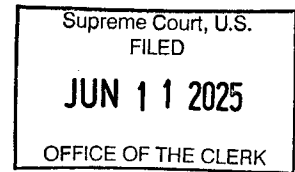


24-7437
NO

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



LOTFOLAH KAVEH AFRASIABI -- PETITIONER

VS.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE -- RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

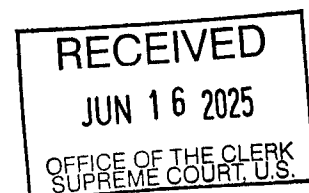
PETITION FOR WRIT OF CERTIOARI

LOTFOLAH KAVEH AFRASIABI

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QUESTIONS PRESENTED

1. Whether a presiding justice presiding over a case involving Harvard University as a defendant should have recused himself from the case due to the extensive connections with the Defendant and conflict of interest?
2. Whether a judge should upon request by a plaintiff disclose the full scope of his financial and non-financial connections to a defendant?
3. Whether a false, uncorroborated, and defamatory report to the national police, i.e., the Federal Bureau of Investigation, by the defendant Harvard University concerning the plaintiff should be considered as a constitutionally-protected activity?

List of parties

☒ All parties appear in the caption for the case on the cover page.

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OPINIONS BELOW

The opinion below (Pet.App. 1) is published at 105 Mass. App. Ct. 1103, 247 N.E.3d 880 (2024). The opinion respecting the Massachusetts Supreme Judicial Court, denying the Petitioner's application for further appellate review, dated April 17, 2025 (Pt. App. 2) is unpublished.

JURISDICTION

The Court's jurisdiction in this matter is based on the US Constitution, Article III, Section 2, Clause 2, as well as 28 U.S.C, Section 1257. The current statute authorizing Supreme Court review of state court decisions allows the Court to review the judgments of the highest court of a State in which a decision could be had. The Petitioner timely files the writ of certiorari within 90 days from the judgment of the Massachusetts Supreme Judicial Court on April 17, 2025.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pursuant to 28 U.S. Code, Section 455, (a)(b) (1), any justice, judge, or magistrate judge of the United States should disqualify himself in any proceeding in which his impartiality might reasonably be questioned. “He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party.”¹

The Petitioner submits to the Court that an associate justice of the Massachusetts Appeals Court, Honorable Peter Sacks, should be found in violation of 28 U.S. Code, Section 455, for his refusal to recuse himself from the case involving the Petitioner versus Harvard University despite extensive and on-going conflict of interest. Judge Sacks presided over a panel of three justices that rendered a decision against the Petitioner by upholding the decision of a lower court with respect to the defendant’s anti-SLAPP Motion. Judge Sacks is a Harvard graduate, a former editor of Harvard Law Review, an active alumni involved in fund-raising for the university, is a member of an advisory committee at Harvard University, and has received funds from the University for giving lectures at Harvard. These are the matter of public record and Judge Sacks denied the Petitioner’s Motion for a full disclosure of his financial and non-financial connections to Harvard University Pet. App. 3). The Petitioner then filed an application for further judicial review at the Supreme Judicial Court, citing Judge Sack’s conflict of interest, which was denied in April, 2025.

¹ For scholarly work, see Julie W. Abramson, "Judicial Disclosures and Disqualifications," *The Justice System Journal*, Volume 28, No. 3, 301-308 (2007).

In light of the compelling and irrefutable evidence of serious conflict of interest, Judge Sacks erred by refusing to recuse himself from the case, which should be corrected by the Court by remanding the case to the Massachusetts Appeals Court to appoint a new panel of justices without any conflict of interest, i.e., to review the Petitioner's appeal de novo. *Mickens v. Taylor*, 535 U.S. 162 (2002). The Petitioner simultaneously prays the Court to vacate the decision of Massachusetts Supreme Judicial Court, denying the Petitioner's request for further appellate review, which is based in part on the argument that pursuant to SJC's own code of conduct, Rule 3:07, , the Appeals Judge Sacks should have been removed from the instant case. The Petitioner has been deprived of the due process of law and justice in part as a result of prejudicial judge with extensive vested interests with the defendant Harvard University, thus precluding the rendering of justice.

STATEMENT OF THE CASE

On March 13, 2023, Afrasiabi filed a complaint in Suffolk Superior Court in the Commonwealth of Massachusetts against the President and Fellows of Harvard College (hereafter "Harvard") alleging defamation, civil rights violation, and both intentional and negligent infliction of emotional damage. In March, 2022, Afrasiabi had received a letter from a US attorney in the southern District of New York stating that the FBI had received a "report" from Harvard that Afrasiabi sent harassing emails to Harvard faculty. At the time, Afrasiabi faced criminal charges

of violating the foreign agent registration act, which was resolved in Afrasiabi's favor without the imposition of any fine, jail time, or probation. In his Complaint, Afrasiabi stated that he is a former post-doctoral researcher at Harvard-turned-whistleblower on Harvard's unethical connections with a Muslim foundation that had placed a reward on the head of author, Salman Rushdie. In his autobiography, Joseph Anton, Mr. Rushdie has recounted Afrasiabi's efforts, together with the late Mike Wallace of CBS' "60 Minutes" to lift the Iranian fatwa, death sentence, on Rushdie. Afrasiabi was then subjected to a retaliatory false arrest and incarceration by Harvard Police in January 1996 in order to silence his whistleblowing. Afrasiabi was exonerated of any wrongdoing and then commenced a civil action in the federal court against Harvard that went to a ten-day jury trial and then was ultimately disposed of by the US Supreme Court on March 24, 2003. Afrasiabi then published a book, titled Looking For Rights At Harvard, with a blurb by the late Mr. Wallace, in which he complained of gross injustice and Harvard favoritism in court, in light of the federal judge's inexcusable self-reversal on the finding of two handwriting experts connecting the Harvard detective on trial with the purported extortionist. Afrasiabi then complained to the then US Senator from Massachusetts, Mr. John Kerry, regarding Harvard's abuse of his civil and human rights. Mr. Kerry's office then undertook an independent investigation, culminating in Mr. Kerry's letter to the US Department of Justice stating that his office had determined that Afrasiabi's complaint against Harvard had "merits" warranting an investigation by the Department of Justice. See the letter of John Kerry to US Department of Justice, dated March 3, 2010. Afrasiabi sent a copy of that letter by Mr. Kerry to Harvard University President, and was subsequently informed by the US attorney abovementioned that that letter was under protective order; no action was taken against Afrasiabi for inadvertently violating a protected document since he had already received it from Kerry before and it was a matter of innocent error.

The Suffolk Superior Justice, Christopher Belezos, on August 7, 2023 allowed the Anti-SLAPP Motion of the Defendant Harvard, filed on June 8, 2023. Prior to this decision, the judge denied Afrasiabi's motion for limited discovery as well as motion to cure the complaint. On August 13, 2023, Afrasiabi filed a motion to reconsider the case's dismissal, citing 13 errors of law, which was denied on August 22, 2023. Afrasiabi then filed a notice of appeal on August 24, 2023. He filed an Petitioner's brief and a panel of justices of the Appeals Court held a hearing on September 25, 2024, with attorney William Keefe representing Afrasiabi. As a pro se Petitioner, Afrasiabi filed two inter-related motions at the Appeals Court, i.e., a motion to recuse the Harvard-affiliated Justice Sacks from the pending case due to the conflict of interest, and another motion for full disclosure of Judge Sacks' financial and non-financial connections with the Defendant Harvard; both motions were (unreasonably) denied respectively on August 16, 2024 and November 27, 2024. Also, Afrasiabi filed a motion to reconsider the Appellate Panel's decision upholding the decision of the lower court, on November 21, 2024, which was also denied by the Appeals Court on November 22, 2024. The Commonwealth's Supreme Judicial Court then denied the Petitioner's request for further appellate review on April 17, 2025, without publishing any explanation for its decision.

Petitioner Afrasiabi is a victim of gross human rights abuse by Harvard University and his civil, human, and constitutional rights have been violated by Harvard with impunity. As stated in his Complaint, Afrasiabi had exercised his 1st Amendment rights to send "various complaint letters" to Harvard President and general counsel seeking a formal apology for the wrongs perpetrated against him. Afrasiabi also circulated to Harvard copies of his related complaints to

various human rights organizations, including the Amnesty International and UN Human Rights Council. At no point during the past three decades did Afrasiabi engage in any activity that could be reasonably construed as "harassing" the Harvard faculty, (per the Complaint) some of whom are Afrasiabi's friends and co-authors i.e., Afrasiabi has penned several articles with Harvard scholars, Mustafa Kibaraglu, Kayhan Barzegar, Abbas Maleki, and has been a part of Kennedy School's Managing the Atom Program and has participated in a high-level lecture at Harvard Law School, quoted in Harvard Gazette. Both the Defendant as well as the Superior Court and the respected justices of the Appeals Court conveniently misconstrued Afrasiabi's open admission of his communications to Harvard (administration) as the evidence of his "harassing" communication to Harvard faculty, without bothering with this important distinction and or providing a shred of evidence to corroborate their false allegation. Afrasiabi contested the latter in his pleadings in court and filed a motion for limited discovery, pertaining to his communications to Harvard, which was unreasonably denied. As a result, both the Superior Court and the Appeals Court rendered a decision in a vacuum of facts and based on undue assumptions and illicit inferences not based on facts, such as claiming that Harvard informed the FBI of Afrasiabi ' s violation of a protective order; such a claim cannot be verified from the existing record however. The mere fact that a US attorney subsequently informed Afrasiabi that some of the documents provided by Harvard to FBI were under protective order cannot be stretched, short of discovery, to prove the fact that this is indeed what Harvard communicated to the FBI. All that is stated by the US attorney' s letter is that Harvard had "reported" to FBI that Afrasiabi is harassing the Harvard faculty through his communications, samples of which had been given to FBI. A reasonable approach by the court should have been to allow Afrasiabi 's motion for limited discovery, to ascertain Afrasiabi 's defense that no reasonable person would construe those communications to Harvard as

"harassing." Harvard's attorney, William Fick, readily admitted at the hearing in Suffolk Superior Court, that he did not even know if Harvard's communications were oral or written. Defendant readily admitted that it had not "complained" against Afrasiabi to the FBI, misconstruing its defamatory "report" to FBI as a mere "opinion," and in the same breath claimed that it had engaged in protected "petitioning activity." Yet, as irrefutably established with the help of relevant SJC authorities in his Petitioner's Brief, Harvard had failed to meet the threshold meaning of "petitioning activity" and it was a mistake by the courts in this instant case to conclude otherwise.

Although in the Commonwealth of Massachusetts the guidelines on conflict of interest are crystal clear, unfortunately both the Appeals Court and the Supreme Judicial Court in Massachusetts have ignored them by virtue of upholding Justice Sacks' refusal to recuse himself from the case due to extensive conflict of interest. As stated in Afrasiabi's motions to dismiss Justice Sacks and to seek Sacks' full disclosure of his financial and non-financial ties to the Defendant Harvard. Judge Sacks should have recused himself from this instant case due to the fact that for all practical purposes he is a member of, and part of, the defendant. Per public information, Judge Sacks is (a) a graduate of Harvard law school, (b) former editor of Harvard Law Review, (c) an active alumnus involved in fund-raising for Harvard, (d) a member of oversight committees at Harvard, and € has given paid lectures at Harvard, i.e., has been on Harvard's payroll. These significant connections, both financial and non-financial, to the Defendant Harvard constitute a conflict of interest, warranting Justice Sacks' dismissal from the appellate panel. Hypothetically speaking, if Judge Sacks had all the abovementioned ties to a different corporation, his recusal from the case would have been most likely automatic.

REASONS FOR GRANTING THIS WRIT

Petitioner prays the Court to grant this writ in the interest of justice. The Defendant Harvard University has dodged the heat of justice in the instant case by the fiat of unethical judicial conduct stemming from the refusal of one its members, i.e., associate Judge Sacks, to recuse himself from the case; Justice Sacks wrote the opinion upholding a dubious decision of a lower court and denied the Petitioner's request to recuse himself and or to disclose the full scope of his financial and non-financial connections to Defendant Harvard University. Judge Sacks then wrote an opinion based on an unwarranted assumption lacking facts in record regarding Harvard's communications regarding the Petitioner. This travesty of justice ought to be scrutinized and reversed by this Court.

CONCLUSION

For the foregoing reasons, the Petitioner prays the Court to grant the writ of certiorari to review and to vacate the judgment of the Massachusetts Court of Appeals.

Respectfully Submitted,

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