22-6842

No. _____

In the Supreme Court of the United States

Bharani Padmanabhan MD PhD
Petitioner

v.

Board of Registration in Medicine
Respondent

On Petition for a Writ of Certiorari
to the Massachusetts Appeals Court
(21-P-0401)

PETITION FOR A WRIT OF CERTIORARI

7 February 2023

Bharani Padmanabhan MD PhD
Petitioner, *pro se*
30 Gardner Road, #6A
Brookline MA 02445
617 5666047
scleroplex@gmail.com

QUESTION PRESENTED

Does the Principle of Party Presentation in which courts shall be a "neutral arbiter of matters the parties present"- called a bedrock of American jurisprudence by this Court in a federal court case, *United States v. Sineneng-Smith*, 590 U.S. ___ (2020) - also apply to litigation in state courts?

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LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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TABLE OF AUTHORITIES

OPINIONS BELOW

The unpublished opinion of the Massachusetts Appeals Court is presented at Appendix A. The Supreme Judicial Court declined further appellate review, which makes it the final opinion of the highest state court.

The unpublished opinions of the Massachusetts Trial Court is at Appendix B.

JURISDICTION

The date of the final state Supreme Court decision is September 12, 2022. This Court granted an application to extend time to February 9, 2023, to file this petition.

The jurisdiction of this Court is invoked under 28 U.S. Code § 1257(a).

THIS COURT'S GUIDANCE ON THE PRINCIPLE OF PARTY PRESENTATION

> "The Ninth Circuit panel's drastic departure from the principle of party presentation constituted an abuse of discretion. The Nation's adversarial adjudication system follows the principle of party presentation. *Greenlaw v. United States*, 554 U. S. 237, 243. "In both civil and criminal cases, . . . we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." Id., at 243. That principle forecloses the controlling role the Ninth Circuit took on in this case. No extraordinary circumstances justified the panel's takeover of the appeal. ... A court is not hidebound by counsel's precise arguments, but the Ninth Circuit's radical transformation of this case goes well beyond the pale." *United States v. Sineneng-Smith*, 590 U.S. ___ (2020)

STATEMENT OF THE CASE

In 2008, petitioner discovered that radiologists at the public Cambridge Heath Alliance hospital system routinely issued reports for brain MRI scans based

solely on the patients' age group and without actually viewing the images. He reported this to the federal Inspector General for Health and Human Services. The hospital suspended him from the medical staff and filed false charges with the Massachusetts medical licensing board, which held an eight-day hearing in January-March 2015 with the explicit aim of suspending his license. In August 2015 the administrative law magistrate ruled that the board did not prove substandard medical care and no discipline was warranted. This ruling became final in February 2016 as a matter of law because the board had not issued its own signed final decision in response to the magistrate's recommended decision. 801 Code of Mass. Reg. 1.01(11)(c)(3), *McGuiness v. Department of Correction*, 465 Mass 660 (2013)

In May 2017, the medical board decided to issue a different 'final decision' indefinitely suspending petitioner's license, without explaining why, which was unlawful. *Leen v. Assessors of Boston*, 345 Mass. 494, 502 (1963), *Bloomstein* infra, *United States v. Serrano-Berríos*, 38 F.4th 246 (1st Cir. 2022)

In November 2019, after the state Appeals Court published its binding, precedential, full opinion in *Bloomstein v. Dept. of Public Safety*, 96 Mass. App. Ct. 257 (2019) regarding Mass. Gen. Laws ch. 30A, § 11 (8), petitioner filed with the board a Petition to Reinstate the Medical License that pointed out the same miscarriage of justice that had been the subject of the precedential ruling in *Bloomstein*. The board did not respond to this petition, though it always routinely responded to such petitions within thirty days. See Appendix C.

After waiting for four months, in March 2020, petitioner sought mandamus

relief from state court in the form of an order to the board to speedily act on the pending petition because he was losing $25,000 monthly due to a void suspension and unreasonable delay. Petitioner, a physician, also wished to volunteer during the global pandemic. State court judge Paul Wilson claimed *Bloomstein* was not a published binding full opinion and denied injunctive relief within one hour of filing, and the case was eventually dismissed in January 2021 for the stated reason that the board still had a petition to reinstate pending before it and had not responded yet in any way. The two dismissal orders are at Appendix B.

Petitioner appealed the dismissal to the state Appeals Court. A panel there denied a request for oral argument, then ruled "Here, it might have behooved the board to rule in some more formal way on the plaintiff's reinstatement petition, or to inform the plaintiff why it would not issue such a ruling. Nevertheless, the plaintiff has not shown that the board had any legal duty to act on the petition. He points to nothing in the board's governing statutes or regulations creating such a duty. The board might well have had the discretion to act, but "a court may not compel performance of a discretionary act." Metropolitan Dist. Comm'n, 397 Mass. at 344. The complaint thus failed to state a claim for mandamus relief. Judgment affirmed." This unpublished decision is at Appendix A. *Padmanabhan v. Board of Reg. in Medicine*, 21-P-0527 (June 13, 2022)

This decision took both parties by surprise. The respondent had never asserted that it did not have any duty to act on a petition to reinstate, and in fact routinely acted in other cases within thirty days. Petitioner had also never asserted

that the respondent did not have a duty to act on a petition to reinstate.

This is because it is binding precedent in Massachusetts that administrative boards have an equitable duty to act on pending petitions to reinstate. *Doe, SORB #6969 v. Sex Offender Registry Board*, 99 Mass. App. Ct. 533 (2021) This is especially true in the case of the medical board because the state's highest court has already ruled that a physician retains a liberty interest in a suspended medical license and the "alleged wrongful withholding of the plaintiff's reinstatement to her chosen profession" constitutes an injury subject to judicial review. *Hoffer v. Board of Registration in Medicine*, 461 Mass. 451 (2012)

The US Supreme Court has also ruled on the duty of the state to care about a person whose liberty rights are threatened. *Jones v. Flowers*, 547 U.S. 220 (2006)

The Massachusetts Supreme Judicial Court denied an application for Further Appellate Review, and the unpublished Appeals Court decision became the ruling of the state's highest court.

It has been more than three (3) years since the petition to reinstate was filed with the respondent. Respondent still has not acted. *Doucette v. Mass. Parole Board*, 86 Mass. App. Ct. 531 (2014)

REASONS FOR GRANTING THE PETITION

The State Court Contravened Supreme Court Precedent By Conjuring A De Novo Question That Was Not Presented Or Briefed By Anyone At All. This case is a good vehicle for this Court to extend the Principle of Party

Presentation to State courts. Massachusetts hitherto has never adopted this Principle.

In *United States v. Sineneng-Smith*, 590 U.S. ___ (2020), the Supreme Court reversed the Ninth Circuit because it appointed *amici* to brief a question never raised by Sineneng-Smith. The Court declared: "The Ninth Circuit panel's drastic departure from the principle of party presentation constituted an abuse of discretion. The Nation's adversarial adjudication system follows the principle of party presentation. *Greenlaw v. United States*, 554 U. S. 237, 243. "In both civil and criminal cases, . . . we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." Id., at 243. That principle forecloses the controlling role the Ninth Circuit took on in this case. No extraordinary circumstances justified the panel's takeover of the appeal. ... A court is not hidebound by counsel's precise arguments, but the Ninth Circuit's radical transformation of this case goes well beyond the pale."

The state court dismissed the appeal based on a question never raised by either party, and did not even appoint *amici* to brief the question. This was a "radical transformation" and a "drastic departure" that went beyond even the Ninth Circuit's action in *Sineneng-Smith* which the Court ruled "went beyond the pale." "This being so, injustice was more likely to be caused than avoided by deciding the issue without petitioner's having had an opportunity to be heard." *Singleton v. Wulff*, 428 U.S. 106, 121 (1976) Also see Stephan Landsman, *Readings on*

Adversarial Justice: The American Approach to Adjudication 2 (1988) - "Adversary theory further suggests that neutrality and passivity are essential not only to ensure an evenhanded consideration of each case, but also to convince society at large that the judicial system is trustworthy."

The state court's dismissal contravened bedrock American principles and caused injustice. This Court must grant this petition and reverse.

This case is an especially good vehicle because there is no case in which the SJC has adopted the Supreme Court's clear holding in *Sineneng-Smith,* and provide Massachusetts courts with guidance that they are to serve solely as a neutral arbiter of matters the parties present. This would help prevent injustice by ensuring parties are actually heard, and would also convince society at large that the Massachusetts judicial system is trustworthy.

CONCLUSION

This Court should grant the petition.

Signed under the pains and penalties of perjury,

/s/ Bharani Padmanabhan MD PhD
BHARANI PADMANABHAN MD PhD
6 February 2023 30 GARDNER ROAD #6A
BROOKLINE MA 02445
617 5666047 - scleroplex@gmail.com