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23-5787
No.

In the Supreme Court of the United States

RICHARD A. FRASCA,
Petitioner,

v.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE,

PARIMAL PATIL

Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the First Circuit**

PETITION FOR WRIT OF CERTIORARI

Professor Richard A. Frasca, Ph.D
Creator and Developer of the Harvard University
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ORIGINAL

QUESTIONS PRESENTED

1. Extensive Case Law Exists in which Depression and Mental Illness have been accepted by the Courts and Governing Bodies as Valid and Legal Bases for the Application of Equitable Tolling, especially in the case of such Depression and Mental Illness resulting from Age Discrimination and Retaliation.
Congress drafts Statutes with Equitable Tolling as a Background Principle and Courts have therefore held that many different kinds of Deadlines may be Equitably Tolled. Therefore, the decisions made regarding the case of Professor Richard A. Frasca, Ph.D., should be overturned.

2. The Petitioner has a Constitutional Right to An Evidentiary Hearing, which have been denied to him in Federal Court. Evidentiary hearings regarding evidence vital to this case must be granted.

LIST OF PARTIES

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

RELATED PROCEEDINGS

Commonwealth of Massachusetts
Commission Against Discrimination:

Richard A. Frasca, Ph.D. v. President and Fellows of Harvard College, MCAD Docket Number: 14BEM02272
EEOC/HUD Federal Charge Number: 16C-2014-02359
(June 7, 2019)

(Equitable Tolling Due to Severe Depression and Resulting Incapacity Denied and and Right of an Evidentiary Hearing Denied and Complaint Dismissed as untimely)

United States District Court (D. Mass):

Richard A. Frasca, Ph.D. v. President and Fellows of Harvard College, EEOC/HUD Federal Charge Number: 16C-2014-02359,
NO. 1:21-10125-WGY (February 22, 2022)
(Equitable Tolling Due to Severe Depression and Resulting Incapacity Denied and and Right of an Evidentiary Hearing Denied and Complaint Dismissed as untimely)

United States Court of Appeals (1st Circuit)

Richard A. Frasca, Ph.D. v. President and Fellows of Harvard College, EEOC/HUD Federal Charge Number: 16C-2014-02359,
No. 22-1140 (December 29, 2022)
(Opinion)

Richard A. Frasca, Ph.D. v. President and Fellows of Harvard College, EEOC/HUD Federal Charge Number: 16C-2014-02359,
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(Opinion)

RULE 29.6 STATEMENT

Richard A. Frasca, Ph.D. has no parent company or publicly held company with a 10 % or greater ownership interest.

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The Opinion of the United States Court of Appeals for the First Circuit (December 29, 2022) is reproduced in the Appendix at App.3.

The Opinion of the United States District Court, District of Massachusetts (February 22, 2022) is reproduced in the Appendix at App.4

The Opinion of the Commonwealth of Massachusetts Commission Against Discrimination (June 7, 2019) is reproduced in the Appendix at App.5.

JURISDICTION

The First Circuit's Opinion was entered on June 23, 2023. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent statute is 29 U.S. Code § 623 of the Age Discrimination in Employment Act of 1967- Prohibition of age discrimination:

It shall be unlawful for an employer—

(1)to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2)to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3)to reduce the wage rate of any employee in order to comply with this chapter.

One of the pertinent statutes guaranteeing Dr. Richard A. Frasca's rights to an Evidentiary Hearing, the Motion for which has never been acted upon by the relevant courts is in 42 CFR § 431.220 - When a hearing is required.

(a) The State agency must grant an opportunity for a hearing to the following:

(1) Any individual who requests it because he or she believes the agency has taken an action erroneously, denied his or her claim for eligibility or for covered benefits or services, or issued a determination of an individual's liability, or has not acted upon the claim with reasonable promptness

All Federal and State Statutes in the USA, including the U.S Constitution guarantee Plaintiffs and Applicants like Dr. Richard A. Frasca rights to have a Filed Motion for An Evidentiary Hearing Acted Upon and When it involves documentary medical evidence central to his case, such evidentiary hearing must be granted.

STATEMENT OF THE CASE

1. Harvard College misstates the District Court's argument for dismissal of Dr. Richard Frasca's action by noting that the dismissal was based on a failure to state claims. The order issued by the District Court on February 8, 2022 clearly states "After hearing from counsel, the Court rules that equitable tolling does not apply, according the case is ordered dismissed." Clearly, based on this order Dr. Frasca's claim was stated, even if the Court dismissed it. The Court presented no legal precedents or arguments justifying this dismissal.
2. The central issue of this Appeal is that the District Court erred in its decision to dismiss the Dr. Richard Frasca's action on the basis that equitable tolling does not apply. A focused and clear examination of all the proceedings and the time line of events relating to this action will show that equitable tolling indisputably does apply and the Order of the District Court should be reversed.

STATEMENT OF THE FACTS

The facts of the Dr. Richard Frasca's action will be presented in the form of an historical timeline that will present the facts and simultaneously where warranted will indicate areas where the Harvard College's Brief erred in its arguments and interpretations of these facts or misstated the actions that took place.

1. In July of 2012 approximately a month later, Professor Richard Frasca received a short terse e-mail from Parimal Patil, the Chair of the Department of South Asian Studies at Harvard University, that informed him that the position of Perceptor in Tamil that Professor Frasca had created and developed with over a decade of dedicated teaching and curriculum development had been given to someone else to supposedly guarantee the "long-term security" of the Tamil Language Program Dr. Frasca had created and developed. The central emphasis of this e-mail was very obviously a reference to the age of Dr. Frasca who had just turned 65 in May 2012.
2. The arguments presented in the Harvard College's Brief that Dr. Frasca had been informed earlier that his position would be ending during the summer of 2012 do not apply for the following reasons:

- A. Nowhere in this e-mail, which was the first and only notification Dr. Frasca received one month late regarding the end of his employment, is there a reference to the correspondence cited by Harvard College's counsel that Dr. Frasca was informed regarding this earlier, proving that this was not the rationale or basis of the decision made during the summer of 2012.
- B. The Department Chair Parimal Patil personally asked Dr. Frasca several times during the Spring Semester 2012 to apply for the position of Preceptor in Tamil assuring him that he supported his renewal as Preceptor in Tamil due to the excellence of his teaching and curriculum development relating to this position. These requests occurred a year after the e-mails referred to in the Harvard College's brief regarding Dr. Frasca's position were sent thereby nullifying their import. Patil also sent him an e-mail with the details of the application process to ease Dr. Frasca's renewal for the position Dr. Frasca had created and developed.
- C. The department has been renewing to the present day the position of Richard Delacy, the Preceptor in Hindi in the department indefinitely, thereby nullifying any arguments that

university policy did not support the renewal of Dr. Frasca as Preceptor of Tamil in a similar way.

D. The concern of the e-mail Dr. Frasca received from Parimal Patil regarding the “long-term security” of the program clearly refers to the fact that Dr. Frasca was 65 years old at the time and based on his age, the Harvard administration and Patil preferred hiring someone much younger as his replacement, even though this person was much less experienced and qualified for the position, given that Dr. Frasca had a Ph.D. and his replacement did not. Dr. Frasca also had the unique academic history of proposing, created and developing a Tamil Language Program at Harvard and his replacement had never accomplished or developed anything close to this regarding teaching experience and curriculum development.

E. There are a large number of e-mails and communications of Harvard deans and other individuals involved in dealing with the employment of Dr. Richard Frasca that directly implicate Harvard University in illegal acts of Age Discrimination regarding Dr. Frasca. These communications clearly state that

Harvard periodically needs to replace untenured Preceptors like Dr. Frasca with “fresh blood,” a clearly discriminatory statement while of course never commenting that tenured faculty members never face such aged-based discriminatory justifications for replacement.

3. Given the context as described above of receiving this unexpected e-mail from Parimal Patil, Dr. Frasca was immediately traumatized and sent Parimal Patil, the chair of his department, an e-mail with a Statement of Grievance regarding the decision to wrongfully terminate him on the basis of his age. He did this in order to access and initiate the Harvard University Grievance Procedure. In a blatant breach and abandonment of his professional duties as a Department Chair at Harvard University and of the code of ethics governing the professional behavior of Professors, Patil did not respond in any way to Dr. Frasca’s important communications and from that date onward has never communicated in any manner again with Dr. Frasca, a colleague and friend who worked together with him for more than a decade during the years that Dr. Frasca proposed and developed the Harvard University Tamil Language

program from a language tutorial to the regular faculty position of Preceptor, which then received endowment donations to become a Chair in Tamil.

The conscious decision by Patil to deny Dr. Frasca a response to his Statement of Grievance effectively sabotaged Dr. Frasca's attempts to access and initiate the Harvard Grievance Procedure because the first stage of the procedure is for the aggrieved party to have a meeting with the Department Chair regarding the grievance. Patil who was acting in concert with the relevant Harvard deans and administrative figures chose not to do this in order to deny Dr. Frasca access to the Grievance Procedure.

4. The denial of access to the Harvard Grievance Procedure by Patil and the Harvard administration resulted in Dr. Frasca reaching out to Department colleagues regarding the illegal acts of Age Discrimination and denial of access to the the grievance procedure. He contacted Professor Michael Witzel, the Professor of Sanskrit of the Department of South Asian Studies, who upon hearing from Dr. Frasca, informed him that he, other department colleagues and Dr. Frasca's students were "shocked" by the decision to replace him. Dr.

Frasca explained Patil's lack of response to this Statement of Grievance and requested a meeting with Dr. Witzel. At this meeting, Witzel explained that other members of the department were also shocked and upset at the decision regarding Dr. Frasca. Dr. Frasca then requested that Dr. Witzel and other colleagues speak up against this decision at the first department meeting of the year, which Dr. Witzel agreed to do.

5. At the first Department of South Asian Studies department meeting of that year, Dr. Witzel discussed Dr. Frasca's grievances and complaints regarding the Age Discrimination and abuse he had experienced at the hands of Harvard University and Patil. This included presenting a written version of these actions. Patil reacted angrily asking Dr. Witzel to communicate a response to Dr. Frasca, which turned out to be the first of a long series of illegal retaliatory acts committed by him and the Harvard administration directed at Dr. Frasca. His response included the following statements and threats:

- A. Richard Frasca can no longer be part of the South Asian Studies academic community at Harvard University.

B. All we at Harvard have to do is to pick up a telephone and Richard Frasca will never get a job in academia again.

6. Dr. Frasca had already been seriously traumatized resulting in emotional and physical debilitation after receiving the short e-mail from Patil informing him his academic career at Harvard was over despite the great contributions he had made academically and personally to the university. A direct result of the above responses he received to his grievances and complaints, however, namely an attempted and illegal ban from the Harvard campus and a threat to destroy his life's work, was that he was further traumatized and entered a state of severe serious catatonic depression in which he spent the next four months in his bed at home, starved himself, suffered uncontrollable panic attacks, and experienced suicidal hallucinations and ideation. He was cognitively and emotionally disabled unable to care for himself and most certainly unable to communicate either by e-mail or letter and most definitively unable to file legal complaints or documents at the Massachusetts Commission Against Discrimination (MCAD). He was also unable to seek proper treatment for his severe serious depression until a local

Psychologist acquainted with his elderly mother hearing of Dr. Frasca's serious depression and resulting disabilities summoned an ambulance, resulting in involuntary admission to the Psychiatric Department at Blake 11 at Mass General Hospital (MGH) in December of 2012.

7. The statement by Harvard College's counsel that the Dr Richard Frasca's "unexcused failure to exhaust administrative remedies effectively barred the courthouse door" displays the typical uninformed and ruthless attitude employers have toward employees they abuse and discriminate against who subsequently experience serious depression as a result of their illegal actions. The serious severe depression that Dr. Frasca suffered as a result of Harvard's discriminatory and retaliatory animus toward him resulted in Dr. Frasca laying on a deathbed of depression for months. If his elderly mother had not intervened and informed a local psychologist regarding his mental and physical disabilities at the time, there is no doubt that Dr. Frasca would have died as a result of his depression from passive or active suicide. This was confirmed upon his involuntary admission to the Blake 11 Psychiatric Unit at the

Massachusetts General Hospital (MGH) where his Doctors and medical providers informed him that “untreated depression can result in death.” Dr. Frasca, suffering from severe and serious depression, spent 49 days in this psychiatric unit undergoing treatment. Since current psychiatric practice focuses on “short-term stabilization,” Dr. Frasca was discharged with prescriptions of psychotropic medications for depression, which he continues to take to this day. He was also required to enter several weeks of “partial hospitalization” at McLean Psychiatric Hospital in which he attended 10 hour days of group and individual sessions of therapy and treatment. Upon completion of this partial hospitalization, Dr. Frasca suffered a relapse and was then admitted to a psychiatric unit at McLean for several weeks. Following his discharge from McLean Hospital, Dr. Frasca entered the care of MGH psychiatric therapists and psychiatrists, which continues to this day.

8. All of Dr. Frasca’s medical and psychiatric providers will provide written and, if necessary, spoken evidence as to the serious functional and emotional disabilities Dr. Frasca suffered as a result of the discriminatory and retaliatory animus of Harvard University

and Parimal Patil. This evidence will definitely support that these disabilities were a valid and legal rationale for his not being able to file a complaint of discrimination and retaliation against Harvard College until August 2014. All arguments by Harvard College to discount or invalidate the disabilities Dr. Frasca experienced as a result of the serious depression he suffered due to the trauma of the discriminatory termination and retaliation of Harvard run counter to current expert diagnoses regarding the symptoms and psychiatric and emotional injuries resulting from severe depression.

REASONS FOR GRANTNG THE PETITION

In a case of this type, it is again important to list arguments validating and supporting Dr. Richard Frasca's rights to not only Equitable Tolling but other elements of his complaint according to the timeline of the proceedings from the very beginning, when the position he created and developed at Harvard University with over a decade of dedicated teaching, research, and curriculum development was given to a less qualified individual decades younger than him.

I. The Investigation Conducted by the Massachusetts Commission Against Discrimination (MCAD) was Procedurally and Legally Flawed

The Investigation conducted by the Massachusetts Commission Against Discrimination (MCAD) was Procedurally and Legally flawed in the following areas:

- A. State regulations and laws governing the procedure of such investigations require that such an investigation be completed within 18 months, whereas the investigators handling Dr. Frasca's complaint took 5 years, an unconscionable and illegal length of time that indicates that not only did the MCAD ignore this case when it was telling Dr. Frasca that they were actively investigating, but MCAD's negligence and malpractice also resulted in Dr. Frasca missing other legal deadlines in other legal venues he would have been able to avail himself of.
- B. In September of 2014, Dr. Frasca filed a Motion with MCAD for an Evidentiary Hearing to determine whether the facts and circumstances of Dr. Frasca's psychiatric injuries and psychiatric disabilities required an "Equitable Tolling" of the statute of

limitations during the period of Dr. Frasca's disabilities thereby supporting a conclusion that his complaint was timely filed. This motion was supported by letters from two experts, Lorenzo Lewis, M.D. and Maryann B. Siegel, LCSW, both mental health professionals at Massachusetts General Hospital (MGH) who were, and had been, treating Dr. Frasca – in the case of Dr. Lewis, from April 2013 to the present; and Ms. Lewis from March 2013 to the present. Both Dr. Lewis and Ms. Siegel affirmed that Dr. Frasca "...[h]as been mentally disabled and incapable of filing" an age discrimination case until August of 2014. The Commission ignored and never ruled or took any action on Dr. Frasca's motion requesting an evidentiary hearing and none was ever held. Instead, on June 7th 2019 – *five years later* – the Commission issued an order dismissing Dr. Frasca's complaint on the grounds that it was not timely filed within the 300-day limitations period. This order was issued on the basis of an illegal and flawed investigation in which Dr. Frasca was denied his rights to an Evidentiary Hearing and Due Process.

C. All indications and the lack of notifications regarding the MCAD's supposed "investigation" over a illegal unconscionably long delay of five years indicate that Dr. Frasca's complaint and proceedings were ignored by the commission for five years with no action being taken, entirely denying him his rights to due process by the commission as mandated by law. The order dismissing his complaint on the basis of its timeliness would only require an investigation of a few months, not five years. Additionally, these actions and the lack of notifications by the MCAD over this period despite Dr. Frasca's inquiries regarding the status of the investigation resulted in Dr. Frasca missing deadlines to pursue his complaints in other legal venues and other courts.

D. Harvard College's argument that Dr. Frasca did not exhaust his administrative remedies is based on the decision of the MCAD, which clearly is an invalid decision due to the seriously flawed and illegal investigation used to arrive at this decision. Accordingly, the District Court's dismissal of his claims should be reversed.

II. Harvard College's Illegal Retaliatory Actions against Professor Richard Frasca Continue to the Present Day as Continuing Violations

It is clear that from the moment Dr. Frasca decided to take both administrative and legal actions against Harvard College regarding the Age Discrimination he had been subjected to by them, they took illegal retaliatory actions against him designed to discredit and deny his contributions as the Creator and Developer of the Harvard University Tamil Language Program and to intimidate him.

The first of these retaliatory actions was the denial of access to the Harvard Grievance Procedure by Patil and the Harvard administration described above in the Statement of the facts.

After this, the following retaliatory threats were issued and communicated to Dr. Frasca:

- A. Richard Frasca can no longer be part of the South Asian Studies academic community at Harvard University.
- B. All we at Harvard have to do is to pick up a telephone and Richard Frasca will never get a job in academia again.

The first of these illegal threats was particularly traumatizing because it was an attempt to ban Dr. Frasca from the campus and

effectively sever his personal and academic connections from colleagues and the research facilities that from 1998 had been essential not only to his academic work, research, and writing, but to his psychological health and well-being. They were the primary nexus of his academic and social life.

The most damning and pernicious retaliatory action that Harvard engaged in regarding Dr. Frasca was the solicitation of \$6,000,000 in endowment funds using an intentionally false narrative regarding the proposing, creation, and development of the Tamil Language Program in which Dr. Richard Frasca is not mentioned once and in which Harvard falsely states that it responded to student requests in creating the program and then hiring the person who replaced Dr. Frasca to teach Tamil. The impossibilities and falsehoods embodied in this narrative is that the action of hiring Dr. Frasca's replacement took place in 2012 after the position had been, due to Dr. Frasca's teaching and curriculum development over more than a decade, elevated from a Language Tutorial in 2004 to a Preceptorship in Tamil in 2010. Dr. Richard Frasca proposed and began teaching Tamil in the Department of South Asian in 2004 and his promotion to the position of Preceptor

took place in 2010, all years before his replacement was hired. This is also a Continuing Violation in that Harvard's use of these illegally solicited funds was to create an endowed chair in Tamil in which Tamil will continue to be taught.

III. Harvard College's Arguments that Dr. Richard Frasca's Complaints Fail to State a Claim are Improperly Applied and Have no Relevance to this Case.

On pages 11-12 of their brief, Harvard College counsel cites cases regarding "conclusory or generalized" statements and "bald assertions, unsupportable conclusions, periphrastic circumlocutions" in an incorrect, irrelevant and improper attempt to dismiss the Dr. Richard Frasca's complaints as not containing sufficient factual matter.

In reality, the exact opposite is true to the maximum in that all Dr. Richard Frasca's complaints and arguments refer to documented evidence in the form of a great many pages of medical records and statements from his medical providers that his psychiatric disabilities made it impossible to file his claims for Age Discrimination and Retaliation within 300 days entirely supporting his request for Equitable Tolling.

Moreover, all Dr. Richard Frasca's complaints and claims regarding the Age Discrimination and retaliation inherent in all the decisions made by Harvard University and Parimal Patil to replace Dr. Frasca and then deal with his complaints with illegal retaliatory actions are also supported by documentary evidence including documents and emails.

An Evidentiary Hearing will give this court the appropriate opportunity to review this documentary evidence. When it does, it will indisputably conclude that Dr. Richard Frasca has most properly stated a claim and that Harvard College's arguments to the contrary are irrelevant and incorrect.

IV. The Theory of Equitable Tolling is Entirely Applicable to this Case

All recent cases focusing on Equitable Tolling support its application to Dr. Frasca's complaints and case. The Table of Authorities presents the cases and authorities referred to here.

The Defendants cite *Berghuis v. Univ. of Mass. Med. Ctr.*, 50 Mass. App. Ct. 1114 as an important ruling contending that it demonstrates the inapplicability of Dr. Frasca's arguments supporting the application of Equitable Tolling to his case. In reality, it supports

Dr. Frasca's arguments. The statement that equitable tolling would only be available, "where a person literally could not act, as when in a coma," actually refers to the type of severe disabling depression that Dr. Frasca experienced and would have caused the sort of mental incapacity that would have been sufficient to toll the statute of limitations regarding filing a discrimination complaint with the MCAD.

Dr. Frasca's most important medical providers in terms of his treatment for depression have provided written statements supporting all of the above that have been part of the proceedings from the time MCAD was handling these complaints, but have been ignored by the investigators and the court, receiving no recognition in any context. Evidence regarding Dr. Frasca's medical providers must be looked at by this Court, a matter that is definitively in the Public Interest. Lorenzo Lewis, M.D. and Maryann B. Siegel, LCSW, both very respected mental health professionals at Massachusetts General Hospital (MGH) who were, and had been, treating Dr. Frasca – in the case of Dr. Lewis, from April 2013 to the present; and Ms. Lewis from March 2013 to the present, have affirmed that Dr. Frasca "...[h]as been

mentally disabled and incapable of filing" an age discrimination case until August of 2014.

Regarding the pathophysiology of a coma, injury or damage to either the cerebral cortex or reticular activating system can cause one to enter a state of coma. Moreover, there is a whole complex series of gradations of coma states such that the use of the singular term "coma," without additional clarifications renders the above quoted legal phrase from *Berghuis v. Univ.of Mass.* insignificant and meaningless. The authoritative medical article discussing and examining in details these gradations of coma entitled *Coma Scales* is included in the Appendix.

One clear defining aspect of a coma is that the underlying cause is always brain trauma and brain damage. This is also a central defining cause of severe serious depression where emotional trauma due to severe life changes such as job loss, divorce, and death of a loved one produce such severe disruptions to both one's physical and psychological lifestyle that serious brain damage results causing serious severe depression. During the four months Dr. Frasca was hospitalized for severe disabling depression these points were discussed in detail and emphasized during his individual and group therapy treatments with

his medical team comparing the way he was dealt with and terminated by Harvard to being “raped” due to the emotional and physical trauma it caused to Dr. Richard Frasca.

Numerous medical studies have focused on the brain damage and trauma caused by depression concluding that “depression not only makes a person feel sad and dejected – it can also damage the brain permanently, so the person has difficulties remembering and concentrating once the disease is over. Up to 20 percent of depression patients never make a full recovery. Moreover, ”depression leaves its mark on the brain as it results in a ten percent reduction of the hippocampus. . . In some cases, this reduction continues when the depression itself is over.”¹

An MRI of Dr. Frasca conducted by MGH after his discharge from hospitalization confirmed significant brain shrinkage undoubtedly caused by the severe depression he experienced as a result of the illegal Age Discrimination, Wrongful Termination and Retaliation he was subjected to by Harvard University.

¹ Please see Sybille Hildebrandt, Depression can damage the brain: People suffering from depression run the risk that their brains shrink and will remain smaller after the disease is over. The discovery provides new knowledge about the brain and new understanding of how antidepressants work, *Science Nordic*.

The realities and ethics that this Court must face regarding depression as a compelling and justified legal basis for Equitable Tolling are discussed in an expert very well researched article published in 2017 by Northwestern University by the important legal scholar Duane Rudolph entitled *Workers, Dignity and Equitable Tolling*. This authoritative article and source is included in the Appendix.

Some very recent well published cases of disabling depression causing total lack of functioning to the point of resulting in death support all of the above regarding the emotional and physical disabilities Dr. Frasca experienced as a result of his falling into serious severe depression. Naomi Judd the acclaimed country music star suffered such severe emotional and physical disability from depression that she passed away very recently. She recounts the crippling emotional and physical disabilities of depression in her memoir, *River of Time: My Descent into Depression*.

All of the above should compel this Court to conclude that brain damage and the resulting disabilities stemming from the severe depression Dr. Frasca was hospitalized in late 2012 for four months and early 2013 are linked to the Age Discrimination, Wrongful Termination

and Retaliation he experienced as teaching and research faculty at Harvard. This brain damage and the resulting disabilities are plausible and valid grounds for the concept of Equitable Tolling being applied to this case.

V. Extensive Case Law Exists in Which Depression and Mental Illness Have Been Accepted by the Courts and Governing Bodies as Valid and Legal Bases for the Application of Equitable Tolling.

This section makes reference to the discussion included in Dr. Richard Frasca's Brief filed on 06/12/2022. Particularly relevant is *Arellano v. McDonough*, U.S. Supreme Court, No. 21-432, which is included in the Appendix.

“The doctrine of equitable tolling is centuries old,” (*McQuiggin v. Perkins*, 838, 409(2013). This Court has recognized that equitable tolling has become a “traditional feature of American jurisprudence.” (*Boechler, P.C. v. Comm'r of Internal Revenue*, No.20-1472, 2022 WL 1177496). Tolling permits courts to extend a deadline “because of an event or circumstance that deprives the filer, through no fault of his own, of the full period accorded by the statute.” (McQuiggin, 569 U.S. at 409.) and serves “humane and remedial” purposes (*Burnett v. New York Central R. Co.*, 380 U.S. 424,

427-428 (1965)), which highlights the public interest element of Dr. Richard Frasca's case.

Relating to this history, this Court has "consistently recognized that equitable tolling is available in the context of provisions that serve the basic policies furthered by all imitations provisions." (*Young v. United States*, 535 U.S. 43, 47, (2002)).

In accord with the long history of equitable tolling and this Court's rulings that equitable tolling is available to all "statutory time limits," (*Irwin*, 498 U.S. at 95), this Court should conclude that Equitable Tolling is available to Dr. Richard Frasca here.

VI. The Doctrine of Equitable Tolling has Deep and Vital Roots in American Jurisprudence

H.G. Wood in *Statutes of Limitations* §1, at 2-3 (2nd ed. 1993) concludes that in common law, "there was no limitation as to the time within which an action might be brought. Another important jurist James John Wilkinson, in *A Treatise on the Limitation of Action* 2 (1829) similarly concludes it is a "maxim that a right never dies.

Courts recognized that the "lapse of time, however long, [did] not deprive a part of his remedy thereon if there [was] a reasonable cause for the delay." (Wood, *supra*, §59 at 146). Joseph Story in *Commentaries*

of *Equity Jurisprudence* §529 at 503-504 instructs that courts “should not refuse their aid in furtherance of their aid in furtherance of the rights of the party,” if there are “peculiar circumstance . . . excusing or justifying the delay.” Courts considered factors that might excuse the late filing and any other “reasonable excuse for the delay” the was presented (*Johnson v. Diversey*, 82 III. 446 (1879)). Further, if a plaintiff could show “good faith and reasonable diligence, a court should grant equitable tolling. (Story, *supra*, §896, at 210).

As concluded in *Arellano v. McDonough*, No.21-432 (2022), p.10, the above precedents and case law establish that “that tolling is appropriate when situations beyond a plaintiff’s control make it difficult or impossible to meet a statutory deadline, even with the exercise of due diligence, such that it would be “inequitable or unjust” for the “bar of the statute” to apply, Story, *supra*, §1521, at 738.

VII. Congress Drafts Statutes with Equitable Tolling as a Background Principle, and This Court Has Therefore Held that Many Different Kinds of Deadlines May Be Equitably Tolled.

This section makes reference to the discussion included in the Dr. Richard Frasca’s Brief filed on 06/12/2022. Particularly relevant is

Arellano v. McDonough, U.S. Supreme Court, No. 21-432, which is included in the Appendix.

This Court has recognized that Congress drafts “statutory time limits in light of the “background principle” of Equitable Tolling. (*Irwin*, 498, U.S. at 95; *Young*, 535 U.S. at 49-50). More powerful and clear is the conclusion of Constitutional scholar John F. Manning in *Textualism and the Equity of the Statute*, 101 Colum. L. Rev. 1, 114 (2001) that “statutes of limitations must be read against the embedded particle of equitable tolling.” Further, the doctrine of equitable tolling should be “read into every federal statute of limitations.” (*Holmberg v. Ambrecht*, 327 U.S.392, 397 (1945)).

This Court has further clarified and concluded that the presumption of equitable tolling is “doubly applicable” to statutory deadlines contained in “humane and remedial Act[s] that are designed to “aid claimants.” (*Burnett*, 380 U.S. at 427-28.). Since Dr. Frasca was subjected to rather ruthless and inhumane Age Discrimination and Retaliation by Harvard University after creating and developing a language program that became an endowed chair, this case definitively

falls into the category of "humane and remedial Act[s]" and is another element in its direct relevance to the public interest.

Directly relevant to this case is the finding in *Boechler*, 2022 WL 1177496 at 6 that tolling is especially appropriate for limitation periods in statutes that were passed to allow "laymen, unassisted by trained lawyers" to pursue claims. Dr. Richard Frasca, following the specific written instructions of the Massachusetts Commission Against Discrimination (MCAD), initiated the claim for which this writ appears before this Court without the assistance of a trained lawyer.

Consistent with the above history are this Court's recent cases that have concluded that tolling is presumptively available in the context of any statutory "[t]ime requirement. (*Irwin*, 498 U.S. at 95).

In *Zipes*, 455 U.S. at 398, this Court held that regarding filing charges with EEOC under Title VII of the Civil Rights Act of 1964 the time limit could be equitably tolled.

Since the Founding of our nation, this Court and other courts have extended statutory deadlines when applying them "would be inequitable or unjust." (*Story, supra*, §1521 at 738).

On the basis of this long history of this Court in applying the principle and doctrine of Equitable Tolling , this Court should apply this doctrine to the case of Dr. Richard Frasca embodied in this Writ of *Certiorari*.

VIII. Dr. Richard Frasca, the Petitioner, has a Constitutional Right to An Evidentiary Hearing

A constitutional right and privilege that has been ignored and denied to Professor Richard Frasca from the very beginning of his legal proceedings and complaints regarding Harvard University regard his rights to an Evidentiary Hearing to present the evidence most important to the courts making a proper decision regarding activating the concept of Equitable Tolling in regards to his case. Documentary medical evidence from his medical providers will confirm that he was incapacitated and disabled to the extent that would have rendered him unable to file his complaint within the cited statute of limitations.

Trial Rules that govern courts at all throughout the United States require that the court must either set a motion for hearing or enter a rule on the motion within a specified time period, often thirty days after the filing of the motion. The Massachusetts Commission Against Discrimination (MCAD) entirely ignored these rules and never set for a

hearing for the Motion for an Evidentiary Hearing that Dr. Richard Frasca had filed.

More to the point, MCAD neither acknowledged nor acted on a Motion Dr. Frasca filed with them requesting an evidentiary hearing, clearly denying him due process and his civil rights. The District Court similarly denied him this right to an Evidentiary Hearing in its decision without citing a legal precedent or any relevant law in its ruling, another denial of due process to Dr. Frasca. An Evidentiary Hearing will enable this Court to receive evidence from which a judicial determination can be made, a matter definitely in the Public Interest.

In CFR § 205.199, the Code of Federal Regulations very clearly sets regulations and rules for the procedures governing Evidentiary Hearings. According to this code, Dr. Richard Frasca had a clear right to file a Motion for an Evidentiary Hearing, a right that he invoked and has continued to invoke throughout all the legal proceedings, Federal and otherwise, regarding this case. This right has been illegally and inappropriately denied to him from the very beginning when he first filed his complaints regarding Age Discrimination and Retaliation and Continuing Violations against Harvard College with the Massachusetts

Commission Against Discrimination (MCAD). Immediately after filing this complaint, he filed a Motion for an Evidentiary Hearing with the MCAD that was entirely ignored and never acted upon throughout the years the MCAD was processing and investing this complaints. During the Federal court proceedings that followed, despite Dr. Frasca clearly asserting that his Motion for an Evidentiary was entirely ignored and never acted upon, the Federal judges continued to ignore Dr. Frasca's arguments regarding his Motion for an Evidentiary Hearing denying him his Constitutional right to such a hearing thus denying the opportunity to present evidence vital to this case, medical documentary evidence that would indisputably support the Equitable Tolling that he is entitled to regarding this complaints and the discrimination, retaliation, and continuing violations he has been subjected to by Harvard College.

In accord with CFR § 205.199, it is mandated that an Order must be entered regarding an Motion for an Evidentiary Hearing that has been filed by Dr. Richard Frasca. Since his motion has been entirely ignored in all legal proceedings regarding this case, not only has

Federal law been violated, but his constitutional rights to present evidence vital to his case have been denied him.

In the entire Code of Federal Regulations (CFR) under all rubrics and all proceedings, a plaintiff is guaranteed a right to file a Motion for an Evidentiary Hearing that must be acknowledged and acted upon by the relevant judge or authority. Similarly in all proceedings conducted or administered by the U.S. Department of Justice, a plaintiff is guaranteed a right to file a Motion for an Evidentiary that must be acknowledged and acted upon. The ignoring of Dr. Richard Frasca's Motion for an Evidentiary and the absence of any type of action regarding this motion is a clear violation and denial of his constitutional rights to such a hearing and his civil rights, illegally and unjustly crippling his means to present evidence vital to the Equitable Tolling of his complaints.

CONCLUSION

For the foregoing reasons, this court should grant *Certiorari*.

Respectfully submitted,



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Dated: September 7, 2023

All parties required to be served have been served.



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