in matters of public interest concerning the Department of Public Works of the City of Providence.

COUNT II

29. The plaintiff herein incorporates all matters herein before alleged in paragraphs 1 through 26 as fully as if the same were set forth herein verbatim.

30. The suspension of the plaintiff without pay as Director of Public Works of the City of Providence violates rights protected by the First and Fourteenth Amendments to the Constitution of the United States as interpreted by the United States Supreme Court in ELROD V. BURNS, 427 US 347, 96 S.Ct., 2673, 49L Ed.2 547, and BRANTI V. FINKEL AND TABAKMAN, -US-, 63 L Ed 2d 574, 100 Supreme Court, in that such suspension without pay was motivated by purely political reasons and in no way which if unless redressed by this court places severe restrictions on the First Amendment Freedoms of Political Belief and Association which the plaintiff is guaranteed to enjoy.

COUNT III

31. The plaintiff herein incorporates all matters herein before alleged in paragraphs 1 through 26 as fully as if the same were set forth herein verbatim.

32. The plaintiff has a property interest in his office as Director of Public Works of the City of Providence under applicable law (See 5.23 of the Charter of the City of Providence), and said position is protected from deprivation without the application of principals of procedural and substantive due process under the Fourteenth Amendment to the Consitution of the United States.

33. The deprivation of the plaintiff's employment in said office violated procedural due process rights protected under said Fourteenth Amendment in that:

a) the plaintiff was afforded no prior warning or notice that his continued employment would be considered during the course of the cumbersome and time consuming suspension proceedings during which he would be without pay.

b) The defendant Vincent A. Cianci, Jr. has not as yet given the plaintiff formal or informal charges in a specific form. Furthermore, pursuant to Chapter 4.30 of the Providence City Charter the defendant does not have to deliver the same to the plaintiff until sometime immediately prior to the next regular meeting of the Providence City Council (the first Thursday of August, 1980). Pursuant to said Providence City Charter no hearing can be had until at least 10 days after the next regular Council meeting.

1) The Charter as such is violative of Plaintiff's fundamental due process right of a prior hearing before any suspension.

c) The defendants deprived the plaintiff of his property interest in his continued tenure in office as Director of Public Works by suspending him from that office without pay and without just cause, all in violation to his right of substantive due process under said Fourteenth Amendment.

d) The acts of the defendant under color of law to suspend the plaintiff from his position without pay was arbitrary, capricious and irrational and based upon accusations and innuendos deliberately delivered to the press and the media in furtherance of the defendant Vincent A. Cianci, Jr.'s political aspirations; all done with the intent to deceive and mislead the public as well as to cause irreparable and irremediable harm to the plaintiff in retaliation for the critical public comments made by the plaintiff about the defendant.

COUNT IV

34. The plaintiff realleges and incorporates herein the allegations of paragraphs 1 through 26 by reference as fully as if the same were set forth verbatim.

35. The unjust suspension of the plaintiff from his office of Director of Public Works without pay implies that the plaintiff engaged in opprobrious, immoral, improper or illegal conduct as a public official and gravely reflects on his ability to secure and obtain reemployment. Accordingly, said suspension without pay deprives him of a liberty interest protected by the Fourteenth Amendment to the Constitution of the United States without due process.

WHEREFORE, that this Honorable Court temporarily restrain and preliminarily and permanently enjoin the defendants in their official capacities and the defendant Vincent A. Cianci, Jr. in his individual capacity as well from suspending, terminating, or in any way depriving the plaintiff of his position in office as Director of Public Works, and/or from depriving him of any of the compensation, rights, and other privileges associated with said office and position, until the City Council can decide the matter.

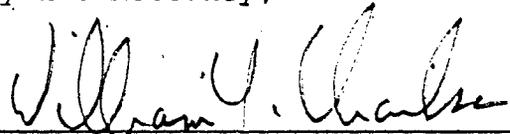
2. That this Court issue its order commanding that the City of Providence restore the plaintiff to the payroll of the said City of Providence retroactively to the date of his reported suspension without pay.

3. That this Court award compensatory damages against the defendants to the plaintiff in the sum of ONE MILLION DOLLARS (\$1,000,000.00).

4. That this Court award punitive damages against the Defendant, City of Providence and Defendant Vincent A. Cianci, Jr., individually as well as in his official capacity in the amount of FIVE MILLION DOLLARS (\$5,000,000.00).

5. That this Court award counsel fees in accordance with 42 U.S.C. § 1988.
6. That the Court award the plaintiff his costs.
7. That the Court grant such other relief as in the premises it may deem meet.

CLEMENT J. CESARO
By his Attorney,



William Y. Chaika
925 Reservoir Avenue
Cranston, Rhode Island 02910
July 14, 1980
943-5070

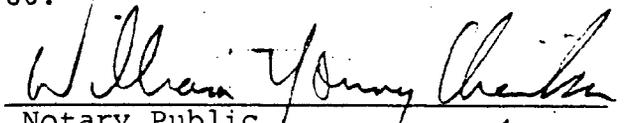
A F F I D A V I T

I, CLEMENT J. CESARO, the plaintiff in the above action have read the foregoing complaint, and all the matters therein alleged as true are true in fact, and that the matters therein stated to be true on my information and belief I believe to be true based on information.



Clement J. Cesaro
Clement J. Cesaro

Subscribed and sworn to before me this 12th day
of July, 1980.



William Y. Chaika
Notary Public
Notary Public



Executive Chamber, City of Providence, Rhode Island

Vincent A. Cianci, Jr.
MAYOR

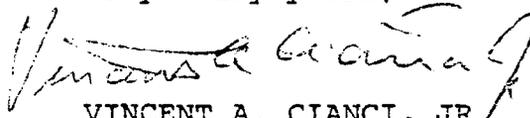
November 14, 1980

Clement Cesaro, Director
Department of Public Works
700 Allens Avenue
Providence, Rhode Island 02905

Dear Mr. Cesaro:

This letter is written to confirm the telephone call made by Mr. John Mancone, at my directive, on November 14, 1980, in regard to the fact that you are not authorized to call any laid-off employees back to work on Saturday, November 15, 1980, except those laid-off employees who normally work a six day week.

Very truly yours,



VINCENT A. CIANCI, JR.
Mayor of Providence

VAC

3:05
JIM

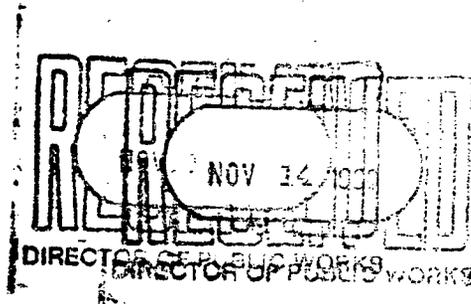


Exhibit BC



Executive Chamber, City of Providence, Rhode Island

Vincent A. Cianci, Jr.
MAYOR

November 18, 1980

Clement Cesaro, Director
Department of Public Works
700 Allens Avenue
Providence, Rhode Island 02905

Dear Mr. Cesaro:

You are hereby notified that, pursuant to the provisions of Section 4.30 of the City Charter of the City of Providence, I am suspending you as Director of Public Works for cause.

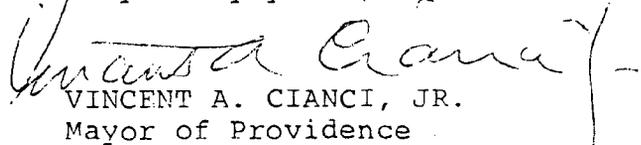
The reasons for your suspension are:

- (1) That you are guilty of insubordination for failing to respond to and carry out my orders.
- (2) In that your refusal to send out snow removal vehicles has endangered the public safety; and
- (3) Neglect of duty by refusing to furnish to me a detailed plan for snow removal after demand.

A copy of the specific charges will be presented to you at the same time as they are presented to the Council.

Until the City Council makes a decision on these charges, you are hereby ordered off Public Works' premises and you are to return to the Deputy Director all City property including motor vehicles in your possession.

Very truly yours,


VINCENT A. CIANCI, JR.
Mayor of Providence

VAC

Exhibit ~~1~~ D

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

CLEMENT J. CESARO)
)
 v.) Civil Action No. 80-0345
)
 VINCENT A. CIANCI, JR., in)
 his capacity as Mayor of the)
 City of Providence, and)
 individually; and STEPHEN)
 NAPOLITANO, in his capacity)
 as Treasurer of the City of)
 Providence; and the CITY OF)
 PROVIDENCE)

MEMORANDUM AND ORDER

This matter came before the Court on the motion of plaintiff, Clement J. Cesaro, for an order temporarily restraining defendants Vincent A. Cianci, Jr., Stephen Napolitano, and the City of Providence ("the defendants") from, among other things, terminating or otherwise changing Cesaro's employment status as Director of Public Works of the City of Providence.

In support of Cesaro's Motion for Temporary Restraining Order, plaintiff has submitted a verified complaint with exhibits attached and a supporting memorandum of law. The

Exhibit B (1)

factual allegations of Cesaro's verified complaint are complex, and need not be detailed here. Basically, Cesaro alleges that employment practices within the Department of Public Works have become a matter of intense public interest and discussion at a time when defendant Cianci is campaigning as the Republican candidate for governor. As a result of heightened public scrutiny of the Department of Public Works, plaintiff, who is a Democrat, has allegedly felt compelled to speak out publicly in his own defense by means of a public letter to the City Council of Providence and by a news conference. (Complaint ¶¶ 15, 18). In his public statements Cesaro has openly criticized Cianci and his administration. (Complaint ¶¶ 18, 19).

In paragraph 22 of plaintiff's complaint, Cesaro alleges^{1/}:

At no time prior to the first public disclosure by the plaintiff of the abuses concerning the payroll at the Department of Public Works did the Mayor ever have any comment about the plaintiff's faithful performance of his duties as Director of the Department of Public Works. Furthermore, it was only after the plaintiff's exercise of his right of freedom of speech to the public, the press, the media, and the Providence City Council, setting forth the truthful, documented records, facts, conditions and circumstances as they then existed, did the defendant Vincent A.

Cianci, Jr. and his top aides ever attack the plaintiff and then only in an attempt to salvage their political aims, ambitions and aspirations. The plaintiff, during the course of his employment as Director of Public Works, has been publically [sic] outspoken on matters of public interest in the administration of the affairs of the City of Providence as they affect the operation of the Department of Public Works.

A conference in chambers was held on plaintiff's Motion for Temporary Restraining Order on July 14, 1980. At that time, counsel for defendants argued that a temporary restraining order in this action is inappropriate; that Cesaro's rights to due process were fully safeguarded by relevant provisions of the Providence City Charter; that temporary relief would abrogate the lawful provisions of the City Charter and make removal of Cesaro impossible; that Cesaro was within the class of employees protected by less stringent first amendment standards than would ordinarily apply^{2/}; and that in the peculiar context of this case, granting Cesaro's motion for temporary relief would impinge on defendants' first amendment rights.

While I am sensitive to the important issues which defendants raise, plaintiff's verified complaint alleges that defendants' acts are in reprisal for the exercise of

his rights of free expression. The high level of protection which the Constitution accords first amendment rights compels me to grant the temporary relief which Cesaro seeks. See, e.g., Pilkington v. Bevilacqua, 439 F.Supp. 465 (D.R.I. 1977), aff'd, 590 F.2d 386 (1st Cir. 1979). "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976) (Plurality Opinion, Brennan, J.).

I do not believe that granting temporary relief will cause significant injury to the defendants or to the public. The harm the city will suffer from allowing Cesaro -- who has been in office since January, 1979 -- to serve a few more days is small compared to the plaintiff's loss of first amendment rights for even a short time.

Defendants' assert that granting preliminary relief to Cesaro would short-circuit the procedures of section 4.30 of the Providence City Charter and make Cesaro's removal for cause impossible. While I admit that this is a question of first impression, it does not seem to me that counsel's position is necessarily correct. I am granting plaintiff's motion for temporary relief solely to protect important first amendment rights which Cesaro alleges will be violated

by defendants' actions. To the extent that defendants seek to terminate plaintiff for reasons other than his exercise of first amendment rights, I specifically acknowledge that they remain free to do so, within the constraints of the due process clause. I note, however, that it is my responsibility to determine the true reason for discharge, and I am required to protect Cesaro's first amendment rights if I find his suspension or discharge is an improper reprisal for protected expression. See Pilkington, supra. The record before me raises the possibility that defendants may have such a motive. In order to protect Cesaro until a factual hearing may be had on the issues raised by plaintiff's complaint, defendants shall be restrained from enforcing any actions taken pursuant to section 4.30 of the Providence City Charter. This order does not prohibit the mayor from filing charges against Cesaro with the City Council, nor does it prohibit the City Council from considering those charges and reaching a decision thereon. After a factual hearing by this Court, if Cesaro has been terminated by the City Council and it appears that Cesaro's termination is not improperly motivated or that Cesaro is not entitled to the rigorous protection ordinarily granted speech, then defendants shall be free to enforce any action already taken under

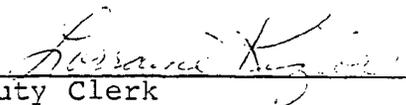
relevant charter provisions.^{3/} In the interim, Cesaro may, despite his suspension, continue to act as Director of Public Works with the same compensation rights and privileges which he enjoyed prior to July 10, 1980.

ORDER

Consistent with the foregoing, it is hereby ordered that defendants Vincent A. Cianci, Jr., Stephen Napolitano, and the City of Providence are temporarily restrained from enforcing any action which alters, changes, or in any way affects plaintiff's status as Director of Public Works or the compensation and privileges to which he is entitled.

The matter is assigned for hearing on preliminary injunction on July 25, 1980 at 9:00 a.m. unless sooner resolved by action of the City Council. The Court also advises the aforesaid date is dependent on this Court's trial calendar.

By Order,



Deputy Clerk

Enter:



Chief Judge

July 15, 1980

FOOTNOTES

- 1/ Cesaro also alleges that defendants have deprived him of procedural due process, and perhaps substantive due process as well. (See Complaint ¶¶ 31-35). Because I believe the first amendment issues are dispositive, I do not reach these other claims at this time.

- 2/ See Pickering v. Board of Education, 391 U.S. 568, 570 n.3 (1970) (distinguishing "policy-making" and "confidential" employees).

- 3/ In short, this order does not negate the validity of Cesaro's suspension or subsequent actions taken pursuant to the Providence City Charter; it merely restrains enforcement of such actions until the Court has an opportunity to consider the important first amendment issues which plaintiff raises.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

*City Ex 6
Clarence J. Spitzer
Notary Public
12/1/80*

CLEMENT J. CESARO :
 :
 vs : C. A. No.
 :
 VINCENT A. CIANCI, JR., in his :
 capacity as Mayor of the City :
 of Providence, and individually; :
 ET AL. :

AFFIDAVIT

Now comes VINCENT A. CIANCI, JR., and under oath doth
depose and say:

1. That I am the duly elected Mayor of the City of
Providence for a term ending in January 1983, and that I am
required by law, among other duties, to provide Police, Fire
and other emergency services to the hospitals in the City and
that I am also required to ensure the travel of private
ambulances and rescue squads of other cities with a clear
roadway to these hospitals at all times, and to provide safe
passage for citizens.

2. That on November 13, 1980 per my order, a staff
member requested in writing from Mr. Cesaro, certain informa-
tion regarding snow removal plans for this winter season (see
Exhibit 1).

3. That on November 14, 1980, I ordered Mr. Cesaro to
provide to me a written report by 4:30 P.M. on November 17, 1980
regarding:

- a) the inventory of salt and sand available
- b) his plans to order the necessary additional
sand and salt for the winter season
- c) arrangements regarding private contractors for
snow removal
- d) his plan of deployment of personnel and vehicles
for snow removal and sanding

e) provisions for maintenance of equipment (see Exhibit 2).

My order was not complied with.

4. That late Monday afternoon, November 17, 1980, and Monday evening, I attempted to reach Mr. Cesaro to no avail to ascertain his plans for the impending winter storm. A winter storm watch had been declared by the weather bureau. Messages were left for him to return my calls. At approximately 9:00 P.M., I verified that no personnel had been called in for the impending storm. At that time I ordered the necessary personnel to load the sanders and get them ready if needed.

5. That at approximately 10:15 P.M., I again attempted to reach Mr. Cesaro at his home and was informed by his wife that he was not there. I again left word for him to call me on an emergency matter. About midnight I ascertained that the general foreman was in, and a mechanic was in to prepare the spreaders. The regular night crew had reported for duty. However, they would neither drive nor load the trucks and sanders.

6. That at approximately 1:00 A.M., November 18, 1980, Mr. Cesaro was seen at the highway garage conferring with the night foreman and he once again disregarded an order to call me immediately. At no time did Mr. Cesaro order the trucks and men on the road. The necessary complement of men were available to operate the equipment. It should be noted that the sand and salt were not loaded on the trucks. It should be further noted that the snow was falling and the roads were getting slippery.

7. That at approximately 4:00 A.M., I spoke with several people in the highway garage and was informed that neither the general foreman nor the night foreman was available to speak with.

At this time I was also informed that keys to the trucks were not available and the wagon master, who works days, was at home. By this time the storm had increased in severity and I once again attempted to reach Mr. Cesaro at home at approximately 4:25 A.M. Since his telephone line was busy, and given the severity of the storm and the existing road conditions, at this time I asked New England Telephone Operator No. 615, who identified himself as 'Gordon', to break into the line so that an emergency phone call could be made. New England Telephone Operator No. 615 confirmed to me that there was, in fact, conversation on the line and he asked that that conversation be stopped so that an emergency phone call from the Mayor of the City of Providence could go through. However, New England Telephone Operator No. 615 informed me, after checking the line three times, that while the line was not, in fact, out of order, it was off the hook. At approximately 5:00 A.M. I was informed by an employee in the highway garage that Mr. Cesaro was on his way down and was five minutes away from the garage. I once again left word to have him call me immediately and at 5:35 A.M. on November 18, 1980, Mr. Cesaro finally returned my phone calls after more than thirteen hours.

8. That at this time I again asked Mr. Cesaro for the snow removal plan which I had requested on Friday and Mr. Cesaro at first told me that he had had the plan delivered to my office at City Hall on Sunday and after further questioning, he later admitted that he had not prepared the plan. I then ordered him to get sanders out because of the road conditions and he refused and I then notified Mr. Cesaro that he was hereby suspended from his job as Director of the Public Works. Mr. Cesaro informed me that he would decide how long he remained Director of Public Works and that I had no power to

tell him anything. I again informed Mr. Cesaro that he was hereby suspended and ordered him to leave the premises. I then contacted Mr. James Lembo, Deputy Director of the Department of Public Works and City Engineer, that he was hereby appointed Acting Director of Public Works until further notice.

9. That at no time did I refuse Mr. Cesaro the right to call in personnel if needed; the letter of November 14, 1980 was written to block Mr. Cesaro from immediately calling back all laid-off workers on Saturday, November 15, 1980. This letter applied specifically to and stated specifically Saturday, November 15, 1980, and did not apply to any emergency situations. I had been informed that Mr. Cesaro had allowed Joseph Virgilio, President of the Local Employees Union No. 1033 and Ernest D'Ambrosco, a City employee and Union steward, to call back all laid-off employees for Saturday, November 15, 1980. It must be noted that most of the employees affected did not normally work a six-day week. This letter of November 14, 1980 authorized Mr. Cesaro to recall on November 15, 1980, only those employees who were normally scheduled to work on that day; for example, employees in the sewerage treatment plant were allowed to work.

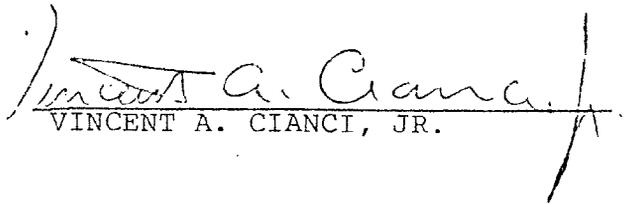
10. That the action that I took in suspending Mr. Cesaro was for insubordination and neglect of duty and had nothing to do with his purported exercise of First Amendment rights.

11. That his actions in refusing to permit sanding and snowplow equipment to go out on the road immediately endangered the public health and safety in that the roads were slippery and dangerous for emergency vehicles, and thus, the travel of fire apparatus, private ambulances, police vehicles, and rescues to the hospitals in the City of Providence, which serves residents of the entire state of Rhode Island, was jeopardized and endangered.

4. 12. That on or about October 20, 1980, because of a severe budgetary crisis, I requested all department heads to submit to me an orderly plan to lay off employees so as to save 4.2 million

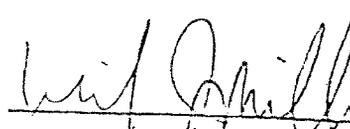
dollars. Mr. Cesaro never furnished to my office a plan for the reduction of his work force. The lay-offs in the Department of Public Works were made despite Mr. Cesaro's refusal, at my request, to submit to me this plan for a lay-off. The numbers of employees laid off which was upheld by an arbitrator did not in fact affect the snow removal capability of the department. In fact, on the evening of November 17, 1980, there were remaining on the payroll of the Department of Public Works, 6 heavy equipment operators, 59 equipment operators, 151 laborers, and 18 mechanics. Additionally, there were on hand at the public works garage, sufficient manpower to load, operate, and maintain all the sanding vehicles needed. The sanding did not take place because Mr. Cesaro in complicity with union officials refused to let the trucks be loaded and sent out.

13. That at no time was the action that I took in suspending Mr. Cesaro related to any political activity or inactivity on his part, nor was it in any way related to anything but his unsatisfactory performance of his duties as Director of the Department of Public Works. Because of his conduct during the evening of November 17, 1980 during a snow emergency, and because of prior actions taken by him, I cannot in the performance of my sworn duties as the Mayor of the City of Providence entrust him with the duties of Director of the Department of Public Works and to remain in my administration as Director of Public Works. I cannot discharge the duties entrusted to me by the people of the City of Providence as Mayor, more especially in the areas of public safety, if Mr. Cesaro is permitted to remain in my administration as Director of Public Works.


VINCENT A. CIANCI, JR.

STATE OF RHODE ISLAND
PROVIDENCE, SC.

Subscribed and sworn to before me this 19th day of
November, 1980 A.D.


Notary Public

cc: J. Rotello



Executive Chamber, City of Providence, Rhode Island

Vincent A. Cianci, Jr.
MAYOR

November 13, 1980

Mr. Clement Cesaro
Director
Department of Public Works
Providence, RI 02905

Dear Mr. Cesaro:

Will you please provide me with the following information per order of the Mayor.

1. Quantity of salt and sand presently on hand.
2. Anticipated quantity needed for snow removal this season.
3. Snow removal contracts presently negotiated and additional expected to be negotiated.

Your prompt response is expected.

Sincerely,

JOHN D. MANCONE
Administrative Assistant

JDM:CS

EXHIBIT 1



Executive Chamber, City of Providence, Rhode Island

Vincent A. Cianci, Jr.
MAYOR

November 14, 1980

Clemente Cesaro, Director
Department of Public Works
700 Allens Avenue
Providence, Rhode Island 02905

Dear Mr. Cesaro:

On November 12, 1980, I directed Mr. John Mancone to find out from you certain information relative to snow removal and sanding. Mr. Mancone has sent me a copy of the letter he sent to you on November 13 requesting this information. To date, neither Mr. Mancone nor I have received any response from you concerning this matter.

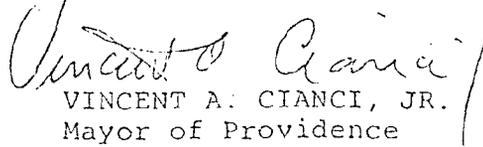
I am hereby directing you to inform me immediately, in writing, as to the following;

1. The inventory on hand of salt and sand which was not used last year, together with the location of same.
2. Please inform me of your plans to order salt and sand and the amount of salt and sand needed for the coming winter season.
3. Your arrangements regarding the rental of private snow removal equipment and operators of same.
4. Your plan of deployment of personnel and vehicles for snow removal and sanding.
5. Additionally, it is my understanding that you have expressed a concern for the need of welders to repair snow removal equipment. It is my understanding that, in the past, this welding service was performed by private contractors. You are also ordered to furnish to me, in writing, your plans for engaging private contractors to do welding, or, in the alternative, your plan to authorize City personnel to do the same.

I am hereby ordering that the above information be given to me by 4:30 P. M. on Monday, November 17, 1980.

Once I have received your written response, I will review the same and will notify you of my approval or disapproval thereof.

Very truly yours,


VINCENT A. CIANCI, JR.
Mayor of Providence

VAC



Executive Chamber, City of Providence, Rhode Island

Vincent A. Cianci, Jr.
MAYOR

November 14, 1980

Clement Cesaro, Director
Department of Public Works
700 Allens Avenue
Providence, Rhode Island 02905

Dear Mr. Cesaro:

This letter is written to confirm the telephone call made by Mr. John Mancone, at my directive, on November 14, 1980, in regard to the fact that you are not authorized to call any laid-off employees back to work on Saturday, November 15, 1980, except those laid-off employees who normally work a six day week.

Very truly yours,

A handwritten signature in cursive script that reads "Vincent A. Cianci, Jr."

VINCENT A. CIANCI, JR.
Mayor of Providence

VAC