No. 21-1257

In The

Supreme Court of the United States

BRIAN EVANS, as the Administrator
of the Estate of Helen Marie Bousquet,

Petitioner,

v.

RONALD MARVIN, M.D., et al.,

Respondents.

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

PETITIONER'S REPLY BRIEF

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ARGUMENT

As the Appellant Respondent admits in their RESPONDENTS OPPOSITION BRIEF, page 5, "Pursuant to 28 U.S.C. § 1257 the Supreme Court of The United States may review decisions by a state's highest court to address federal law." The Respondents are correct, and there is a question of Federal Law in the Writ before this Honorable Supreme Court.

The Table of Authorities in this Petitioner's Reply Brief is in addition to those cited in the Petitioners original Writ before this Honorable Supreme Court. Petitioner also wishes to note that several Defendants failed to Reply or even file a notice to this Honorable Supreme Court that they would not be filing a Reply and were served with the documents the Clerk of This Court provided to the Petitioner and ignored them.

It has been held that a "defendant has a due process right to an impartial judge under both state and federal Constitutions. (U.S. Const., 14th Amend). "A fair trial in a fair tribunal is a basic requirement of due process. (See *Murchison*, 349 U.S. 133, 137 (1955)). This Court must put Public Policy, the Interests of Justice, and Appearances at the forefront of this Writ. Courts have held that a trial before a biased or impartial judge is subject to automatic reversal as a "structural error." (*Neder*, supra, 527 U.S. at 8; *Fulminante*, supra, 499 U.S. at 309-310; *Chapman*, supra, 386 U.S. at 23, fn. 8).

I. THE APPEARANCES ISSUE MAKES THIS CASE A FEDERAL AND CONSTITUTIONAL COURT ISSUE.

The U.S. Supreme Court itself, in a state case, "We vacate the Nevada Supreme Court's judgment. . . ." Our precedents, the Due Process Clause may sometimes demand recusal even when a judge "'ha[s] no actual bias.'" *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 825, 106 S.Ct. 1580, 89 L.Ed.2d 823 (1986). Recusal is required when, objectively speaking, "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975); see *Williams v. Pennsylvania*, 579 U.S. ___, ___, 136 S.Ct. 1899, 1905, 195 L.Ed.2d 132 (2016).

In *Rippo v. Baker*, the United States Supreme Court vacated the Nevada Supreme Court's denial of relief based on the trial judge's failure to recuse himself. 137 S.Ct. 905 (2017).

According to 28 U.S.C. § 455, any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. The term "judge of the United States" includes judges of the courts of appeals, state and federal district courts, Court of International Trade and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior. He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in

controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding. A judge should inform himself about his personal and fiduciary financial interests and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

II. THE RESPONDENT'S SEEK TO ASK THIS COURT TO ALLOW A TECHNICALITY BY A PRO SE LITIGANT TO PREVAIL OVER THE INTERESTS OF JUSTICE AND PUBLIC INTEREST.

During the entire Appeals process, at no time did the Respondents raise the issue of the Petitioner failing to file a Notice of Appeal on the judge's denial of a motion concerning his own wife's admitted connection to the hospital (until they filed their Reply Brief). During the entire record of the Massachusetts Court of Appeals, the issue was never raised, but the Defendants replied to all of the motions Petitioner filed in that court both while acting in Pro Se, which the Massachusetts Appeals Court ruled on without issue of his Pro Se status, and when he was able to get an attorney as COVID interfered with his ability to do so. It should also be noted that not until this very request for a Writ of Certiorari have the Defendants ever admitted that the Petitioner did not find out about the Judge's wife's doctor's connection to the hospital only being learned about until the middle of the Appeal with the Massachusetts Appeals Court, previously only deceivingly

claiming that the Petitioner should have brought up the judge's connection during the trial, which the Plaintiff did not know because the judge concealed it, and it only appeared on the internet two years after the fact of the judge's wife's connection that went back over a decade without ever notifying Petitioner or counsel. In fact, the Defendants and Counsel may have also known about the judge's wife's connection but also failed to reveal such knowledge. However, what this Court must determine is that if a technicality, when all of the filings in the Appeals Court clearly had motion after motion about the judge's wife, and a one page technicality should be more important that Public Trust, Appearances, and the fact that a woman died. Let's not forget that the jury found a nurse negligent in this case, but coincidentally the judge, Salim Tabit, dismissed Defendants that his own wife was, in the least and untested, admitted to practice in, right before the jury began deliberations, despite Holy Family Hospital of Methuen, Massachusetts nurse Anne Marie Mede being found to be negligent in her care, but the judge holding his wife's connections to the hospital not responsible. If that does not scream about Appearances and Public Interests then I do not know what does. (See **Appendix C**).

III. THE APPELLANT HAS THE RIGHT TO FILE THIS WRIT PRO SE.

The U.S. Supreme Court itself has a process that allows Pro Se litigants to file a Writ of Certiorari.

A representative of an estate may proceed pro se in Federal court where there are no other beneficiaries or creditors other than the litigants. See *Bass v. Leatherwood*, 788 F.3d 228, 230 (6th Cir. 2015); *Guest v. Hansen*, 603 F.3d 15, 17 (2d Cir. 2010). See also *Pridgen*, 113 F.3d at 393. (See **Appendix B**).

Deceitfully, the Respondents on numerous occasions have stated that the issue of this judge should have been brought up at trial, however the Petitioner did not find out until two years later while the judge, Salim Tabit of the Essex County Superior Court in Lawrence, Massachusetts, concealed the fact that the motions he was ruling upon were, as the Appendix attached to this Reply confirms, he was actually sleeping with. That alone, knowing his wife was connected to this hospital, should have had him reveal or recuse himself so that we had the opportunity to object.

The Respondents have repeatedly argued that the Petitioner did not have the right to file motions Pro Se. Even the judge in the Lower Court acknowledged that the Massachusetts Superior Court Tabit held that the Pro Se litigant Evans was permitted by the Massachusetts Appeals Court that he was able to file and was granted a motion for transcripts, contrary to what the Respondents are stating. (See **Appendix A**). The judge in the Superior Court, in his own ruling stated "The court is also cognizant that the court's ruling may conflict with the court's earlier decision determining that Mr. Evans may not bring an action of this sort on behalf of this mother's estate as he is not a licensed

attorney. Nonetheless, the Appeals Court refused to dismiss the plaintiff's appeal on those grounds."

In relevant cases where Federal Courts have permitted Pro Se litigants to proceed Pro Se, On April 7, 2016, in *Rodgers v. Lancaster Police & Fire Department*, the U.S. Court of Appeals for the Fifth Circuit held, in a matter of first impression, that an individual with capacity to represent an estate under state law may represent an estate pro se if that person was the estate's sole beneficiary and there were no other creditors (5th Cir. April 7, 2016)).

On appeal, the Fifth Circuit reversed. The court first found that federal civil rights laws extend federal-question jurisdiction by incorporating state wrongful-death statutes under 42 U.S.C. § 1988. Rodgers could therefore bring a claim under federal civil-rights laws through Texas's wrongful-death statute under which she had capacity to sue as the surviving parent. Construing Rodgers's pleadings liberally, the Fifth Circuit determined that she adequately alleged that she suffered personal injuries from violations of her son's rights under 42 U.S.C. §§ 1983 and 1985. As a result, the court had subject matter jurisdiction.

The Fifth Circuit also ruled that the district court erred in dismissing Rodgers's action solely because she was proceeding pro se on behalf of the estate. Joining the U.S. Courts of Appeals for the Second and Sixth Circuits, the Fifth Circuit held that a litigant with capacity under state law to represent an estate may do so pro se in a survival action if the litigant was the

estate's sole beneficiary and the estate had no creditors (see *Guest v. Hansen*, 603 F.3d 15, 19-21 (2d Cir. 2010); *Bass v. Leatherwood*, 788 F.3d 228, 230-31 (6th Cir. 2015)). The court remanded the case for further determination whether Rodgers was the estate's sole beneficiary. Plaintiff is and always has been the sole beneficiary and makes this claim under Penalty of Perjury before this Honorable United States Supreme Court.

IV. THE MASSACHUSETTS APPELLATE COURT DID ERR IN DETERMINING THE TRIAL JUDGE WAS NOT REQUIRED TO RECUSE HIMSELF FROM THE TRIAL OR DISCLOSE HIS SPOUSE'S ADMITTING PRIVILEGES TO THE PARTIES PRIOR TO LITIGATION.

As the Respondents seek to convince this Honorable Supreme Court that there is no federal issue, they contradict themselves by arguing what the Respondents believe shouldn't be before this Court to begin with. Their entire Reply to this U.S. Supreme Court is a copy and paste job from their other filings, with the exception of finally admitting the Petitioner did not learn of the judge's wife's connection to the hospital until two years later and during the appeal.

While the Appellate Court, delegating their statement to footnote 12, concluded that the judge's wife only had "admitting privileges" to the defendant hospital, such a statement is not based on any tested fact nor is there any evidence in this case what admitting

privileges encompass at the defendant hospital or what financial benefits the judge's spouse reaped from her relationship with the hospital. None of these facts are in the record because the judge failed to disclose to any of the parties his wife's relationship with the hospital when the case was before him. To the Common Man, that meets the criteria for the Appearance of Impartiality.

In a footnote by the Massachusetts Appeals Court in this current matter, the Court says directly, App. 9 in footnote marked 12, the Appeals Courts literally says, "*While it may have been better practice for the judge prior to trial to reveal that his wife has admitting privileges at Holy Family*" is a "full stop" admission by the Massachusetts Appeals Court themselves as to what the common man, which is all that is required under state and federal law, would have concluded and should have had the Appeals Court Order a mistrial. To further say "that wasn't enough," is absurd, as the Oral Arguments confirm that are publicly available on the Courts website, the Appeals Court judges *admit* they didn't even know what admitting privileges were. That means, they don't know what monetary contribution to this judge's household were, and how deeply connected to the hospital the judge's wife was.

The "common man" would have seen that this judge should not have been presiding over this case, the Massachusetts Appeals Courts it would have been "better practice" for him to admit his wife's connection to this case and told us, and it should not have been my job to investigate and only learn about this because I

was browsing the internet and saw a story about his wife, where I discovered only in that moment and during my Appeal that she was connected to the hospital. As I previously said, just how deep the rabbit hole goes we don't know because the judge concealed it.

My mother lost her life, and to rule because of a technicality, while *admitting* in The Massachusetts Appeals Court Order that the judge should have conducted "better practice," is simply appalling. I will retain an Attorney to argue before this Honorable Court if it requires an oral argument at all. This is so black and white that I am shocked it's even before you right now.

The judge admitted his wife was connected to this hospital, was never Ordered to speak more to it by the Appeals Court, who admitted it would have been "better practice" to do so. It was my mother's wrongful death trial, not a small claims case and we had a right to know this judge's wife's connections. The Appeals Court judges were not doctors, and they admittedly didn't even know what Admitting Privileges were at the Oral Argument in this case, yet ruled it wasn't enough to meet the threshold later in their written ruling. However, they didn't ask for any hearing in the lower court that would have made the judge in this case answer under oath the answers to very serious questions about his wife's connections to all the Defendants, several of whom he dismissed that his wife was associated with, before the jury was to return to deliberate. If that does not smell bad, then I honestly do not know what does. Massachusetts was covering

one of their own, and that's the "Appearance" of everyone who has heard about this case.

CONCLUSION

This Writ should be granted. Numerous case law confirms that this is indeed a Federal and Constitutional issue. The Appearance issue here by the Massachusetts Appeals Court's own admission should have been handled with "better practice" by the judge. My mother died at a hospital this judge's wife had at the least, admitting privileges to. We don't know how much further she was connected with the Defendants because the Massachusetts Appeals Court *didn't want to know*.

I ask that this Court does not sweep under the rug the facts in this matter as all of the Massachusetts Courts have done. My mother mattered. I had a right to know if the judge presiding in my case was sleeping next to an individual associated with the Defendants. This case is about judges covering for other judges.

For a moment, if none of you were Justices, if you were the "common man" or "common woman" and you heard about all of this, exactly what would your conclusion be?

The Appearance issue in this case is undeniable. My mother didn't deserve "maybe better practice" (as the Massachusetts Court of Appeal admitted in their Order) from the judge overseeing a case that sought

justice for her death following knee surgery. Please grant the writ, and Order a new trial, or at a minimum, put this judge in the lower court on the stand to answer under oath everything about what his wife's connection to this hospital was. More than enough case law was presented in my Original Brief. My mother deserved more than "better practice" by the judge overseeing her case, as admitted by the Massachusetts Appeals Court. If that's how they see it, then you can imagine how the "common man" would have. The Interests of Justice and Public Interests must prevail over a technicality, as this same Appeals Court has done in the past with other cases. And although the Federal and Constitutional facts clearly fall within this Court's jurisdiction for these reasons and the reasons cited in my brief and case law above, the Petitioner is under no illusion that this Court will grant to the Common man such a Writ over a major corporation such as this hospital, a hospital owned by Cerberus Capital Management, who owns this hospital and gun manufacturers. In other words, the Defendants make the guns, treat the wounds, and then rely on judges who conceal information such as Judge Salim Tabit did to cover for his wife and where she works.

Thirty-nine United States Governors have already issued Sleep Apnea Proclamations over what happened to my mother, which you may see at helenbousquet.com. And while this Court may do nothing, the legacy of this filing and the corruption involved will be forever filed within this Court and for future generations to come.

It is up to you, the Justices of this country, to decide if what happened here can really be deemed: "Okay."

The people of this country, ordinary people and not just those with the last name Trump, should get expeditious justice and should be heard as easily and quickly as he does. Most filings with his last name are immediately accepted. What about the rest of us? The Elite should not be the only ones who have access to *our* United States Supreme Court.

This happened to my mother, and she mattered. I hope this Court will agree, and not be yet another series of judges who pretended none of this happened, and that it's ok for judges to lie. There's ample federal and constitutional law that makes this the proper forum for all of these questions without yet another court sweeping it under the rug or even simply denying to review it at all. That is what everyone else has done.

May The United States Supreme Court be better. I know that Helen Marie Bousquet, my mother, deserved to have her son take this miscarriage of justice as far as I could. I now have.

Respectfully submitted,

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COMMONWEALTH OF MASSACHUSETTS

ESSEX COUNTY, SS

CIVIL ACTION
NO.: 1577CV00569

BRIAN EVANS, AS THE ADMINISTRATOR OF THE STATE OF HELEN MARIE BOUSQUET,
Plaintiff,

v

RONALD A. MARVIN, M.D., ORTHOPAEDICS NORTHEAST, P.C., SRIDHAR R. GANDA, D.O., KRISTIN A. DASILVA, R.N., ANNE MARIE MEDE, R.N., HOLY FAMILY HOSPITAL, STEWARD MEDICAL GROUP, INC. AND STEWARD HEALTH CARE SYSTEM, LLC,
Defendants.

ORDER

(Filed Jun. 5, 2019)

After review, the motion is DENIED. Whether to reconsider a matter is left to the sound discretion of the motion judge. See Audubon Hill S. Condo Ass'n v. Cmty. Ass'n Underwriters of America, Inc., 82 Mass. App. Ct. 461, 470 (2012). After considering the plaintiff's motion for transcripts and recordings, and his motion for reconsideration, the court determined that the plaintiffs had presented a change in circumstances worthy of

reconsideration. Nothing in this motion alters the court's review. The court is also cognizant that the court's ruling may conflict with the court's earlier decision determining that Mr. Evans may not levy an action of this sort on behalf of his mother's estate as he is not a licensed attorney. Nonetheless, the Appeals Court refused to dismiss the plaintiff's appeal on those grounds, and to the extent the transcripts and recording are required to prosecute that appeal, he is entitled to them.

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

10th Circuit – Probate
Division – Brentwood
PO Box 789
Kingston NH 03848-0789

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NOTICE OF DECISION

BRIAN EVANS
37 DIAMOND RUN ST
LAS VEGAS NV 89148-4416

Case Name: **Estate of Helen Marie Bousquet**
Case Number: **318-2012-ET-01394**

On July 23, 2021, Judge Mark F. Weaver issued orders relative to:

> Sixth Account – Allowed. However, the accounting period should be 1/1/20 to 12/31/20.

Any Motion for Reconsideration must be filed with this court by August 05, 2021. Any appeals to the Supreme Court must be filed by August 25, 2021.

July 26, 2021

LoriAnne Hensel
Clerk of Court

C: Richard Bousquet; Nancy Gentile

COMMONWEALTH OF MASSACHUSETTS

ESSEX COUNTY, SS

CIVIL ACTION
NO.: 1577CV00569

BRIAN EVANS, AS THE ADMINISTRATOR OF THE ESTATE OF HELEN MARIE BOUSQUET,
PLAINTIFF,

v.

RONALD A. MARVIN, M.D.,
ORTHOPAEDICS NORTHEAST, P.C.,
KRISTIN A. DASILVA, R.N.,
ANNE MARIE MEDE, R.N.,
HOLY FAMILY HOSPITAL,
DEFENDANTS.

TRANSCRIPT OF PROCEEDINGS

(September 17, 2018)

* * *

[5] PROCEEDINGS

(Verdict of Anne Marie Mede, R.N. commences at 11:52 a.m.)

(Jury present)

THE CLERK: Question Number 5: Was the defendant Anne Marie Mede, R.N. negligent in her care and treatment of Helen Bousquet?

Answer: Yes.

* * *
