No. _____

In The

Supreme Court of the United States

SHELDON SCHWARTZ, M.D.,

Petitioner,

v.

UNIVERSAL HEALTH SERVICES, INC.; UNIVERSAL HEALTH SERVICES FOUNDATION, INC.; HRI HOSPITAL, INC.; UHS OF DELAWARE, INC.; PATRICK MOALLEMIAN; and KRISHNASWAMY GAJARAJ,

Respondents.

On Petition For Writ Of Certiorari To The Appeals Court Of Massachusetts

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED – Continued

principles of equal protection, due process and free speech?

2. Must the state law be invalidated so unconstitutional?

3. Did Massachusetts courts err in refusing to consider the Supreme Court's proscription of post-employment retaliation in any profession?

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retaliation. The state courts ruled that physicians in Massachusetts cannot sue for post-employment retaliation, unlike other professionals, because the state medical retaliation statute only covers adverse actions while the physician is still employed. The courts ignored the constitutional violations.

OPINIONS BELOW

On February 7, 2017, the state trial court issued a memorandum and order of dismissal in *Sheldon Schwartz, M.D. vs. HRI Hospital, Inc. d/b/a Arbour-Hospital, et al.*, case # 1682CV00679. The Appeals Court, case # 17-P-656, affirmed this decision on December 29, 2017. The Supreme Judicial Court denied Further Appellate Review on March 29, 2018. Circuit Justice Stephen Breyer granted an application to extend to August 26, 2018, the time to file a petition for *certiorari*.

JURISDICTION

This Court has jurisdiction per 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

1st Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free

Massachusetts General Law chapter 149, Section 187: Health care providers; protection from retaliatory action by health care facilities

Section 187. (a) As used in this section, the following words shall have the following meanings:

"Health care facility", an individual, partnership, association, corporation or trust or any person or group of persons that employs health care providers, including any hospital, clinic, convalescent or nursing home, charitable home for the aged, community health agency, pharmacy or other provider of health care services licensed, or subject to licensing by, or operated by, the department of public health; any facility as defined in section 3 of chapter 111B; any private, county or municipal facility, department or unit which is licensed or subject to licensing by the department of mental health pursuant to section 19 of chapter 19, or by the department of developmental services pursuant to section 15 of chapter 19B; any facility as defined in section 1 of chapter 123; the Soldiers' Home in Holyoke, the Soldiers' Home in Massachusetts; or any facility as set forth in section 1 of chapter 19 or section 1 of chapter 19B.

"Health care provider", an individual who is a licensed health care provider under the provisions of chapter 112 including, but not limited to, registered nurses, licensed practical nurses, physicians, physician assistants,

taken against a health care provider affecting the terms and conditions of employment.

(b) A health care facility shall not refuse to hire, terminate a contractual agreement with or take any retaliatory action against a health care provider because the health care provider does any of the following:

(1) discloses or threatens to disclose to a manager or to a public body an activity, policy or practice of the health care facility or of another health care facility with whom the health care provider's health care facility has a business relationship, that the health care provider reasonably believes is in violation of a law or rule or regulation promulgated pursuant to law or violation of professional standards of practice which the health care provider reasonably believes poses a risk to public health;

(2) provides information to or testifies before any public body conducting an investigation, hearing or inquiry into any violation of a law, or rule or regulation promulgated pursuant to law or activity, policy or professional standards of practice of a health care provider, by the health care facility or by another health care facility with whom the health care provider's health care facility has a business relationship, which the health care provider reasonably believes poses a risk to public health;

(3) objects to or refuses to participate in any activity, policy or practice of the health care

policy or practice is known to one or more managers of the health care facility and the situation is emergent in nature; (ii) reasonably fears physical harm as a result of the disclosure; or (iii) makes the disclosure to a public body for the purpose of providing evidence of what the health care provider reasonably believes to be a crime.

(d) Any health care provider or former health care provider aggrieved by a violation of this section may, within two years, institute a civil action in the superior court. Any party to such action shall be entitled to claim a jury trial. All remedies available in common law tort actions shall be available to prevailing plaintiffs. The remedies shall be in addition to any legal or equitable relief provided herein. The court may: (1) issue a temporary restraining order or preliminary or permanent injunction to restrain continued violation of this section; (2) reinstate the health care provider to the same position held before the retaliatory action, or to an equivalent position; (3) reinstate full fringe benefits and seniority rights to the health care provider; (4) compensate the health care provider for lost wages, benefits and other remuneration, and interest thereon; and (5) order payment by the health care facility of reasonable litigation costs, reasonable expert witness fees and reasonable attorneys' fees. A health care provider may bring an action in the appropriate superior court or the superior court of the county of Suffolk for the relief provided in this subsection. The health care provider or former

cost of reasonable attorneys' fees and reasonable expert witness fees.

(g) Nothing in this section shall be deemed to diminish the rights, privileges or remedies of any health care provider under any other federal or state law or regulation or under any collective bargaining agreement or employment contract.

(h) A health care facility shall conspicuously display notices reasonably designed to inform its health care providers of their protection and obligations under this section and use other appropriate means to keep its health care providers so informed. Each notice posted pursuant to this subsection shall include the name of the persons the health care facility has designated to receive written notifications pursuant to subsection (c). Any health care facility which violates the provisions of this subsection shall be punished by a fine of not less than $250 nor more than $2,500. The provisions of this subsection shall be enforced by the attorney general.

(i) The attorney general may promulgate rules and regulations necessary and appropriate to enforce the provisions of this section.

STATEMENT OF THE CASE

Sheldon Schwartz, M.D., is an internist and gastroenterologist who used to care for patients in intensive care units in the Greater Boston area.

the morning in addition to his regular medical responsibilities.

This change was implemented to decrease costs.

This change began causing harm to patients because they frequently came in with serious general medical conditions in addition to psychiatric conditions, and these general medical conditions were often mistreated or neglected for up to 24 hours after admission. These serious medical conditions included disorders associated with HIV infection, diabetes mellitus, heart disease, asthma, organ transplantation, kidney disease and the like. Diabetes patients often would not receive the required diet or medicines. Patients who were on important medicines that the defendants considered expensive did not receive them at all for days.

Upon coming in every morning Dr. Schwartz found he had to spend many hours correcting the errors from the night before and ensuring proper medical care to the newly admitted patients in addition to caring for those who already were in-house.

Dr. Schwartz brought this problem to the attention of the defendants on numerous occasions. Dr. Gajaraj flatly told him that hiring an internist every night cost too much money and he would not do it. CEO Moallemian stated that budgetary constraints made the hiring of internists difficult or impossible.

Arbour at this time, and every year, generated around 30% profit year on year. It generated that level of profit throughout the events in this case.

be referred to the medical executive committee for adjudication. The medical committee concluded that Dr. Schwartz was not guilty of any wrongdoing and that he had acted to protect the safety of patients and staff. Dr. Schwartz was fully exonerated.

Moallemian then contrived a repeat act of retaliation against Dr. Schwartz' professional status. A false complaint of assault on a woman nurse was fabricated while Dr. Schwartz was away on vacation at the end of December. CEO Moallemian made an oral agreement with Dr. Schwartz and the medical executive committee that although he was being suspended while this accusation was being investigated, the entire matter would be concluded within ten days so that the hospital would not have to make a mandatory report to the state medical board. CEO Moallemian deliberately did not "officially" conclude his investigation until more than ten days had expired and Dr. Schwartz was, therefore, reported to the medical licensing board. When Dr. Schwartz and the medical executive committee reminded CEO Moallemian of their oral agreement, he denied the existence of such an agreement.

On February 27, 2013, Dr. Schwartz spent one full day to help administrative staff construct paper examination and progress note booklets because it was known that the electronic medical record system ("EMR") would be inoperative on the following day as the server would be down. Dr. Schwartz impressed upon the administrators that it was vital that backed-up notes from the previous days be printed out and provided to the medical staff to preserve patient safety.

he refused to return to seeing patients then he could leave and that his services would be no longer needed.

CEO Moallemian and Director Dr. Gajaraj referred Dr. Schwartz to the medical executive committee for "disruptive" behavior for his audacity in advocating for patient safety that day.

It is vital to note that after the state observer arrived, the administrators assured the state that backup notes were indeed printed and being distributed.

On May 9, 2013, Dr. Schwartz left on Dr. Gajaraj's desk a list of ten patients who had not been appropriately managed upon admission the previous night. Dr. Schwartz wrote a note to Dr. Gajaraj that it was unacceptable that the patients had not been appropriately worked up and that patients had been neglected and placed in harm's way. After hearing nothing from Defendant Dr. Gajaraj for three hours Dr. Schwartz visited Dr. Gajaraj's office in person to discuss the matter. Dr. Gararaj berated Dr. Schwartz for his lack of respect and did not act upon his detailed list of complaints.

On May 30, 2013, Dr. Schwartz was about to examine an unstable diabetic patient in the examination room. Dr. Gajaraj entered the examining room and began to berate Dr. Schwartz about his unwillingness to vacate the examining room so that a new patient could be evaluated by nursing staff. Dr. Gajaraj screamed at Dr. Schwartz that he hated him and that if was up to him he would fire Dr. Schwartz at once. Dr. Schwartz told Dr. Gajaraj that he had to evaluate an unstable

only those supportive of the UHS narrative as witnesses for the board when it issued a statement of allegations against Dr. Schwartz.

Exculpatory witness statements that directly contradicted the administrators' testimony were jettisoned, and Paikos did not preclude the administrators' false statements from then being asserted as official board allegations.

Paikos and Barringer then together formulated the list of witnesses to be subpoenaed by the board. Paikos sent these subpoenas to Barringer to be sent on to witnesses, even those who no longer were employed by UHS at Arbour.

Witnesses thus received a board subpoena in an envelope from UHS's own attorney, along with an offer of representation by Barringer at the board hearing.

This naturally informed the witnesses that UHS was fully aware that they were to testify at what was ostensibly a state proceeding. They were further informed that UHS's own private lawyer would be in attendance and listening to their testimony.

This action is entirely unique and has never before been seen in any board proceeding against a physician in Massachusetts.

This unique action also meant that UHS had the list of board witnesses long before Dr. Schwartz himself did, and it was his professional licensing case.

> DR. SCHWARTZ. Why do you think the Board sent your subpoena to LeClair Ryan and not to you?
>
> DR. FELSON. I don't know.
>
> MR. PAIKOS: Objection. I withdraw the objection. I think he said "I don't know."
>
> DR. SCHWARZ. Do you think the subpoena should be sent to you, or do you think it should have been sent to an attorney who you had no knowledge of?
>
> DR. FELSON. I would think I would be the logical one to receive that.
>
> DR. SCHWARTZ. Had LeClair Ryan ever represented you in the past?
>
> DR. FELSON. No."

Sworn testimony, May 10, 2016, p.332-333.

It is vital to note that Paikos objected to the witness, a licensed physician, being asked why he thought the medical board sent the subpoena to his employer's external counsel rather than directly to him as a licensed physician. Paikos then objected to the photographs of the subpoena and letter from UHS's lawyer being introduced as exhibits by Dr. Schwartz. (*Dr. Padmanabhan served as Dr. Schwartz's aide during his direct testimony.*)

> DR. PADMANABHAN. So is it your testimony that Dr. Felson was sufficiently perturbed to reach out to you and inform you about this?

is because "representation was made to the board" that she represented individuals employed by Arbour-HRI. No such representation was offered in evidence and the witnesses themselves testified that they had not been represented by Barringer prior to her contacting them with the board's subpoena. They were confused as to why they received board subpoenas via UHS-Arbour's own lawyer. Witnesses who were no longer employed by UHS also received subpoenas and offers of representation by UHS.

> The magistrate denied Paikos' objection.
>
> THE MAGISTRATE: I'm going to allow them. I don't so much view them as incomplete as enlargements of another document, and there certainly has been testimony from a number of individuals including Dr. Felson about the receipt of subpoenas and about the involvement of Arbour's law firm. And so to that extent, I'll take the exhibits. In light of some deficiencies, I still think they qualify as admissible, and I do recall there was testimony from Dr. Felson that while he received a letter offering representation, that he declined that. So Respondent's Exhibit 25 and Exhibit 26 are admitted into the record."

Sworn testimony, June 7, 2016, p.994.

For UHS to have made "representations" that its external counsel already represented the witnesses that the medical board intended to subpoena, it must have received that list of witnesses from Paikos first. UHS had that list weeks before the respondent, Dr.

PAIKOS: · Objection. Withdraw the objection.

Sworn testimony, May 9, 2016, p.186.

In these excerpts, Paikos attempts to show that the problems at UHS-Arbour were pretty much the same problems everywhere else:

PAIKOS: So prior to working at Arbour, you worked at CVS?

REID (pharmacist): Um-hum.

PAIKOS: If you could say "yes" or "no."

REID: Yes.

PAIKOS: You would get prescriptions faxed or brought in or electronically sent to the store by physicians, correct?

REID: Yes.

PAIKOS: And there were errors you saw from physicians that you would get prescriptions from when you worked at CVS?

REID: Yes.

PAIKOS: Similar to the problems that you saw at Arbour when you worked there?

REID: Yes.

Sworn testimony, May 23, 2016, p.603-604.

Again, in this excerpt Paikos attempts to claim that the problems at Arbour were just the same as elsewhere:

> SCHWARTZ: Errors happen, but there are behaviors that can prevent them from happening. And I don't know what Mr. Paikos was specifically referring to but if he was trying to defend the hospital's behavior on the day the computers were down, there were actions that the hospital should have taken to prevent errors and they didn't take it. And not taking it, not setting up a workable system is different from what we call medication errors where a nurse accidentally gives the wrong medication or an order is misread. Those are human errors. But not having the proper system set up is unacceptable.

Sworn testimony, June 28, 2016, p.1189-1190.

Paikos also objected repeatedly and strenuously to introduction of exhibits documenting the level of systemic dysfunction at Arbour Hospital.

> DR. PADMANABHAN: Your Honor, the Board objected to Respondent's Exhibit 23, and I think we should like to reintroduce it.
>
> THE MAGISTRATE: 23?
>
> DR. PADMANABHAN: Newspaper articles.
>
> THE MAGISTRATE: Mr. Paikos.
>
> MR. PAIKOS: **I would object as they contain multilevel hearsay.** Looking at the first paragraph, for example, "Brookline psychiatric hospital is again accepting new patients but on a limited basis after **the state gave preliminary approval to the hospital's plan for correcting serious safety**

> became very paranoid, very high turnover, unsupportive, undirected establishment.
>
> SCHWARTZ: Did you have any interaction with Pat Moallemian?
>
> MARTELL: Yes.
>
> SCHWARTZ: Was he professional in his interactions with you?
>
> MARTELL: No.
>
> PAIKOS: Objection as to relevance.
>
> THE MAGISTRATE: I think it's generally, it's at least relevant, Mr. Paikos, in the sense that some of the allegations against Dr. Schwartz do relate to this individual's interactions with him, so I think it's arguably relevant in that regard. I don't know how far it will maintain the relevance, but let's see.

Sworn testimony, May 23, 2016, p.637.

Paikos, the licensing board's lawyer, brazenly acted as UHS' advocate.

Paikos was joined by Medical Director Gajaraj in actively playing down the existence of problems at Arbour. This is the testimony of the Medical Director:

> SCHWARTZ: Did a patient die from a respiratory arrest at Arbour-HRI in the summer of 2013?
>
> GAJARAJ: I don't recall that, no.
>
> SCHWARTZ: How many deaths occurred in Arbour-HRI in the last ten years?

DR. SCHWARTZ: Thank you. Has the Board ever investigated you?

DR. GAJARAJ: Yes.

DR. SCHWARTZ: Could you tell us what the complaints were against you?

DR. GAJARAJ: I do not see the relevance to this particular thing for that. My – I don't see the relevance for why I'm here. This is about Dr. Schwartz and not about my personal practice of medicine.

THE MAGISTRATE: The question before you, there isn't an objection, so you need to answer the question.

DR. GAJARAJ: I do not want to answer that question.

Sworn testimony, May 12, 2016, p.562-563.

Dr. Gajaraj never did answer that question.

PADMANABHAN: Is it your testimony that Dr. Gajaraj accused you of undermining the hospital?

SCHWARTZ: Yes.

PADMANABHAN: Was presenting him a list of ten neglected patients undermining the hospital?

SCHWARTZ No. He was referring to the fact that I said I was going to go to DMH and the

PADMANABHAN: Had the Board possessed documentary evidence that this involved ten patients, not just one?

SCHWARTZ: The Board has a document, the Board had this document in 2013, 2014.

PADMANABHAN: In your opinion why did the Statement of Allegations by the Board not mention the ten patients involved and just said "a patient"?

SCHWARTZ: Because if there were ten patients, it would be foolish allegation, and they are in an adversarial way trying to make a case where there is no case.

Sworn testimony, June 7, 2016, p.919-920.

PADMANABHAN: There is a list of ten patients. You find that these patients have been neglected and you go see the medical director and the medical director doesn't want to talk about it. What would a nondisruptive member of the medical care team do at that point?

SCHWARTZ: Actually I was, I wasn't disruptive. I said I came down to discuss these things and this has to stop because what was one, two, five, six things has now become ten things, and ten things represents 15 percent of the patients in the hospital, and you are expecting me to work up in addition to all the patients I have to see, instead of coming at seven-thirty and staying for five and a half hours, I'm staying to five or six o'clock at night to do the work that hasn't been done the previous night and also has threatened safety,

> thing now having learned it before the break that Ms. Barringer is here in the courtroom.
>
> MR. PAIKOS: Yes.
>
> THE MAGISTRATE: I want to make sure that the witnesses – I'm sure Ms. Barringer understands the ethical issues here. I want to make sure the witnesses are aware that there is no looking for guidance, looking for advice, no interaction whatsoever."

Sworn testimony, May 9, 2016, p.129.

Despite this clear order from the Magistrate, her order was quickly violated that same day.

> DR. SCHWARTZ: And you think that UHS, they are representing you through UHS, right?
>
> PENHALLURICK: Yes.
>
> DR. SCHWARZ: And you think that UHS had a role in this proceeding?
>
> PENHALLURICK: I guess so, but I haven't really thought about it that much. I thought it was part of this process.
>
> DR. SCHWARZ: Have they coached you in any way? What did their, not factually, but what was your time with them spent doing or the service they provided you?
>
> PENHALLURICK: Maybe just to let me know, prepare me for what was going to be here today. I mean I have, I have my own opinions. It's been a while so I don't remember

toward someone she knows to try to understand what is going on, but that does not come to the absolute and extreme conclusion of some sort of collusion or unethical behavior by either the witness or by people in the audience.

There was an instruction to one of the witnesses from you indicating you are not to focus toward the gallery, and certainly that person I believe followed it and it wasn't given to the third person, I believe Ms. Grau, but she instinctively looked over toward the back. There were other people in the back. Presumably she looked toward Ms. Barringer, and that is an understandable reaction, not the result of some sort of collusion, plot, etc. that the respondent is suggesting.

So I would say that his argument fails and is also unclear what he is asking, if he is asking for some sort of dismissal. I would suggest that, respectfully suggest if there is an issue with people not focusing on the testimony, that a similar instruction be given that that be solved and not someone be banned from a public hearing. It is ultimately the Magistrate's decision. Essentially, I don't take a position who should be here or not, but his motion which I'm responding to really has no factual or legal basis.

DR. SCHWARTZ: May I respond?

THE MAGISTRATE: No. There has been a little too much back and forth, and I think I have heard enough. **I will say for the**

sunlight between Barringer and Paikos. They were one team and did not even deny it. It was unprecedented.

Dr. Schwartz immediately filed suit in state court in direct response to this unprecedented open collusion between a medical licensing board employee and his former hospital. He filed suit before the end of the hearing conducted, allegedly, by the licensing board.

Paikos questioned Dr. Schwartz about this lawsuit even before UHS or the other defendants were served, in an aim to claim Dr. Schwartz repeatedly threatens people with lawsuits.

> PAIKOS: Do you believe that when someone says something that you disfavor, you have a habit of threatening or actually suing them, threatening to sue them or actually suing them?
>
> DR. SCHWARTZ: Until the events with the Board of Medicine, I, who own extensive amounts of property, have never been in a litigious situation except for one or two cases where a tenant broke a contract. I'm not litigious. All my behaviors have been not to sue people, and the lawsuit against UHS is the first time other than maybe 25 years ago when somebody broke a rental contract that I have ever sued for anything other than going to an insurance company to make claims when there have been damages to property. So I'm not litigious.
>
> PAIKOS: But you have sued Arbour twice, correct?

The trial court dismissed Dr. Schwartz' suit based on UHS' statute of limitations claim. The court never analyzed or even mentioned the unprecedented involvement of UHS in what was ostensibly an independent licensing board hearing. Dr. Schwartz filed a timely notice of appeal.

The Appeals Court issued the attached decision in December 2017. This court ruled that Massachusetts physicians who blow the whistle and get retaliated against may not recover for post-employment retaliation because no law protects them once they are no longer employed by that hospital. The court ruled that protection from post-employment retaliation does not even exist as far as physicians are concerned.

This decision issued even after Dr. Schwartz made explicit that he, like thousands of doctors across the United States, was never an ***employee*** of the hospital, even when he held privileges and treated patients in-house.

In the meantime, Dr. Schwartz's earlier implied-contract lawsuit against UHS-Arbour went to trial before a jury regarding the administrative stipend that he was owed that the same defendants did not pay him for more than two (2) years while he still worked at Arbour. These same defendants testified that Dr. Schwartz was "disruptive", unprofessional and did not deserve to be paid the stipend. The jury took less than two (2) hours to rule against UHS and awarded Dr. Schwartz more than $200,000 in damages and interest.

hospital, does not automatically mean that he/she are employees of the hospital.

Physicians are different in this regard from all other professions covered by the statute, such as nurses or respiratory therapists, all of whom indeed have an employer-employee relationship with the hospital.

Based on this long-standing reality, applying the state court's interpretation means that the statute does not cover any physician at any Massachusetts hospital who blows the whistle but is not a salaried employee.

Allowing this interpretation to stand automatically means that no medical professional in Massachusetts is safe when he or she speaks up on behalf of patient safety, as Dr. Schwartz did.

This result is counter to the will of the Legislature which explicitly desired that ALL persons who help provide medical care to patients be protected in order to ensure they report waste, fraud and abuse so that patients are protected.

It is the definition of absurd to interpret a medical whistleblower statute in a way that strips protection away from just physicians, but that is precisely what the Massachusetts courts have done.

If the state court's ruling is left intact, then of all the physicians in the United States, only Massachusetts physicians will be deprived of any protection from post-employment retaliation and hospitals who desire

The unprecedented level of active collusion between the former employer and a board employee is laid bare using the official transcript and the magistrate's own statements.

The lower court's claim that physicians ***alone*** are not protected in Massachusetts from post-employment retaliation for engaging in protected conduct defied clear rulings from the Supreme Court, *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997); *Burlington Northern & Santa Fe Ry. v. White*, 548 U.S. 53 (2006); *United States v. Ehrlichman*, 546 F.2d 910 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 1120 (1977), as well as the entire body of national case law.

See, e.g., *Coles v. Deltaville*, 2011 WL 666050 (E.D. Va. 2011) (plaintiff's allegations that his former employer engaged in an outright campaign to ensure that the plaintiff never worked in this proverbial town (here, industry) again constituted a prima facie case of retaliation under both Title VII and 42 USC. 1981), *Hayes v. Shalala*, 902 F. Supp. 259 (D.D.C. 1995) (causal connection existed three years after protected conduct based on the time plaintiff first became vulnerable to retaliation); *Berry v. Stevinson Chevrolet*, 74 F.3d 980 (10th Cir. 1996) (an employer's post-employment filing of criminal charges against a former employee who had filed a Title VII charge against that employer constituted unlawful retaliation); *Durham Life Ins. Co. v. Evans*, 166 F.3d 139 (3d Cir. 1999); *Torres v. Gristede's Operating Corp.*, 628 F. Supp. 2d 447 (S.D.N.Y. 2008); *Darveau v. Detecon, Inc.*, 515 F.3d 334 (4th Cir. 2008); *Gill v. Rinker Materials Corp.*, No.

ignored his concerns and retaliated against him because they knew they were willfully putting patients at risk in order to generate profits of 24-30% consistently year after year.

The defendants' business model has already been declared by the U.S. Supreme Court as well as the U.S. First Circuit Court of Appeals to be a fraud that depends on stealing from the Treasury and providing substandard care that has already harmed patients, including many preventable deaths.

> *Universal Health Services, Inc. v. United States ex rel. Escobar*, 579 U.S. ___ (2016) (By using payment and other codes that conveyed this information without disclosing Arbour's many violations of basic staff and licensing requirements for mental health facilities, Universal Health's claims constituted misrepresentations [. . .] and second, the defendant's failure to disclose noncompliance with material statutory, regulatory, or contractual requirements makes those representations misleading half-truths.)

United States ex rel. Escobar v. Universal Health Servs., Inc., 2016 WL 687650 (1st Cir. 2016) ("*Escobar II*").

This *certiorari* petition is not the first time this Court is hearing about these defendants. That is what makes the state court's decision to carve physicians out of protections for whistleblower retaliation and declare that Massachusetts physicians may never claim

his license and right to earn a living as a physician. Paikos violated this Court's rulings in *Napue* and *Giglio*. *Napue v. Illinois*, 360 U.S. 264 (1959); *Giglio v. United States*, 405 U.S. 150 (1972).

Allowing the state court's ruling to stand would massively harm patients by endorsing state court protection for severe post-employment retaliation by hospitals, up to and including getting a whistleblowing physician's license revoked.

4. If the state court's narrow interpretation is not an error, then the law must be invalidated

It is petitioner's contention that the state court's interpretation of the Massachusetts medical whistleblower statute is impossibly narrow and makes the law devoid of any meaning. What good is a medical whistleblower protection statute that does not prevent hospitals from colluding with the licensing board to get doctors thrown out of medicine and leaves those physicians with no remedy?

If, however, this Court agrees with the state court's narrow interpretation of MGL ch. 149, § 187 as written, then this Court must invalidate the statute on Constitutional grounds as it undeniably is not fit for purpose if it allows physicians specifically to be excluded from protection from post-employment retaliation and gives *carte blanche* to hospitals seeking 30% profits to collude with licensing boards to drive