

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**

PETITION FOR REHEARING

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SUPREME COURT, U.S.**

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REASONS TO GRANT REHEARING

A.

The Massachusetts Appeals Court, in their own Order in this very case stated *themselves* that it should have “ . . . *been better practice for the judge prior to trial to reveal that his wife had admitting privileges to Holy Family Hospital.*”

This was a wrongful death trial, not a small claims case. The judge concealed that his wife had admitting privileges to the hospital Petitioner was suing, and the Massachusetts Appeals Court did not issue any type of Order to the lower court to make the judge answer as to whether or not she had other connections to the hospital. This is a total conflict of interest and the common man, in terms of appearance, would certainly have agreed when the Massachusetts Appeals Court themselves admit in their Order (App. 9 in footnote marked 12) that the judge in this case failed to conduct better practice in this case.

Even Justice Roberts recently raised concerns about the Appearances of Judges in cases. In this case, a nurse, Holy Family Hospital nurse Anne Marie Mede, was found negligent by a jury in the case, and yet the judge, who was married to a doctor who had at the least, admitting privileges to this hospital, dismissed several of the companies that would have been held liable where the judge's wife had such admitting privileges prior to it being sent to the jury for deliberations. The jury says the nurse was negligent, but the judge who is married to a woman who has, at a

minimum, admitting privileges and untested as to other potential conflicts or fiduciary benefits as a member of his household, dismisses the claims against several of those companies the judge's wife worked with before it went to a jury.

B.

In the Respondents *newly raised issue* in their Opposition to the Writ filed before this Court, Respondents claimed there was no federal issue to rely upon in Petitioner's Writ. This newly raised issue by the Respondents allows for the Petitioner to respond. In responding to the Respondents newly raised issue by claiming there was no federal issue, the constitution is clear . . .

"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).

C.

This is not the first time that this Judge has concealed information. Prior to this very judge in this case being made to “be a judge,” Salim Rodriguez Tabit, was ordered to appear back before the Governor’s Council for additional vetting as he was being nominated to be a judge.

Massachusetts Governor’s Councilor Robert Jubinville said he was “troubled” that Tabit had not alerted the council to a complaint made against him to the Board of Bar Overseers, which Tabit said had been dismissed. Tabit described the complaint as “frivolous” in an undated notice to the council that councilors said was provided to them during the hearing.

Even before the complaint came up, Tabit faced tough questioning from Jubinville.

“I don’t know whether you prepared that well,” Jubinville said at one point. Jubinville quizzed Tabit about case law and asked about a boastful remark he had made under questioning by Councilor Christopher Iannella.

During his questioning Iannella made a remark about cases usually resulting in a guilty verdict to which Tabit replied, “Not when you have me in the courtroom,” drawing laughter.

“Why would you say something like that?” Jubinville asked.

“Well, it was a joke, councilor,” Tabit replied.

Jubinville said “usually nominees don’t come in here and joke around about something.” The rules don’t apply to this judge.

D.

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. Petitioner’s Reply Brief in this case confirmed this to be the case.

E.

The interests of justice, public interest and appearances must prevail over technicalities.

To date, *solely because of this case*, it has resulted in 39 United States Governors issuing Sleep Apnea Awareness Proclamations which specifically name Petitioners mother in most of them. There is no more proof of public interest than 39 of our U.S. Governors stating that what happened to the Petitioner’s mother was wrong. Attached to Appendix A is one of them for your review, and this specifically states this is a national issue, and not an issue this presiding judge should ever have been assigned to knowing his wife’s connection to the hospital (Petitioner did not want to waste the Courts time with 39 Proclamation attachments but they can be provided in their entirety at the

Courts request, as the remaining Proclamations can be viewed at helen-bousquet.com). A judge whose wife was admitted to practice in this hospital, untested and with no other knowledge as to what other connections she had to the Respondents, had no business sitting over this case and concealing her involvement, a case that made thirty-nine United States Governors take notice, including the governor of Oregon, who himself is a doctor.

This Court must not turn its back on an issue of a Judge, who admits his wife is admitted to practice after concealing it for two years, only admitting it during the Appeals process, behaving in this way. The Massachusetts Appeals Court admits this in their own footnote in their Order, which far surpasses what the "Common Man" would believe about this case. If this Court allows a judge to conceal this information to Plaintiff's in this case, it sets a precedent that judges can conceal information at their whim.

39 U.S. Governors agree, and yet a judge overseeing the case, this case, is married to a doctor with at least admitting privileges to the hospital and concealed it as he has a history of even before becoming a judge through his own vetting process. The appearance issue is undeniable.

A nurse was found negligent in this case, but the judge dismissed the Complaint against Steward Health before it goes to a jury, where his wife has admitting privileges.

The Massachusetts Appeals Court while denying the Appeal . . . agreed the judge should have shown “better practice” in their footnote. If that’s how they saw it, how would the common man?

There is ample precedent that a Pro Se litigant can represent an Estate if the Petitioner is the sole beneficiary which was established in Petitioners Reply Brief in an Appendix.

As Justice Roberts agreed quite publicly several months ago, The Supreme Court cannot be saying it’s “ok” for judges to conceal their family members employment or financial interests in a company a Plaintiff is suing and this case will be used in future cases to come if this Supreme Court allows it. This is not just about my mother, but the precedent our Highest Court is setting for future victims of wrongful death cases and what judges can conceal, including his wife being involved with the Defendants in such cases.

The nurse was found to be negligent in this case by a jury. Companies the judge’s wife worked for were dismissed before it went back to the jury. There is no question as to what the common man would think.

It is up to you, the United States Supreme Court, to see to it that a judge may not conceal this information, as he did even before he became a judge during his vetting process to become a Superior Court judge.

This is the last thing I can do to bring justice for my mother, and honor and respect to sitting judges who rely on the public’s trust.

This national case, which 39 United States Governors issued Proclamations over, was one of this judge's first trials ever, and it is not the first time he has concealed information. My mother's passing was not "frivolous" either. It wasn't a joke. My mother died. This is just how this judge thinks. It's not ok to conceal information when you're a judge. It's not ok to laugh about serious issues, prior to becoming a judge, or after.

This Court cannot turn its back on Petitioner's petition for certiorari and rehearing without trespassing the rule of law and undermining its own credibility as a trustee of the Constitution and what a judge can and cannot do. The interests of justice, perception by the public of a judge's impartiality, and the precedent this Honorable Supreme Court will be setting will have consequences that are immeasurable for future Plaintiff's in Wrongful Death cases if you send the message that a judge can conceal information about the fact that his wife is associated with the very hospital the Petitioner was suing and have it swept under the rug. This is the very reason why the public does not trust the judicial system and this is your opportunity to make it clear that our Highest Court will not tolerate it, and that "would have been better practice" has no place in a nationally known case that has resulted in U.S. Governors nationwide issuing Proclamations for this very case and by a judge who literally was overseeing this major case, one of his first or second trials. If this Court allows an amateur judge to get away with this now, he will continue to do so in future cases as you'll essentially free him from any leash the law

provides. If the U.S. Supreme Court sends this judge the message that it's okay to conceal this kind of information, as he did even through his own vetting process to become a judge, you are indeed unleashing the judge from the rule of law, and he will do it again. You'll be giving him permission.

◆

CONCLUSION

The Petition for Rehearing should be granted.

Respectfully submitted,
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App. 1

STATE OF OREGON

PROCLAMATION

OFFICE OF THE GOVERNOR

- WHEREAS:** Sleep apnea is a common, chronic disorder in which one or more pauses in breathing or shallow breathing occurs during sleep; and
- WHEREAS:** The New England Journal of Medicine estimates that sleep apnea affects at least nine percent of women and twenty four percent of men. Sleep apnea results in poor sleep and is the leading cause of excessive, day-time sleepiness; and
- WHEREAS:** Most individuals with sleep apnea do not even know they have it and should consult a physician if snoring or if sleeping seems difficult; and
- WHEREAS:** Physicians and caregivers of individuals diagnosed with sleep apnea should be notified of their condition as anesthesia and certain medications can create a dangerous situation when administered to someone with sleep apnea; and
- WHEREAS:** Helen Marie Bousquet has brought national attention to the dangers of leaving a patient with sleep apnea in an unmonitored recovery room following any surgery while medicated post op on drugs such as morphine,

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which is known to slow down the respiratory system even in patients who do not have this condition.

NOW,

THEREFORE: I, John A. Kitzhaber, M.D., Governor of the State of Oregon, hereby proclaim **August 1, 2013**, to be

SLEEP APNEA AWARENESS DAY

in Oregon and encourage all Oregonians to join in this observance.

[SEAL] IN WITNESS WHEREOF, I hereunto set my hand and cause the Great Seal of the State of Oregon to be affixed. Done at the Capitol in the City of Salem in the State of Oregon on this day, July 23, 2013.

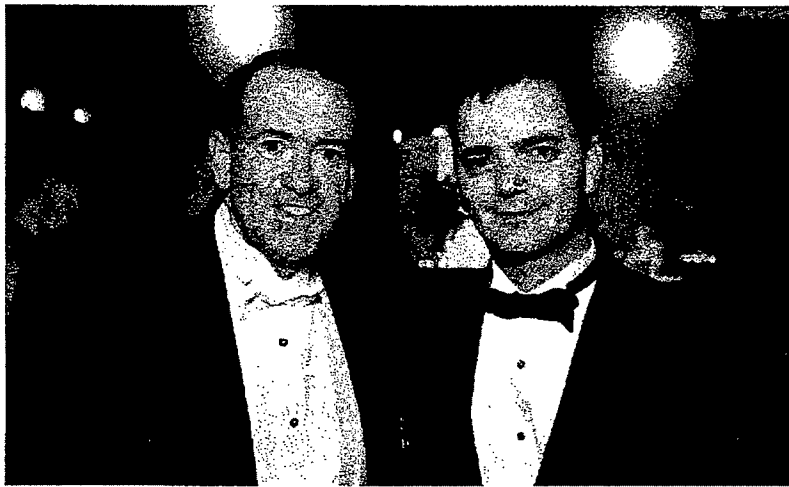
/s/ John A. Kitzhaber
John A. Kitzhaber, M.D., Governor

/s/ Kate Brown
Kate Brown, Secretary of State

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LAS VEGAS
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**Tom Hanks, Jeff Bridges,
William Shatner, Dr. Oz assist
Brian Evans in fight against
sleep apnea**



Mike Huckabee and Brian Evans. (Getty Images)

By ROBIN LEACH NICHE DIVISION OF
LAS VEGAS REVIEW-JOURNAL

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