No. 21-6792

IN THE

Supreme Court of the United States

Pauline Leslie,
Petitioner,

v.

STATE OF MASSACHUSETTS,
Respondent,

On Petition for a Writ of Certiorari to the Supreme Court of the State of Massachusetts.

PETITION FOR REHEARING

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April 15, 2022

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PETITION FOR REHEARING

Pursuant to the Supreme Court Rule 44, Pauline Leslie in her own right respectfully prays and requests this court to grant her Petition for rehearing or motion for reconsideration as the decisions issued in her case by the lower court arise out of fraud, violation of her Constitutional equal protection rights and due process rights. The travesty of justice in Massachusetts drew public attention to Petitioner's case, as supported in the 23 affidavits submitted with the Writ and was part of the lower court's record. See App.G.28a. A petition of this injustice was posted on change.org in support of Petitioner by a member of the public that has over 852 signatures. See *https://www.change.org/p/the-governor-of-massachusetts-charlie-baker-state-senator-elizabeth-warren-discrimination-resulting-in-a-miscarriage-of-justice-by-the-massachusetts-judicial-system*). "The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society". *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

REASONS FOR GRANTING THE PETITION

When legislature imposes duties on an officer or those functioning as officers of the lower court and who are directed to peremptorily perform those duties and "when the rights of individuals are dependent on the performance of those acts, he (she) is so far the officer of the law; is amenable to the laws of his (her) conduct; and cannot at his (her) discretion sport away the vested rights of others". *Marbury v. Madison*, 5 U.S. 137, 165-166 (1803). "A law repugnant to the constitution is void." *Id.* at 180. "The constitutional foundation underlying the privilege is the respect a government-state or federal-must accord to the dignity and

integrity of its citizens". *Miranda vs. Arizona*, 384 U.S. 436, 460 (1966). A court cannot make discretionary rulings that are repugnant to the Constitution in violation of its citizen's rights. In Petitioner's case, the officer of the lower courts failed to perform those basic duties and such failure places the court process in disrepute. The unfair treatment by the lower courts against the Petitioner and her children is as good as no judicial process.

I. This Court should grant the Petition on the grounds the Petitioner's Fundamental rights to due process under the Constitution were clearly ignored by the lower court and this court is the only court that has jurisdiction

As previously stated in the Writ, in Petitioner's case an alleged IME doctor unlawfully injected himself in the case during the lower court's "alleged" trial against Petitioner. The doctor pretended to have been retained by the defense team in 2015 and the defense team later denied retaining him by their letters written in November 2017. See defense letters: App. J and K. The lower court was aware of the fraud on Petitioner's case and ignored it while it appeared to display persistent favoritism for the defense team. See appeals court hearing on youtube.com 1:41:01. https://www.youtube.com/watch?v=s9H8qU-QqJI. Prior to the official start of the hearing the lower court told Petitioner they will not be asking her any questions, while it entertained multiple questions from the defense team. The defense team was allowed to make non-factual statements about the Petitioner although the lower court previously ordered to it be impounded.

The conduct of the doctor was egregious, and he and the lower court violated the Petitioner's due process rights. The doctor violated his duties to do no harm to the petitioner in a bogus and abusive fake IME. See *Hoover v. Williamson*, 236 Md. 250 (1964). "Whether or not a physician-patient relationship exists, within the full meaning of that term, we believe that a physician in the exercise of his profession examining a person at the request

of an employer owes that person a duty of reasonable care". *Id.* at 254. *Bazakos v. Lewis,* 12 N.Y.3d 631 (2009). "...the relationship between a doctor performing an IME and the person he is examining may fairly be called a 'limited physician-patient relationship'- indeed, this language is used in an American Medical Association opinion describing the ethical responsibilities of a doctor performing an IME (AMA Council on Ethical and Judicial Affairs, Code of Medical Ethics, Ops on Patient-Physician Privilege E-10.03)." *Id.* at 635. *Dyer v. Trachtman,* 679 N.W.2d 311 (2004). "The limited relationship that we recognize imposes a duty on the IME physician to perform the examination in a manner not to cause physical harm to the examinee." *Id.* at 315. See *Mero v. Sadoff,* 37 Cal. Rptr.2d 769 (1995). *Ramirez v. Carreras,* 10 S.W.3d 757 (2000). An IME owes the "duty not to injure" the examinee. *Id.* at 762. Massachusetts gave an IME doctor an absolute privilege to commit medical malpractice during an examination that is contrary to decisions in other state courts because an IME doctor has a "limited patient-physician relationship" and owes a duty to do no harm.

The federal court recognized there are no immunity to those who perform a different function from the duty they are bound by, especially if their conduct was abusive. See *Burns v. Reed,* 500 U.S. 478, 493 (1991). *Kalina v. Fletcher,* 522 US 118, 126-127 (1997), *Levin et. al. v. USA,* 133 S. Ct. 1224 (2013), *Mitchell v. Forsyth,* 472 U.S. 511, 520 (1985), and *Meltzer v. Grant,* 193 F.Supp.2d. 373, 378 (2002). In other Massachusetts' cases it ruled an IME doctor will be held accountable for actions when they deviate from their standard of care. See *Lambley v. Kameny,* 43 Mass. App. Ct. 277, 283-284 (1997), *Sugarman v. Bd. Of Registration in Medicine,* 422 Mass. 338 (1996), *Zucco v. Kane,* 55 Mass. App. Ct. 76, 78 (2002), and *Harding v. Goodman, MD* 13 Mass. L. R. 287 (Mass. Supr. Ct. 7/3/01).

Massachusetts ruled favorable in summary judgment cases where absolute privilege or immunity did not apply. See *Dear v. Devaney* et al., 83 Mass. App. Ct. 285, 291-293 (2012) and *Maxwell v. AIG Domestic Claims, Inc.*, 460 Mass. 91-117 (2011). **Massachusetts gave Petitioner less rights, compared to other citizens in its state, and other states.**

An "alleged" **independent** psychiatrist should not have the absolute privilege to commit medical malpractice during examination because Petitioner's psychological harm from the abuse would not place her in the position she was prior to the abuse. Bodkin violated Petitioner's HIPAA privacy rights when he obtained Petitioner's medical records prior to her filing a lawsuit, and he was unable to truthfully state how he obtained her medical records through his counsel (Oh). He recorded Petitioner without her consent not in compliance with 18 U.S.C, § 2511 and G. L. c. 272, § 99. Bodkin violated Petitioner's privacy rights and threatened her during the exam with his fist because she did not provide him with the name of an aunt. Bodkin deviated from his affidavit that he was evaluating Petitioner about the impact of a car accident (sic), and later admitted he only inquired about a little.

II. This Court should grant the Petition on the grounds the Petitioner's children are affected by the lower court's material errors of fact and where the children's due process rights are continuously being ignored by the lower court

The lower court has written non-factual events to support the defense while at the same time violating Petitioner and her children's constitutional equal protection and due process rights. Recently, the children requested the court to correct its erroneous statement and decision that they were passengers in their mother's vehicle (Petitioner) when she was in the course of her employment when she was repeatedly rear-ended by a loaded sand and gravel tractor trailer driven by John R. Barrett. The children were

never parties to the case against Bodkin and the remaining defendants, yet the court gratuitously added them stating they were passengers in the car when they were in school at 1:15 pm on Wednesday December 22, 2010. See *Leslie et al. v. Travelers Ins. Co.,* 96 Mass. App. Ct. 1105 (2019), footnote 2. The lower court refused the children's right of due process to correct the record while citing Mass. Rule App. Pro. 27 that does not apply to them because it only applies to the parties, while implying to the Petitioner not to file anything further in the case. See Docket No. 27 https://www.ma-appellatecourts.org/docket/2019-P-1584. The lower court deprived the children of their basic Constitutional due process rights by imposing non-positive laws that requires agreement.

III. This Court should review the Petitioner's case because the Petitioner has no other alternative to address the violation of her Constitutional due process rights and equal protection rights especially where there was clear fraud against the Petitioner in her case, and this is the only court that has jurisdiction under Article III.

Article III of the Constitution reads "The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish...inferior Courts, shall hold their Offices during good Behavior, and shall". This Court is the Supreme Court that has authority over the inferior courts. Where the inferior court has failed to follow the Constitution there can be no justice. Also, there can be no statute of limitation when there is fraud on a case and the lower court ignores them. According to G. L. c. 268, § 1, 18 U.S.C, § 1621 and 18 U.S.C, § 1623 it is punishable as a crime to make false statements under oath. **Bodkin was not retained by anyone for his services; therefore, he was an imposter.** *See* App. J and K. Bodkin injected himself into Petitioner's case under false pretense, which violated Petitioner's

Constitutional rights to remedy the wrong against her by an unbiased court. The panel wrote Ms. Leslie "undergo an IME," that means Bodkin was independent of the court and acting on his own accord. The panel omitted facts and issues presented on appeal arising out of Petitioner's claims for medical malpractice; the summary decision was erroneous absent a fair reporting of the findings and a full review of the issues. The panel asked Bodkin's counsel during oral argument "whether the conduct (Bodkin) borders assault, such as the clenching of the fist and locking her (Petitioner) in the room without water." The IME was not private as promised by defense. The court implied it does not matter who retained Bodkin, yet his false testimony under oath was used against Petitioner to deprive her of civil rights to a fair trial while no one claimed to retain him.

Petitioner's Constitutional rights were violated when the appeals court affirmed an IME doctor was absolutely privileged to commit medical malpractice without recourse to the law where Petitioner could bring claims for the injuries she suffered to her body and mind; this interfered with her unalienable rights to life, liberty, and pursuit of happiness because her petition for redress was answered by repeated injury. **If the court claims, it does not matter who retained Bodkin, then how was he allowed to testify against Petitioner in the underlying civil case.** This is one of the travesties of justice that caused Petitioner to submit 23 affidavits with her brief in the Court of Appeals. (App.G.). "Minorities rely on the independence of the courts to secure their constitutional rights against incursions of the majority, operating through the political branches of government...If the plaintiffs' right to equal protection of the laws has been violated...then it is our duty to say so." *Finch et al. v. Commonwealth Health Ins. Connector Auth. et al.,* 461 Mass. 232, 249 (2012). The Court of

Appeals in the underlying case punished Petitioner and criminalized her legal acts under HIPAA Correction Principle and Minimum Necessary Provision.

Countless attorneys in MA cases have made claims against the court (Giles, J) including but not limited to, biased actions, disparaging remarks and in collusion with defendant in *Sullivan v. Connolly*, 91 Mass. App. Ct. 56, 61 (2017); the court accused *Lori Holland* of bankruptcy fraud (see brief online of *Holland* pp. 42-43) in *Holland v. Kantrovitz*, 92 Mass. App. Ct. 66 (2017). In *Commonwealth v. Ortega*, 480 Mass. 603 (2018) and *Commonwealth v. McCalop*, 485 Mass. 790 (2020), the court's actions and inactions allowed racially inappropriate jury conduct and promoted racial bias jury selections. The court was accused of hating negros posted on a blog online. http://dennerlaw.blogspot.com/2009/02/spotlight-on-massachusetts-judge-linda.html. The court wrote alternative theories to deprive an elderly plaintiff ("*Papadopoulos*") of fair compensation in a slip and fall case. *Papadopoulos et al. v. Target Corp.*, 87 Mass. App. Ct. 1115 (2015). https://www.salemnews.com/news/local_news/appeals-court-reverses-judge-in-peabody-slip-and-fall-case/article_418a3b70-906d-5399-9b1f-9ffd7d2c1198.html (2015)... Petitioner and her children were outright denied their equal protection and due process by the same court. The court challenged their competency, deny them their right to a fair trial, it made personal attacks against them, it denied them a fair hearing to be heard on their claims, it denied Petitioner the right to present her relevant evidence and to call witnesses to support her claims. The court made discriminatory remarks, injected its testimony in the case and made alternative facts against Petitioner, all which deprived Petitioner and her children of their Constitutional rights to equal protection and due process by an impartial court.

The Constitution Due Process and Equal Protection states in part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". The lower court deprived Petitioner of timely notice and due process to argue matters affecting her interest. Petitioner was deprived of her rights and privileges, absent extraordinary circumstance. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950):

> The "right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself (herself) whether to appear or default, acquiesce or contest...an elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to afford them an opportunity to present their objections (and) it (notice) must afford a reasonable time for those interested to make their appearance." *Id.* at 314-315. *See Goldberg v. Kelly*, 397 U.S. 254, 267-268 (1970) and *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965).

Petitioner was denied timely notice within a "meaningful time and in a meaningful manner" and denied due process when the court bombarded her with unscheduled motions before she was punished. *Armstrong* at 552. "Notice by mail in the circumstances of this case would surely go a long way toward providing the constitutionality required assurance that the State has not allowed its power to be invoked against a person who had no opportunity to present a defense..." *Greene v. Lindsey*, 456 U.S. 444, 455 (1982).

Leslie v. Superior Court of MA, 1:17cv12384 (D. Mass. Dec. 22, 2017). The MA U.S. District Court stated "...the United States Supreme Court, and not the District Court, has jurisdiction to review the judgment. *See* 28 U.S.C. § 1257... (and) there is no explicit or implicit suggestion that Judge Giles violated a declaratory decree **or that declaratory relief was unavailable to Leslie in the underlying state court matter.**" The courts of appeals

ignored and disregarded many of the issues on appeal and inaccurately reported on issues not presented on appeal by Petitioner. The record showed Petitioner was denied a hearing in the first two appeals despite a request for hearing in the second appeal. Petitioner noted in lower court she was denied a hearing on appeal. In the third appeal, Petitioner was schedule to have a hearing, but she was treated differently by the panel when compared to other litigants heard that day. MA Decl. of Rights guarantee that every person has equal protection under the law, like the United States 14th amendment guarantee of equal protection. The Equal Protection Claus states that no person shall be denied the same protection of the laws that are enjoyed by other citizens in their lives, liberty, and property. The state may not deny citizens equal protection when governing its laws. The panel misconstrued many of its findings, including but not limited to writing Petitioner "objected to driving to Bodkin's office," when the record showed the defense reneged on paying for the taxi fare to McLean Hospital and compelled Petitioner to attend the alleged IME at their office with promises that it would be in a "private conference room". The Panel misconstrued Petitioner's argument by stating "Bodkin should not have reviewed her medical records" at all, when the real issue was about the timeline when he received the medical records on May 22, 2013, before Petitioner filed any lawsuit. Bodkin was not a party and or a person of interest to be entitled to any privilege because no one retained him; he was an imposter. Statements or actions prior to suit must be "contemplated in good faith and under serious consideration" to be applicable for the absolute privilege as stated in Petitioner's lower court's brief pgs. 34-35. See *Sriberg v. Raymond*, 370 Mass. 105 (1976). Whether Bodkin contemplated future litigation and his intent of his clenched fist and angry faces is a question of fact for the jury. *Sriberg v. Raymond*, 544 F.2d 15 (1976). "...if an occasion is

privileged as to communications between certain parties, the privilege is lost if the communication is made in such a manner as to unnecessarily and unreasonably publish it to others, as to whom the occasion is not privileged." *Id.* at 17. Bodkin lost any privilege he had when he conducted the "alleged" IME in a non-private setting. The panel affirmed summary Judgment(s) when there were issues of disputed material facts against Travelers, despite Petitioner and her children were denied full discovery (production of documents and interrogatories) and affidavits submitted were omitted in its findings and summary judgment(s) should have been denied. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986), *Reeves v. Sanderson Plumbing*, 530 U.S. 133, 134-135 (2000), *Taylor v. Swartwout*, 445 F.Supp.2d 98, 102 (2006) and *Tolen v. Cotton,* 134 S. Ct. 1861, 1863, 1866 (2014). In the underlying case, the panel reported on post-accident records, rather than the objected to pre-accident record not in compliance with 79G, therefore **Petitioner was denied full appellate review.**

The single Justice SJC cited *State Board of Retirement et. al., v. Woodward*, 446 Mass. 698, 701, 703-704 (2006), briefly stating Petitioner did not meet three of the four elements without factual explanation. App.B.4a. The full SJC briefly affirmed with one paragraph without addressing the errors that were not reviewed on appeal. App.A.1a. See *Sheriff of Plymouth County v. Plymouth County Personnel Bd., et al.*, 440 Mass. 708, 710 (2004). The judgments in the lower court are plainly incorrect because they contradict the U.S Constitution, the MA Declaration of Rights, the federal law, and other state laws. The decisions are erroneous and circumvents the Constitution in place intended to protect injured parties, such as Petitioner. The court criminalized Petitioner's conduct that was lawful under HIPAA correction principle and minimum necessary provision. The judgments

cannot stand because it deprives Petitioner and her children of their fundamental rights to a fair trial, a fair hearing, a right to be fully heard on the record, a right to be heard by an impartial court, a right to notice and a fundamental right to equal protection under the U.S Constitution for the wrongs against them. (App.G.28a-30a). The court of appeals created a travesty of justice because the judgments oppressed Petitioner and her children and does not reflect the issues presented in Petitioner's brief(s), reply brief(s), and appendices. Petitioner was deprived of her immunities and privileges under the 14th Amendment and Mass. Declaration of Rights to be heard by a fair and impartial court. **App.G.28a-79a. See online change.org Petition.** Petitioner (and her children) will continue to suffer irreparable harm because the actions leading up to the judgments prevented them from exercising their constitutional right to seek damages for the harm and wrongs against them. See **App.G.28a-G.30a.**

I. CONCLUSION

For the foregoing reasons, Petitioner respectfully prays and requests this court under Article III grant the petition for rehearing and or motion to reconsider its denial and order a full briefing and oral argument on the merits of this case.

Respectfully submitted,

/s/ Pauline Leslie

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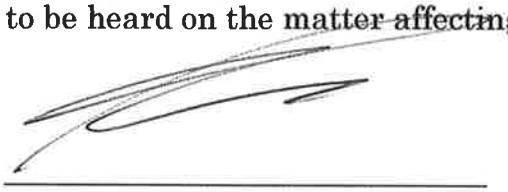
April 15, 2022

CERTIFICATE OF PETITIONER

I hereby certify as required by the United States Supreme Court Rule 44, **that the grounds** for this petition for rehearing (reconsideration) **are limited to intervening circumstances of substantial or controlling effect or other substantial grounds not previously presented.** My case arises out of fraud to which there cannot be a claim for statute of limitation; and where on April 7, 2022, my children's due process rights were affected by the Appeals Court's erroneous facts, and it deprived them of their rights to have the court correct the false information circulating on the internet while adding the Petitioner (her children) not to file anything further in the matter. *See* Appendix D. The Supreme Court is the only court that has Jurisdiction in this matter under Article III. I also certify that this petition is **presented in good faith and not intended to cause any delay** but to have the rights to be heard on the ~~matter affecting~~ my children and I Constitutional rights.



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Resubmitted with amended Certificate