No. 23-6805

In The
Supreme Court of the United States

Bharani Padmanabhan MD PhD

v.

Cambridge Health Alliance

On Petition For A Writ Of Certiorari

PETITIONER'S REPLY BRIEF

March 30, 2024

/s/ Bharani Padmanabhan MD PhD
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QUESTION PRESENTED

In *Fidelity & Deposit Co. v. United States*, 187 U.S. 315 (1902) the Court explained that granting summary judgment would not violate the right to trial by jury if the movant submitted in "precise and distinct terms the grounds of defence, "which must be such as would, if true, be sufficient to defeat the plaintiff's claim in whole or in part."'

If the movant's "grounds of defence" are obviously untrue, as in this case, was the grant of summary judgment repugnant to the United States Constitution's Seventh Amendment right to a trial by jury?

TABLE OF CONTENTS

INDEX OF APPENDICES

Online video of oral argument: https://www.youtube.com/watch?v=loUAcO66hh4

TABLE OF AUTHORITIES

CASES — Page

REASONS FOR GRANTING THIS PETITION

1. The brief in opposition reinforces the need for granting this petition

The brief in opposition employs name-dropping of the type that is a recognized logical fallacy called "Argument from authority," also known as "*argumentum ad verecundiam*." By this, the brief in opposition pats this Court on the head and recommends that it modestly defer to the superior authority of the Massachusetts appeals court and respectfully step aside.

What the brief in opposition did not do is present actual evidence that CHA's "grounds of defence" is true and that no material fact is in dispute. All that the brief asserts is that the Massachusetts appeals court has ruled and this Court must accept it and keep quiet.

As the petition notes, this Court explained in *Fidelity & Deposit Co. v. United States*, 187 U.S. 315 (1902) that the movant must submit in "precise and distinct terms the grounds of defence, "which must be such as would, if true, be sufficient to defeat the plaintiff's claim in whole or in part."" "[I]f true" is an integral part of this Court's allowance of summary judgment. Summary judgment would not deny Dr. Padmanabhan's right to trial by jury **only if** CHA's "grounds of defence" is "true." The evidentiary record in this case is clear and convincing that CHA's "grounds of defence" is not "true" because the evidence in the record proves that (1) Dr. Padmanabhan did not resign and (2) a 3-day Fair Hearing has already been held.

Despite CHA's assertion to this Court in its brief in opposition, there was no "negotiated resignation," there was no resignation letter, there was a certified letter

that pointedly declared that it is not a resignation letter because Dr. Padmanabhan ***shall not resign*** after his exoneration at the 3-day Fair Hearing which had been held, there are numerous sworn affidavits to United States Secretary of Health and Human Services Kathleen Sebelius and to then-U.S. Senator Scott Brown swearing that there was no resignation, a letter from Senator Brown to Secretary Sebelius documenting this fact, this petitioner testified in court that he remains a member of the CHA medical staff and never resigned, and presented documentary evidence from CHA itself proving that a Fair Hearing had already been held and exonerated him. (If there really was a "negotiated resignation," what did Dr. Padmanabhan get in exchange for resigning after he won exoneration? There is zero evidence for a "negotiated resignation" because it is not "true.")

It is thus notable that the very same lawyer, CHA's lawyer, Brian Sullivan from Sloane & Walsh, who intentionally lied to the lower courts, and has now intentionally lied to the US Supreme Court that Dr. Padmanabhan voluntarily resigned and no Fair Hearing was held, chose to conceal from his brief in opposition to this Court the public fact that the very same appeals court that he uses for his *Argument from authority*, ruled via published opinion that Dr. Padmanabhan had plausibly stated a claim that CHA had lied to the federal government that Dr. Padmanabhan had resigned and that this question of fact must be resolved only by a jury after discovery. *Padmanabhan v. City of Cambridge*, 99 Mass. App. Ct. 332 (2021) On March 21, 2021, even Law360 reported on this. (https://www.law360.com/employment-authority/articles/1367389/mass-panel-

partially-revives-neurologist-s-retaliation-suit)

This important detail is conspicuously missing from CHA's brief in opposition, as is the reality that there has been no discovery at all. At minimum, a material fact remains in dispute even now that only a jury has the authority to resolve, and CHA's "grounds of defence" is not true.

2. **All of the Authorities in CHA's Brief in Opposition are Wildly Irrelevant, Because the "Grounds of Defence" is Not True**

Firstly, CHA cites *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) to assert that summary judgment here was indeed appropriate because there was no genuine triable issue of fact. This assertion has been in dispute from 2011, was in dispute when the appeals court remanded that question in 2021 for fact-finding by a jury. *Celotex* is inapplicable in terms of supporting CHA here given the evidentiary record documents that Dr. Padmanabhan has continuously disputed, for thirteen years, CHA's unilateral assertion that he resigned.

Secondly, CHA cites *Hill v. McDermott, Inc.*, 827 F.2d 1040 (5th Cir. 1987) to assert that Dr. Padmanabhan's Seventh Amendment right has not been violated. *A priori* a 5th Circuit case from forty years ago is an odd choice. It is also irrelevant given that the lower court granted summary judgment even though Dr. Padmanabhan disputed material facts and presented evidence for 'counter-facts' (the truth) in his timely opposition brief. The record is clear that ***the lower court declared that it would ignore all the disputed facts identified in that timely opposition brief***. See Appendix A, Bates 35. This violated both state court

Rule 9A(b)(5)(iii)(B) as well as this Court's binding precedent.

Thirdly, CHA cites *Calvi v. Knox County*, 470 F.3d 422 (1st Cir. 2006) *citing Harris v. Interstate Brands Corp*, 348 F.3d 761 (8th Cir. 2003), to falsely assert that "Here, the Petitioner was afforded the opportunity to present evidence that might show that the facts material to CHA's motion for summary judgment were subject to a genuine dispute. He failed to do so (and could not do so)." This statement from CHA's lawyer Brian Sullivan is a statement of fact, not argument, and is an intentional factual misrepresentation to the US Supreme Court. The 139-page appendix filed with this petition documents the detailed brief that Dr. Padmanabhan filed in opposition to CHA's motion for summary judgment which identified and explained the triable material facts that remain in genuine dispute. See Appendix D, Bates 116-134. Dr. Padmanabhan also filed a motion to refer Brian Sullivan to bar counsel for intentionally lying to that court about those genuinely disputed triable material facts - (1) Dr. Padmanabhan did not resign, (2) A Fair Hearing was held and exonerated Dr. Padmanabhan.

Dr. Padmanabhan most certainly presented "evidence that might show that the facts material to CHA's motion for summary judgment were subject to a genuine dispute." CHA's lawyer, Brian Sullivan from Sloane & Walsh, intentionally lied to the US Supreme Court when he made that false statement of fact to this Court.

3. **Only this Court can and must remind lower courts of first principles**

This court has previously granted certiorari petitions in order to correct errors in the lower courts on fundamental issues where they have gone astray. For example, in *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998) this Court denounced the practice of hypothetical jurisdiction and reminded the nation's courts of first principles. And in *Caetano v Massachusetts*, 577 U.S. 411 (2016) this Court declared that the Massachusetts supreme court's "reasoning defies our decision in *Heller*" and "the explanation the Massachusetts court offered for upholding the law contradicts this Court's precedent. Consequently, the petition for a writ of certiorari and the motion for leave to proceed *in forma pauperis* are granted. The judgment of the Supreme Judicial Court of Massachusetts is vacated, and the case is remanded for further proceedings not inconsistent with this opinion."

Similarly, this Court must grant this petition in order to reiterate its holding from 100 years ago that summary judgment passes constitutional muster **only if** the movant's "grounds of defence" is "true."

This Court has repeatedly ruled that "Where, as here, the record blatantly contradicts the plaintiff's version of events so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a summary judgment motion. Pp. 1774-1776." *Scott v. Harris*, 550 U.S. 372 (2007), *Tolan v. Cotton*, 572 U.S. 650 (2014) What is needed now is re-emphasis on the "if true" clause. "If true" is what the people's 7th Amendment right hinges upon.

The practice of ignoring the "if true" clause in this Court's ruling in *Fidelity & Deposit Co. v. United States*, 187 U.S. 315 (1902) violates a foundational Constitutional right that defines the United States and sets it above most other countries, is well known to and popular with all her citizens (*I will take my case to a jury!*), and is worth preserving.

CONCLUSION

This petition for certiorari must be granted. There remains a real need for this Court to remind lower courts that the movant's "grounds of defence" must be "true" for summary judgment to be constitutional.

Respectfully submitted,

March 30, 2024

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CERTIFICATE OF COMPLIANCE AND SERVICE

Petitioner certifies that he served a copy of this reply upon the defendant via counsel Brian Sullivan (and Michael Maxey) via email. This reply brief contains 1903 words.

March 30, 2024

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