

Bostwick

21-8246

No.: Application No.: 21A611

ORIGINAL

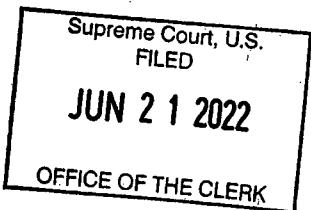
IN THE

SUPREME COURT OF THE UNITED STATES

Richard D. Bostwick,
Pro Se Petitioner;

vs.

44 Chestnut Street, Wakefield, Mass. (IN REM) et & Others;
Respondent(s).



On Petition for a Writ of Certiorari to

Supreme Judicial Court (SJC)
For the Commonwealth of Massachusetts

PETITION FOR A WRIT OF CERTIORARI

Richard D. Bostwick
BSEE, MSECE, MSCS
Pro Se Petitioner
44 Chestnut Street
P.O. Box 1959
Wakefield, MA 01880-5959
781-279-0789 (Land Line)

QUESTIONS PRESENTED

1. Whether the Remedies, Procedures and Rights set forth in (a) the Americans with Disabilities Act (Title 42 c. 126 U.S.C. §§ 12101) generally and Enforcement (42 U.S.C. § 12133) and Regulations (42 U.S.C. 12134) and (b) Remedies and Attorney Fees 29 U.S.C. § 794a and (c) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and (c) Department of Justice, Americans with Disabilities Act Title II Regulations (28 CFR Part 35) and (d) Title 29 U.S.C. § 794 Section 504. Rehabilitation Act of 1973 are **UNCONSTITUTIONAL** under the Strict Scrutiny, Substantive Due Process of the "Equal Protection" in the U.S. Constitution, Amendment XIV and "Regulatory Taking" in the U.S. Constitution, Amendment V concerning Qualified Individuals with Disabilities "Access to the Courts" for Administratively Disabled (Wheel Chair Barriers, Seeing, Hearing Disabled) versus Judicially Disabled (Bostwick's Motion(s): Request for more Time: Stroke, Heart Surgery, Depression, Concentration).
2. Whether the Respondant(s) "(19) Massachusetts Appeals Court, (20) Middlesex Superior Court, Massachusetts Executive Office of the Trial Court" by claiming "Absolute Judicial Immunity" **PRESENTS A CONFLICT OF LAWS** and **VIOLATES** Bostwick's Remedies, Procedures and Rights set forth in (a) the Americans with Disabilities Act (Title 42 c. 126 U.S.C. §§ 12101) generally and Enforcement (42 U.S.C. § 12133) and Regulations (42 U.S.C. 12134) and (b) Remedies and Attorney Fees 29 U.S.C. § 794a and (c) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and (c) Department of Justice, Americans with Disabilities Act Title II Regulations (28 CFR Part 35) and (d) Title 29 U.S.C. § 794 Section 504. Rehabilitation Act of 1973 given Bostwick as a Qualified Individual with Disabilities and Bostwick's Motion(s): Request for More Time given Stroke, Heart Surgery, Depression and lack of Concentration.
3. Whether the Supreme Judicial Court (SJC) Opinion(s) of "Absolute Judicial Immunity" concerning Bostwick's Americans with Disabilities Act (Title 42 c. 126 U.S.C. §§ 12101) generally and Reasonable Accommodation Discrimination (42 U.S.C. § 12132) and Retaliation and Coercion (42 U.S.C. §§ 12202, 12203) specifically **PRESENTS A CONFLICT OF LAWS** and **VIOLATES** Bostwick's Remedies, Procedures and Rights set forth in the Americans with Disabilities Act (Title 42 c. 126 U.S.C. §§ 12101).
4. Whether **MANIFEST INJUSTICE** and **THE PUBLIC INTEREST** may require Removal of the WHOLE ORIGINAL Bostwick v. 44 Chestnut Street (1581CV05636) Case et al to Federal District Court, where abstention is inappropriate.

**NOTICE OF BOSTWICK'S DISABILITIES
(SEE APPENDIX H)**

Bostwick was not able to finish his Petition given his Physical and Emotional Sickness of (1) Continuing ADA Atrial Tachycardia Resulting in ADA Depression and Inability to Concentrate; (2) PHOBIA (Fear) of another Stroke, Arrhythmia, Flutter, Tachycardia (24 Hours/ 7 Days) resulting in ADA impaired ability to Concentrate and (3) Other Physical and Emotional Disabilities identified below. See Appendix H

Under the Americans with Disabilities Act (ADA) (Title 42 c. 126 U.S.C. §§ 12101) generally and under Title 42 U.S.C. § 12102, 12131, 12132, 12133 specifically and given Bostwick's Disabilities, Bostwick PROVIDES NOTICE ONLY and asks this Court for a "Reasonable Accommodation" GIVEN Bostwick's Heart Surgery, Heart Recovery, Brainstem Stroke and Emotional Disabilities (Bostwick has Difficulty Concentrating, Reasoning, Reading, Emotional Distress, Depression, Anxiety, etc.)

The "Reasonable Accommodation" Requested is Leave to Amend Bostwick's Petition For A Writ of Certiorari (to include "Statement of the Case" and "Reasons for Granting The Petition") with an Enlargement of Time for sixty (60) days with the SAME QUESTIONS after Bostwick's Petition is Filed and after this Court makes its Decision and Order by Letter on this matter. Bostwick makes this "Reasonable Accommodation" Request for a "Corrected Petition" based on Supreme Court Rule 14.5 and its demand for Compliance with Supreme Court Rules 10, 14, 33 and 34 with submission in accordance with Rule 29.2.

NOTICE OF APPLICATION NUMBER 21A611

Given Bostwick's Disabilities, this Court Allowed Bostwick an Extension of Time to 20 June 2022. Please refer to Application No. 21A611 in Appendix B. Because Juneteenth is a Federal Holiday and under Supreme Court Rule 30, Bostwick's Petition For A Writ of Certiorari is due in the mail on 21 June 2022.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition are as follows:

PLAINTIFF(S):

RICHARD D. BOSTWICK and RICHARD D. BOSTWICK as a CLASS OF ONE; Plaintiff(s)

DEFENDANTS:

(1) 44 CHESTNUT STREET, WAKEFIELD, MASS. (In Rem); (2) UNKNOWN FUTURE PROPERTY OWNERS of Defendant 44 Chestnut Street, Wakefield, Mass.; (3) UNKNOWN FUTURE TITLE INSURANCE COMPANIES providing Title Insurance for Defendant 44 Chestnut Street; (4) SANTANDER BANK, N.A. previously known as (p.k.a.) Sovereign Bank N.A., Sovereign Bank; Santander Holdings USA, Inc., Sovereign Bancorp, Inc.; (5) FEDERAL NATIONAL MORTGAGE ASSOCIATION also known as (a/k/a) FANNIE MAE; (6) ORLANS MORAN PLLC; (7) LEONARD J. SIMS a/k/a LEONARD JOSEPH SIMS, LEONARD J. SIMS CO., GENERAL CONTRACTORS, and LEONARD J. SIMS CUSTOM CARPENTRY; (8) UNKNOWN THE CLASSIC GROUP, INC, p.k.a. UNKNOWN CLASSIC RESTORATIONS, INC.; (9) KYLE BARNARD; (10) PHILIP BATES; (11) RICHARD F. GANTT; (12) UNKNOWN OFFICERS and DIRECTORS of The Classic Group, Inc. p.k.a. Classic Restorations, Inc.; (13) UNKNOWN INSURANCE POLICY ENTITIES/ COMPANIES insuring The Classic Group, Inc. p.k.a. Classic Restorations, Inc. and their Officers and Directors;

(14) THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES, DEPARTMENT OF PUBLIC HEALTH; (15) PAUL N. HUNTER, the Title 42 U.S.C.A § 1983 Person; (16) PAUL N. HUNTER, in Official Capacity as Director Childhood Lead Poisoning Prevention Program, The Department of Public Health, The Commonwealth of Massachusetts; (17) DONNA LEVIN, the Title 42 U.S.C.A. § 1983 Person; (18) WARREN M. LASKEY, the Title 42 U.S.C.A. § 1983 Person;)

(19) MASSACHUSETTS APPEALS COURT; (20) MIDDLESEX SUPERIOR COURT, MASSACHUSETTS EXECUTIVE OFFICE OF THE TRIAL COURT;
Defendant(s).

For a full Listing of Counsel and their Telephone Numbers, please refer to the Certificate Of Service. The Counsel are as follows: For Orlans Moran PLLC: Orlans PC; For Bates and Barnard: Sassoon & Cymrot, LLP; For Commonwealth Defendants: Office of the Attorney General; For Leonard J. Sims et al: McDonough, Hacking & Lavoie, LLC; For Santander Bank, N.A. and Federal National Mortgage Association: Laredo & Smith, LLP and For Alex Mattera: Pierce Atwood LLP.

RELATED CASES

1. Richard D. Bostwick v. Leonard J. Sims et al, Middlesex Superior Court, Civil Action No.: 04-02417 (Now 0481CV02417) et Seq.

-- AND --

Richard Bostwick vs. Leonard J. Sims & Others, Appeals Court, Case No. 2014-P-1277

1.1 Sims caused Bostwick to suffer Construction and Lead Law Damages at 44 Chestnut Street. Bostwick's Complaint and Written Demand for Relief identifies approximately fifty-nine (59) Violations of M.G.L. c. 93A by Sims against Bostwick. However, the Lead Law Damages were never Litigated in the 0481CV02417 Bostwick v. Sims et al Case.

1.2 The Bostwick v. Sims Trial Court refused to admit at Trial the Evidence of the 9/02/2008 Department of Public Health Letter and the Internet publication of Unauthorized Deleading at Bostwick's Residence by Sims and Classic.

1.3 BostwickAppealed. However, given "Regulatory Taking," "Due Process," "Equal Protection" research problems; Bostwick did a Voluntary Dismissal. RA.III/135-164. Consequently, the Case No. 2014-P-1277 Judgment is Final. Based upon that Final Judgment, Bostwick then initiated Litigation on Sims in the 2015, Lower Court, Bostwick v. 44 Chestnut St., Case No.: 1581CV05636.

2. Department of Public Health (DPH) Adjudicatory Hearing of Bostwick vs. Sims and Classic

2.1 On 08 November 2007 and 15 November 2007, Bostwick Filed his Administrative Complaint to the DPH CLPPP against Sims and Classic.

2.2 On 02 September 2008, the DPH Served Bostwick with an Administrative Unauthorized Deleading Complaint. For Bostwick and Future Owners of Bostwick's Multifamily Residence, 44 Chestnut Street Wakefield is subject to Strict Liability forever for a lead poisoned child. Because of Fear of Financial and Legal consequences, Bostwick cannot Rent or Sell his Multifamily Residence.

2.3 Bostwick's Request for a DPH, Formal Adjudicatory Hearing concerning the Sims and Classic Unauthorized Deleading at Bostwick's Multifamily Residence was Denied. Bostwick sought Judicial Review under G.L. c. 30A; however, the Judicial Review was Dismissed and BostwickAppealed as described below in 10-1775 (Now 1081CV01775) et Seq.

3. Richard D. Bostwick v. The Classic Group, Inc. et al, Middlesex Superior Court, Civil Action No.: 08-01465-J (Now 0881CV01465) et Seq.

-- AND --

In re: The Classic Group, Inc., Debtor, United States Bankruptcy Court, District of Massachusetts Case No.: 11-10574-JNF

3.1 The Classic Group, Inc. et al caused Bostwick to suffer Construction and Lead Law Damages at 44 Chestnut Street.

3.2 The Classic Group declared Bankruptcy on 01/25/2011. Barnard, Bates and Gantt are Classic Group Officers and Directors. Given the Classic Bankruptcy automatic Stay, Bostwick sued the Officers and Directors, Bates, Barnard and Gantt in the 2015, Lower Court, Bostwick v. 44 Chestnut St., Case No.: 1581CV05636.

4 Pre-Foreclosure -- Richard D. Bostwick v. Sovereign Bank et al, Middlesex Superior Court, Civil Action No.: 09-01755 (Now 0981CV01755) et Seq.

-- AND --

Pre-Foreclosure -- Richard D. Bostwick v. Sovereign Bank & Others, Appeals Court Case No.: 13-P-296 -- AND -- Richard D. Bostwick v. Sovereign Bank, SJC Case No.: 468 Mass. 1103 -- AND -- Richard D. Bostwick v. Sovereign Bank et al, Supreme Court of the United States, Case No.: 14-6360

4.1 On 11/20/2008, Sovereign initiated Foreclosure on Bostwick's Property in Land Court. On 05/07/2009, Bostwick sued Sovereign in Superior Court. On 31 October 2012, the Superior Court to the U.S. Supreme Court all Dismissed Bostwick's Complaint because there was no Foreclosure Auction.

4.2 On 08/05/2015, Sovereign initiated Foreclosure again in Land Court. In response to this Foreclosure action, Bostwick then initiated Litigation on Sovereign Bank et al in the 2015, Lower Court, Bostwick v. 44 Chestnut St., Case No.: 1581CV05636.

5. Richard D. Bostwick v. The Commonwealth of Massachusetts, Department of Public Health; Leonard J. Sims et al and The Classic Group, Inc. et al; Middlesex Superior Court, Civil Action No.: 10-1775 (Now 1081CV01775) et Seq.

-- AND --

Federal District Court Case # 11-10662-GAO

5.1 On 02 September 2008, the DPH Served Bostwick with an Administrative Unauthorized Deleading Complaint. For Bostwick and Future Owners of Bostwick's Multifamily Residence, 44 Chestnut Street Wakefield is subject to Strict Liability forever for a lead poisoned child. Because of Fear of Financial and Legal consequences, Bostwick cannot Rent or Sell his Multifamily Residence.

5.2 Bostwick's Request for a DPH, Formal Adjudicatory Hearing concerning the Sims and Classic Unauthorized Deleading at Bostwick's Multifamily Residence was Denied. Bostwick sought Judicial Review under G.L. c. 30A; however, the Judicial Review was Dismissed and BostwickAppealed as described below in 10-1775 (Now 1081CV01775) et Seq.

5.3 Based upon that Final Judgment, Bostwick then initiated Litigation on the DPH and 1983 Persons Hunter, Laskey, Warren in the 2015, Lower Court, Bostwick v. 44 Chestnut St., Case No.: 1581CV05636.

6. Pre-Foreclosure and Post-Foreclosure -- Lower Court, (This Case) Richard D. Bostwick and Richard D. Bostwick as a Class Of One v. 44 Chestnut Street, Wakefield, Mass. (In Rem) et al; Middlesex Superior Court, Civil Action No.: 1581CV05636 et Seq.

-- AND --

Post-Foreclosure -- Land Court, 16 MISC 000328, Bostwick, Richard D. v. Santander Bank, N.A. formerly known as Sovereign Bank N.A., Sovereign Bank et al

-- AND --

Post-Foreclosure -- Concerning Lower Court, Superior Court, Civil Action No.: 1581CV05636 et Seq.; Richard D. Bostwick vs. 44 Chestnut Street & Others, Appeals Court Case No.: 2017-P-0414.

-- AND --

Post-Foreclosure -- Concerning Land Court, 16 MISC 000328, Richard D. Bostwick vs. Santander Bank, N.A. & Others, Appeals Court Case No.: 17-P-291.

-- AND --

Post Foreclosure -- Concerning Lower Court, Richard D. Bostwick and Richard D. Bostwick as a Class Of One v. 44 Chestnut Street, Wakefield, Mass. (In Rem) et al; Middlesex Superior Court, Civil Action No.: 1581CV05636 and its APPEAL Lower Court, Richard D. Bostwick, vs. 44 Chestnut Street, Wakefield, Mass & Others, Appeals Court Case No.: 19-P-589.

6.1 (a) On 08/05/2015, Sovereign initiated Foreclosure again in Land Court. (b) On 12/02/2015, Bostwick sued Sovereign again in Superior Court. (c) Judge Desmond Dismissed Santander and Fannie Mae based upon the claimed Res Judicata of the previous 2009 Case. (d) Judge Desmond Dismissed Orlans Moran, the Lawyer for Sovereign, given Lawyer privileges. (e) Judge Desmond Denied Bostwick's Foreclosure Preliminary Injunction. (f) Then, on 29 April 2016, Santander and Orlans Moran conducted a Foreclosure Auction and Sale of Bostwick's Property.

6.2 (a) On 06/15/2016, Bostwick sued Santander, Fannie Mae and the Buyer, Saturn Realty Group, in Land Court, 16 MISC 000328. (b) On 12/13/2016, Judge Connolly Denied Bostwick's Request to Amend the Complaint to include the Foreclosure Auction and Sale in Superior Court.

6.3 (a) For the 2015 Case, there is no Mass.R.Civ.P. Rule 58 Entry of Judgment. (b) The 27 September 2016 Final Judgment concerning Santander and Fannie Mae was Vacated on 24 April 2017 by the Appeals Court No. 2017-P-0414. (c) On 17 May 2018, the remaining defendants except "(1) 44 Chestnut Street In Rem" were Dismissed. Then Judge Henry Dismissed Bostwick's Case without a Mass.R.Civ.P. Rule 58 Entry of Judgment. (d) BostwickAppealed on 14 August 2018.

6.4 (a) The 26 March 2018, Appeals Court, Memorandum of Order sent the Land Court Case back to Superior Court with the Order to address the Foreclosure Issues. (b) On 17 May 2018, Judge Henry Dismissed Gantt and remaining Parties. (c) On 17 July 2018, Judge Henry Denied Bostwick's Request to Amend the Complaint to include the Foreclosure Auction and Sale as identified in Bostwick's Proposed Second Amended Complaint. This was done by Judge Henry even given Motion knowledge of the 26 March 2018, Appeals Court, Memorandum of Order to send the Land Court Case back to Superior Court with the Order to address the Foreclosure Issues. (d) On 17 May 2018, the remaining defendants except "(1) 44 Chestnut Street In Rem" were Dismissed. For the 2015 Case, there is no Mass.R.Civ.P. Rule 58 Entry of Judgment. Then Judge Henry Dismissed Bostwick's Case without a Mass.R.Civ.P. Rule 58 Entry of Judgment. (e) BostwickAppealed on 14 August 2018. On 22 January 2021, the Appeals Court Case No.: 2019-P-0589 docketed its Rule 23.0 Decision and its Memorandum and Order.

6.5 The Decisions of the State Middlesex Superior Trial Court are identified in Appendix D.

7. Richard D. Bostwick vs. 44 Chestnut Street & Others, Massachusetts Appeals Court, Action No.: 2019-P-0589

AND

Richard D. Bostwick vs. 44 Chestnut Street, Wakefield, Mass. & Others, Massachusetts Supreme Judicial Court, Action No.: SJC-13061

7.1 The Appeals Court Case No.: 2019-P-0589 upheld all Lower Court Decisions except for the Santander and Fannie Mae Wrongful Foreclosure which they wanted to Remanded back to Superior Court for Litigation. However, before the Rescript of the Remand, the Appeals Court did an Appeal to the SJC under G.L. c. 211A § 12 under Case No.: SJC-13061. Bostwick had made a Claim against the Appeals Court concerning Violations of Bostwick's Americans with Disabilities Act (ADA) Accommodations (Stroke, Heart Surgery). A Party cannot be the Judge in its own Case.

7.2 The Decision of the Massachusetts Appeals Court Case No.: 2019-P-0589 is identified in Appendix C

7.3 The Decision of the Massachusetts Supreme Judicial Court (SJC) Action No.: SJC-13061 is identified in Appendix A. In addition, Bostwick's Rehearing, SJC Decision is identified in Appendix B.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Pro Se Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

APPENDIX A Decision(s) of State Supreme Judicial Court (SJC)

1. The final Opinion of the SJC on the merits appears at Appendix A and is reported at Richard D. Bostwick vs. 44 Chestnut Street, Wakefield, Mass. & Others, 488 Mass. SJC 1016 (2022).

SJC Opinions that are material to this petition are as follows:

1.a "...The plaintiff objected to the Appeals Court deciding the claims against it...we affirm the judgment of the Superior Court Judge dismissing the claims against the Appeals Court."

1.b "...The relevant pleading in this case is the plaintiff's first-amended complaint, filed on December 2, 2015..."

1.c "...(2) claimed violations of Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131 et seq..."

1.c "...Among the other arguments, the Appeals Court contends that to the extent Bostwick's claims under the ADA are based on judicial conduct, they are barred by the doctrine of absolute judicial immunity...we leave that issue for another day."

2. The unpublished, November 23, 2021 Opinion of the SJC appears at Appendix A.

SJC Opinions that are material to this petition are as follows:

2.a "...The relevant pleading in this case is the plaintiff's first amended complaint, filed on December 2, 2015..."

2.b "...(2) claimed violations of Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131 et seq..."

2.c "...Under the ADA, a State Court, such as the Appeals Court, may be held liable for violating a duty to accommodate a person with a disability in cases "implicating the fundamental right of access to the courts." Tennessee v. Lane, 541 U.S. 509, 533-534 (2004). In applying this principle, courts have drawn a distinction between a court's administrative function, which may form the basis for liability under ADA, and judicial conduct, which enjoys absolute immunity from suit. See Geness v. Administrative Office of Pa. Courts, 974 F.3d 263, 274

n.12 (3d Cir. 2020), cert. denied, 141 S. Ct. 2670 (2021) (“The parties do not present and we are not aware of any legal authority that would permit [the defendant] to be found liable [under the ADA] based on judicial conduct”); Duvall v. County of Kitsap, 260 F.3d 1124, 1133 (9th Cir. 2001) (ADA claims against judge marred by judicial immunity where allegations concerned judicial acts, rather than administrative or other functions). See generally LaLonde v. Eissner, 405 Mass. 207, 210 (1989) (“It is a well-settled principle under our common law, too well settled to require discussion, that every judge, whether of a higher or lower court, is exempt from liability to an action for any judgment or decision rendered in the exercise of jurisdiction vested in him [or her] by law” [citation and quotation omitted]). Moreover, the plaintiff cannot avoid the absolute immunity afforded to judicial conduct by naming the Appeals Court as a defendant, rather than an individual judge or judges. See Geness, 974 F.3d at 274 n.12; DiPasquale v. Miln, 303 F. Supp. 2d 430, 431-432 (S.D.N.Y. 2004) (adding housing court as named defendant did not “alter the result” that ADA claims based on judicial conduct were barred by absolute judicial immunity).”

(Continued in next paragraph)

“Here the plaintiff’s ADA claims against the Appeals Court were based in large part on quintessential judicial conduct, for instance, the court’s dismissal of an appeal by the plaintiff for lack of prosecution, along with a single justice’s refusal to vacate the dismissal, see *Bostwick v. Sims* Appeals Court, No. 2014-P-1277, and in another case, the issuance of a decision affirming a Superior Court judgment dismissing a civil suit brought by the plaintiff, see *Bostwick v. Sovereign Bank*, 85 Mass. App. Ct. 1101 (2014). For the reasons discussed *supra*, claims under ADA based on judicial conduct are barred by absolute judicial immunity, and therefore, the superior Court judge’s dismissal of any such claims was proper.” (The SJC references its Note 4 continued in the next paragraph)

“4. The Superior Court Judge did not base his dismissal of these claims on the ground of judicial immunity, but we may affirm on any basis apparent in the record. See, e.g., Lopes v. Commonwealth, 442 Mass. 170, 181 (2004); Gabbidon v. King, 414 Mass. 685, 686 (1993), and cases cited.”

APPENDIX B Order of State Supreme Judicial Court (SJC) Denying Rehearing

1. The SJC denied Bostwick's Motion for Reconsideration on 21 January 2022. This Court's Application No. 21A611 (See Appendix F) allowed Bostwick an Extension of Time to 20 June 2022, which is the Juneteenth Federal Holiday. Consequently, Bostwick's Petition is due on 21 June 2022.

2. The SJC has Impounded a Security Video of Bostwick's ADA, Physical and Emotional Sickness occurring at the SJC, Boston Office concerning the SJC-13061 Case and all the Cases Below.

APPENDIX C Decision of State Court of Appeals

1. The final opinion of the Appeals Court on the merits appears at Appendix C and is reported at *Bostwick v. 44 Chestnut Street, Wakefield. Mass. App. Ct. 1107 (2021)*.
2. The Opinions in section "6. Commonwealth defendants" are incorporated herein by reference as material to this petition.

APPENDIX D Decision(s) of State Trial Courts

1. The final opinions of the State Trial Court Case; namely, *Richard D. Bostwick and Richard D. Bostwick as a Class Of One v. 44 Chestnut Street, Wakefield, Mass. (In Rem) et al; Middlesex Superior Court, Civil Action No.: 1581CV05636 et Seq* are Unpublished and appear at Appendix D.
2. First, the Opinions in the "Memorandum of Decision and Order On Commonwealth Defendants Motion to Dismiss" section "2. ADA Claims" are incorporated herein by reference as material to this petition. In addition, at the end of Appendix D, the "Motion to Reset/ Enlarge Tracking Order Dates For Rule 56 Motions," and its Opposition and the Judge Wilkins Decision are incorporated herein.

APPENDIX E Bostwick v. Sovereign Bank Decision of State Court of Appeals

1. The final opinion of the Appeals Court on the merits appears at Appendix E and is reported at *Bostwick v. Sovereign Bank, 85 Mass. App. Ct. 1101 (2014)*.
2. In the Unpublished Decision of the Appeals Court, 85 Mass.App.Ct 1101, the Opinion material to this petition is as follows:

2.a "...We reject Bostwick's claim that the judge should have continued the summary judgment hearing under Mass.R.Civ.P 56(f), 365 Mass. 824 (1974). The Judge continued the hearing at least once, and Bostwick has failed to identify any material fact that he might hope to uncover with additional time..."

JURISDICTION

1. This Court's Application No. 21A611 (See Appendix F) allowed Bostwick an Extension of Time to 20 June 2022, which is the Juneteenth Federal Holiday. Consequently, Bostwick's Petition is due on 21 June 2022. Please refer to the SJC-13061 Docket in Appendix F. The Supreme Judicial Court Judgment, SJC-13061, was entered on 11/23/2021. Bostwick made a timely Motion for Reconsideration on 12/06/2021. The SJC gave Bostwick Leave to file a Supplement to the Motion for Reconsideration, which was Timely on 01/04/2022. The SJC Denied Bostwick's Motion for Reconsideration on 1/21/2022.
2. Given that the Cases are from the State Courts, the Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).
3. Bostwick challenges the Constitutionality of an Act of Congress under Rule 29.4(b) and 28 U.S.C. §2403(a). Notification to the Solicitor General of the United States has been made as required by Rule 14.1(e)(v).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Constitutional and Statutory Provisions and VIOLATIONS Involved are as follows: (1) ADA Reasonable Accommodation Discrimination (42 U.S.C. § 12132) and Retaliation and Coercion (42 U.S.C. §§ 12202, 12203) is a major Issue; (2) "Supremacy Clause" means U.S. Constitution, Article VI, [2]. (3) "Judges Bound by Constitution" means U.S. Constitution, Article VI, [3]. (4) "Right to Petition" means U.S. Constitution, Amendment I. (5) "Due Process" means U.S. Constitution, Amendment

XIV. (6) "Regulatory Taking" means U.S. Constitution, Amendment V. (7) "Bill of Attainder" means U.S. Constitution, Article I, Section 10. (8) "No Excessive Fines" means U.S. Constitution, Amendment VIII. (9) "Equal Protection" means U.S. Constitution, Amendment XIV. (10) "ADA" means the Americans with Disabilities Act (Title 42 c. 126 U.S.C. §§ 12101) generally and Reasonable Accommodation Discrimination (42 U.S.C. § 12132) and Retaliation and Coercion (42 U.S.C. §§ 12202, 12203) specifically. And (11) Title 29 U.S.C. § 794 Section 504. Rehabilitation Act of 1973.

STATEMENT OF THE CASE

1. QUESTION #1:

1.1 The Question #1 states the following:

"1. Whether the Remedies, Procedures and Rights set forth in (a) the Americans with Disabilities Act (Title 42 c. 126 U.S.C. §§ 12101) generally and Enforcement (42 U.S.C. § 12133) and Regulations (42 U.S.C. 12134) and (b) Remedies and Attorney Fees 29 U.S.C. § 794a and (c) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and (c) Department of Justice, Americans with Disabilities Act Title II Regulations (28 CFR Part 35) and (d) Title 29 U.S.C. § 794 Section 504. Rehabilitation Act of 1973 are **UNCONSTITUTIONAL** under the Strict Scrutiny, Substantive Due Process of the "Equal Protection" in the U.S. Constitution, Amendment XIV and "Regulatory Taking" in the U.S. Constitution, Amendment V concerning Qualified Individuals with Disabilities "Access to the Courts" for Administratively Disabled (Wheel Chair Barriers, Seeing, Hearing Disabled) versus Judicially Disabled (Bostwick's Motion(s): Request for more Time: Stroke, Heart Surgery, Depression, Concentration)."

1.2 It is in the **PUBLIC INTEREST** to create Precedence concerning the Remedies, Procedures and Rights of the Judicially Disabled (Bostwick's Motion(s): Request for more Time: Stroke, Heart Surgery, Depression, Concentration).

1.3 Under Case Law the following is stated:

"Title II of the Americans with Disabilities Act (ADA) prohibiting discrimination by a public entity, validly abrogated Eleventh Amendment Immunity through

enforcement of the Fourteenth Amendment as applied to cases implicating the fundamental right of access to the courts. *Tennessee v. Lane*, U.S. 2004, 124 S.Ct. 1978, 541 U.S. 509, 158 L.Ed.2d 820."

1.4 There are two Classes of Qualified Individuals with Disabilities; namely the Administratively Disabled and the Judicially Disabled. The Administratively Disabled include those with Wheel Chair Barriers or Seeing and Hearing Access problems. The Judicially Disabled includes people like Bostwick, with Stroke, Heart Surgery, Depression and Concentration problems; whose Motions for an Enlargement of Time are Denied. An Allowed Motion for an Enlargement of time would provide an appropriate Judicial Access to the Courts.

1.5 However, it appears that the Remedies, Procedures and Rights set forth in the Americans with Disabilities Act related Statutes and Regulations exclude the Judicially Disabled Class and are applicable only to the Administratively Disabled Class. Concerning Bostwick's Case, this is **UNCONSTITUTIONAL** under the Strict Scrutiny, Substantive Due Process of the "Equal Protection" in the U.S. Constitution, Amendment XIV and "Regulatory Taking" in the U.S. Constitution, Amendment V.

1.6 For example, The Remedies and Attorney Fees 29 U.S.C. § 794a and (c) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) provide Judicial Review for the Department of Justice (DOJ) created Superior and Appeals Court Agencies for the Administratively Disabled only. For another example, the Department of Justice, Americans with Disabilities Act Title II Regulations (28 CFR Part 35) provides for Grievance Procedures, Complaints, Hearings, etc. with the DOJ created Superior Court Agencies for the Administratively Disabled only. The SJC Opinions in Appendix A and identified above verify these Legal Facts.

1.7 Consequently, concerning Bostwick's Case, this is **UNCONSTITUTIONAL** under the Strict Scrutiny, Substantive Due Process of the "Equal Protection" in the U.S. Constitution, Amendment XIV and "Regulatory Taking" in the U.S. Constitution, Amendment V.

2. **QUESTION #2:**

2.1 The Question #2 states the following:

"2. Whether the Respondant(s) "(19) Massachusetts Appeals Court, (20) Middlesex Superior Court, Massachusetts Executive Office of the Trial Court" by claiming "Absolute Judicial Immunity" **PRESENTS A CONFLICT OF LAWS** and **VIOLATES** Bostwick's Remedies, Procedures and Rights set forth in (a) the Americans with Disabilities Act (Title 42 c. 126 U.S.C. §§ 12101) generally and Enforcement (42 U.S.C. § 12133) and Regulations (42 U.S.C. 12134) and (b) Remedies and Attorney Fees 29 U.S.C. § 794a and (c) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and (c) Department of Justice, Americans with Disabilities Act Title II Regulations (28 CFR Part 35) and (d) Title 29 U.S.C. § 794 Section 504. Rehabilitation Act of 1973 given Bostwick as a Qualified Individual with Disabilities and Bostwick's Motion(s): Request for More Time given Stroke, Heart Surgery, Depression and lack of Concentration."

2.2 **For a Discussion of Question #2, see the comments in the Section, "Reasons For Granting the Petition" below.**

3. **QUESTION #3:**

3.1 The Question #3 states the following:

"3. Whether the Supreme Judicial Court (SJC) Opinion(s) of "Absolute Judicial Immunity" concerning Bostwick's Americans with Disabilities Act (Title 42 c. 126 U.S.C. §§ 12101) generally and Reasonable Accommodation Discrimination (42 U.S.C. § 12132) and Retaliation and Coercion (42 U.S.C. §§ 12202, 12203) specifically **PRESENTS A CONFLICT OF LAWS** and **VIOLATES** Bostwick's Remedies, Procedures and Rights set forth in the Americans with Disabilities Act (Title 42 c. 126 U.S.C. §§ 12101)."

3.2 Official Capacity and No Derived Absolute Judicial Immunity for Parties "Superior Court" and "Appeals Court"

3.2.1 Bostwick makes no Claims against Individual Judges. If there is any Derivative State Liability Protection, it is based upon the Judges in their Official Capacities. The 23 November 2021, Decision by this Court generally Argues that there is no ADA Liability based upon “judicial conduct.” Bostwick makes his Claims against the State Entities, “Superior Court” and “Appeals Court” and NOT Individual Judges. The next section discusses the ADA Liabilities related to Official Capacity.

3.2.2 The following is stated in Prakel v. Indiana, 100 F.Supp.3d 661 *677-*678 (2015); “...V. Judicial Immunity [11] [12] [13] Defendants contend that the judicial defendants (Magistrate Judge Schmaltz, Judge Humphrey, and Judge Cleary in their official capacities are protected from Mr. Prakel’s suit by the doctrine of absolute judicial immunity. However, judicial immunity is a personal defense reserved for individuals. See Hernandez v. Sheahan 455 F.3d 772, 776 (7th Cir. 2006) (“Official immunities (judicial, legislative, absolute, qualified, quasi and so on) are personal defenses designed to protect the finances of public officials whose salaries do not compensate them for the risks of liability under vague and hard-to-foresee constitutional doctrines. That justification does not apply to suits against units of state or local governments, which can tap the public fisc.”); Newman v. State of Ind. 129 F.3d 937, 942 (7th Cir. 1997) ((“[I]t is to spare judges from shrinking from doing their duty out of fear of being sued that the doctrine of absolute judicial immunity was devised.”) Mr. Paekel has not named any individual defendants in this suit; rather, all defendants are named in their Official Capacities, and it is well-established that “[a]n official capacity suit is tantamount to a claim against the governmental entity itself.” Guzman v. Sheahan, 495 F.3d 852, 859 (7th Cir. 2007) (citations omitted). Accordingly, absolute judicial immunity does *678 not shield the

judicial defendants in this case from Mr. Prakel's suit." Consequently, ADA Liability based upon "Judicial Conduct" does not apply to Bostwick's Case.

3.3 The "...no ADA Liability based upon "judicial conduct"" CASE LAW in the 23 November 2021, SJC Decision by this Court Does Not Apply to Bostwick's Case.

3.3.1 See 23 November 2021, Decision Case Law: "Geness v. Administrative Office of Pa. Courts; 974 F.3d 263, 274 n.12 (3d Cir. 2020), cert. denied, 141 S. Ct. 2670 (2021). The citation means that the Party "Administrative Office of Pennsylvania Courts (AOPC)" is NOT a Derivative Judicial Entity and thus cannot be sued as a Judge ("judicial conduct").

3.3.2 See 23 November 2021, Decision Case Law: Duvall v. County of Kitsap, 260 F.3d 1124, 1133 (9th Cir. 2001). Again, Bostwick cites the Case Prakel v. Indiana, 100 F.Supp.3d 661 *677-*678 (2015). Note 11 states the following: "In support of their contention that judicial immunity applies here. Defendants cite ... (another Case) ... and Duvall v. County of Kitsap, 260 F.3d 1124 (9th Cir 2001). However, in both cases, judicial immunity was found to bar only those claims that were brought against judicial defendants for money damages in their individual capacities. Accordingly, they do not aid Defendant's argument in this case.

3.3.3 See 23 November 2021, Decision Case Law: LaLonde v. Eissner, 405 Mass. 207, 210 (1989). Obviously, Judges have Absolute Judicial Immunity for their Judicial Acts.

3.4.4 See 23 November 2021, Decision Case Law: DiPasquale v. Miln, 303 F.Supp. 2d 430, 431-432 (S.D.N.Y. 2004). My Internet Search Engine cannot find the Case. However, it most likely is about money damages from a Judge.

3.4 "Superior Court" and "Appeals Court" Systemic ADA Liability

3.4.1 In Opposition to the 23 November 2021, SJC Decision arguments of “judicial conduct,” Bostwick argues that there is Systemic (Organizational: Appeals & Superior Court’s) ADA Discriminatory Animus Bias with 42 U.S.C. § 12203, Retaliation / Coercion against Bostwick. For Evidence of the Systemic, Disparate, Animus, Retaliation, Coercion against Bostwick by the Defendant-Appellees, Appeals & Superior Courts see SJC-13061 Appellant’s Brief, Section 6.0 et al in general and Section 6.5 specifically. Bostwick’s Claims are Systemic (Organizational), which is evidenced by Administrative and statistical Judicial Behavior. Consequently, Bostwick makes his Title II and 42 U.S.C. § 12203, Retaliation / Coercion Claims against the State (“Appeals & Superior Courts), where the State has no Immunity under 42 U.S.C. § 12202.

4. QUESTION #4:

4.1 The Question #4 states the following:

“4. Whether **MANIFEST INJUSTICE** and **THE PUBLIC INTEREST** may require Removal of the **WHOLE ORIGINAL** Bostwick v. 44 Chestnut Street (1581CV05636) Case et al to Federal District Court, where abstention is inappropriate.”

4.2 It is in the PUBLIC INTEREST to create Precedence concerning the Remedies, Procedures and Rights of the Judicially Disabled (Bostwick’s Motion(s): Request for more Time: Stroke, Heart Surgery, Depression, Concentration).”

4.3 Under Natural Law “No person can be a JUDGE in his own Case.” (Contra Nemo Iudex in Sua Causa.” The U.S. Supreme Court calls it “a mainstay of our system of government.” (Gutierrez de Martinez v. Lamagno, 515 U.S. 417, 428 (1995)). In the Superior and Appeals Cases below, the Superior Court and Appeals Court are both JUDGES in their own Case resulting in Judicial Bias against Bostwick and his Claims

against the Superior and Appeals Courts. In addition, the Supreme Judicial Court has a Judicial System Image Interest in the outcome of Bostwick's Case(s).

4.4 Given Bostwick's ADA Claims and Demands for Monetary Damages in the Cases Below against the Superior and Appeals Courts, there is Superior and Appeals Court and SJC Bias Against Bostwick and All of His Claims Against All of the Defendant-Appellants Below.

4.5 Some reasons for the EXTRAJUDICIAL, Judicial Disqualification are follows: (1) Bias, (2) Appearance of Bias where the Judges Impartiality might be Questioned, (3) Pecuniary Interests (Bostwick's Damages), (4) Judicial and Social Business Relationships (Judges Retaliating Against Judges) and (5) Systemic Appeals, Superior, Judges Background, Experience, Knowledge concerning Systemic Court Bias against being Sued by Bostwick resulting in ADA Retaliation.

4.6 Manifest Injustice may require Removal of the WHOLE ORIGINAL Bostwick v. 44 Chestnut Street (1581CV05636) Case to Federal District Court, where abstention is inappropriate. See Hirsch, *supra* note 18, at 713, Cf. *Root v. Schenk*, 953 F. Supp. 1115, 1122 (C.D. Cal. 1997). ("This case is not one that demonstrates the extraordinary circumstances where the tribunal is incompetent due to bias").

REASONS FOR GRANTING THE PETITION

1. Bostwick restates his "**NOTICE OF BOSTWICK'S DISABILITIES (SEE APPENDIX H)**" as follows:

"Bostwick was not able to finish his Petition given his Physical and Emotional Sickness of (1) Continuing ADA Atrial Tachycardia Resulting in ADA Depression and Inability to Concentrate; (2) PHOBIA (Fear) of another Stroke, Arrhythmia, Flutter, Tachycardia (24 Hours/ 7 Days) resulting in ADA impaired ability to Concentrate and (3) Other Physical and Emotional Disabilities identified below. See Appendix H."

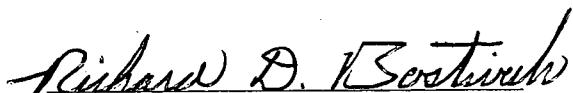
"Under the Americans with Disabilities Act (ADA) (Title 42 c. 126 U.S.C. §§ 12101) generally and under Title 42 U.S.C. § 12102, 12131, 12132, 12133 specifically and given Bostwick's Disabilities, Bostwick PROVIDES NOTICE ONLY and asks this Court for a "Reasonable Accommodation" GIVEN Bostwick's Heart Surgery, Heart Recovery, Brainstem Stroke and Emotional Disabilities (Bostwick has Difficulty Concentrating, Reasoning, Reading, Emotional Distress, Depression, Anxiety, etc.)"

"The "Reasonable Accommodation" Requested is Leave to Amend Bostwick's Petition For A Writ of Certiorari (to include "Statement of the Case" and "Reasons for Granting The Petition") with an Enlargement of Time for sixty (60) days with the SAME QUESTIONS after Bostwick's Petition is Filed and after this Court makes its Decision and Order by Letter on this matter. Bostwick makes this "Reasonable Accommodation" Request for a "Corrected Petition" based on Supreme Court Rule 14.5 and its demand for Compliance with Supreme Court Rules 10, 14, 33 and 34 with submission in accordance with Rule 29.2."

CONCLUSION

1. The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date June 21, 2022

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