COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Ruth Adjartey, Ismail Abdelhamed, Vesta Ballou, Mildred Collins, Jackeline Cucufate, Marjorie Evans, Matthew Griffin, Gerard Hughes, Donna Mejias-Berrios, Janet Montgomery, Elizabeth Norris, Luciano Oliveira, Mychelyne Oliveira, Susan Osborne, Daniel Peristere, Christy Raymond, Caitlin Ryals, John Schumacher, Myron Swanston Petitioner-Appellants v. Worcester Housing Court, Original Respondent-Appellee, Santander Bank, Midfirst Bank, Nationstar Mortgage LLC, MRH Sub1LLC, Freddie Mac, Fannie Mae, U.S. Bank N.A. As Trustee Of J.P. Morgan Acquisition Trust 2006-WMC3, Lisa Y. Barron, HSBC Bank USA N.A. As Trustee For Nomura Asset Acceptance Corporation Mortgage Pass Through Certificates Series 2005-AR3, HSBCBank USA N.A. As Trustee On Behalf Of Fremont Home Loan Trust 2006-CMortgage-Backed Certificates Series2006-C, Savers Co-Operative Bank, Deutsche Bank National Trust Co.Trustee For Ameriquest Mortgage Securities Inc. Asset-Backed PassThrough Certificates Series 2003-13,US Bank N.A. As Trustee For Bear Stearns Asset Backed Securities Trust 2004-Ac4, U.S. Bank TrustN.A. Trustee Of Volt 2012-NPl1Asset Holdings Trust Respondents-Appellees	Docket No. SJC-12380

Christine Hilton, Ruth Adjartey, Ismail Abdelhamed, Vesta Ballou, Lori Cairns, Jackeline Cucufate, Marjorie Evans, Gerard Hughes, Maria Navedo, Paul Norris John Schumacher, Jean Atkinson, Edna	

Austell, Annette Bent, Steven Bourassa, Samantha Farrar, Patricia Ferreira Bonilla, Kelly Johnson, Felix Kangaru, Heather Kozak, Cheryl Leblanc, Philippe Leblanc, William Marks, Deb Mccarthy, Keith Mckenzie, Paulette McKenzie, Miranda Morgan, Joseph Nuzzolilo, Cynthia O'Gara, Mychelyne Oliveira, Susan Osborne, Thomas Saxe, Al Solitro, Sherry Stanley, Myron Swanston, Stefani Tubert, Tracey Tobin, Cynthia White, Nunciata Sullivan, Lila Ortiz, Carl Rellstab, Carey Souda, Patricia O'Dell, Linda Potter, Brian Potter, Jasmine Alvarez, Petitioner/Intervenor-Appellants vs. Worcester Housing Court, Respondent-Appellee,	**Docket # SJC-12406**

Petitioners' Reconsideration of SJC Decision of April 10, 2019 to Address Discrimination and Hostile Environment

NOW COMES Petitioner Janet Montgomery and requests this Court reconsider its decisions as to the above cases looking at Petitioners' explicit focus on the types of violations by the Worcester Housing Court ("WHC") being based in disparate treatment. More than once Petitioners urged this Honorable Court to address the hostile environment that explicit and pervasive disparate treatment has created. In that context, they had specifically asked for the most immediate remedies to an urgent, urgent situation – recusal, change of venue or stoppage of all evictions for themselves and those similarly situated.

In this Honorable Court's decision in *Hilton* it references

that the Petitioners were seeking redress for discrimination or disparate treatment by the WHC; referencing *Adjartey* it states that the same request was also made therein. The *Adjartey* decision itself does not name that petitioners are explicitly requesting redress regarding disparate behavior by the WHC[1].

More than once the Petitioners referred to a hostile environment[2], which is an expression of discrimination which has become so rampant that it can only be described as institutionalized[3], and thus the Petitioners requested redress.

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[1] The second appeals question in *Adjartey* explicitly asks: "Did the Single Justice err in not recognizing the WHC regular practice disparate based on indigency is discriminatory; includes an element of public shaming; and violates the concept of not having to pay for justice, and the Reade v. Galvin decision that an access issue that somebody with more money can cross the hurdle of it, but if you are indigent, you can't, that that is unconstitutional, statutorily prohibited, and against, our jurisprudence,… "

[2] See the term explicitly used, for instance, in the Amended Petition in *Hilton v. Worcester Housing Court:* pp. 20 ("she has now created a hostile environment where they could no longer get LAR representation from lawyers who had been willing."), p.26 ("the Court has accused them, as members of the Worcester Anti-Foreclosure Team, of engaging in illegal practices that actually hurt their abilities to stay in their home. The Court has threatened them with criminal charges. It has created an atmosphere where lawyers regularly deride their organization, their preparation for Court. It has created a hostile environment, in some cases, where lawyers have used that to take license and intimidate and bully WAFT members in the hallway.

The Judge has actually accused WAFT members of being damaged by their membership with WAFT. Court staff has stated this. Lawyers, regularly now, accost WAFT members in the hallway and tell them that they should not work with the organization."), pp. 32-33.

[3] Clerk Magistrate even called this Petitioner's dying brother's doctor for medical details to discredit her report? Thankfully, nurse recognized HIPPA violation, hung up and notified her.

Such an institutionalized discrimination creates a hostile environment rendering obtaining justice impossible and, in fact, precludes their ability to fully participate in their court cases even though this is a constitutionally guaranteed right.

Hilton specifically addressed that in relationship to being pro se and to affiliation with the Worcester Anti Foreclosure Team ("WAFT"). A clear measure of this is that Court personnel's behavior has necessitated the commitment of WAFT members in the last few years to ensure that no pro se litigant ever goes to court alone, even for something as simple as filing a motion. (See *Hilton* amended petition FN4.) Petitioner and her co-petitioners feel that no longer needing to ensure someone goes with you to file a motion or in court for a more substantial purpose is an appropriate measure for this Court and the world that the hostile environment has lifted. We are far from that.

Both petitions (Hilton in a single list) identified disparate treatment as to being indigent (an equal right to access to justice in our Constitution), having a disability (explicit at Article 114, Mass. Constitution amendments), being pro se (Article XI) and/or being part of WAFT as a political affiliation (1st Amendment) for the purposes of redress.

Given that these are all apparently substantive rights as explicitly Constitutionally identified, protection of them is addressed in the preamble to the Constitution of the

Commonwealth, as mentioned in the Petitioners' briefs: "an impartial interpretation of the laws", *that is our courts*.

The Petitioners believe they have clearly put before this Court a problem which this Court has a historic and unique obligation to address. See *The Inherent Power of a State's Highest Court to Discipline the Judiciary*, p.6 (Chicago-Kent Law Review, Dec 1977 by James Duke Careron):

> "The Supreme Judicial Court of Massachusetts, for example, asserting its power to inquire into the conduct of a judge, proclaimed its source of power to be "the inherent common law and constitutional powers of [the] court."' Through the exercise of its inherent power, that court also established by court rule a Committee on Judicial Responsibility."

As codified in our laws as well MGL Chapter 211 § 3 states:

> "The justices of the Supreme Court shall also have general superintendence of the administration of all courts on inferior jurisdiction…. as may be necessary [clearly mending a hostile environment is necessary] or desirable for the furtherance of justice the regular execution of the laws, the improvement of the administrations of such courts, and the securing of their proper and efficient administration."

Redress in relation to a hostile environment based on discrimination and disparate treatment is obviously necessary for the furtherance of justice. This is directly this Court's jurisdiction given the expression of the discrimination and hostile environment has included, but not limited to, the denial of the execution of our laws (even such fundamental procedures as testing for a Plaintiff's standing, fundamental to subject matter jurisdiction -- the very definition of being a court) and

the failure of the WHC to administer the functions of the court (such as; accepting filings equally, following rules of civil procedure and not altering dockets.) These would also all be improvements, this Court would likely recognize as necessary.

There is nothing efficient in the need to do an approaching infinite number of Single Justice Appeals because step after step in normal judicial process does not occur or occurs unfairly (105 single justice appeals for the sample 46 herein). This simply cannot be an efficient administration of justice.

Nor is it an efficient administration of justice that essentially all effective full panel appeals are blocked and the natural self-correcting nature of our legal system through review by higher courts has been rendered close to non-existent for pro se litigants.

Petitioners recognize there are ways in which this is a matter of first impression, specifically, the use of Writ-of-Mandamus style petitions to address a hostile environment in a court. Still, the Petitioners even in this short reconsideration period attempt herein to provide the Court with clarification of that their day-to-day experiences mirror the unacceptability of a hostile environment in school and in work places. These characteristics presumably apply in a Court – especially so where both impartiality and the appearance of impartiality are absolute requirements for effective administration of justice.

Petitioners therefore apply the tests laid out in Guckenberger v Boston University, 957f. supp. 306 (D.Mass 1997). The court therein made a parallel and accurate reflection of the application of harassment and hostile environment standards perhaps more developed in work place situations but applied them to a university environment.

Herein these standards are used by the Petitioners to apply to a court environment where the authority and responsibility and constitutional obligation is part of the obligations of the entire form of our government and the three branches of government itself.

The standard laid out[4] states the following legal test:

1. That the petitioner is a member of a protected group
2. That the petitioner has been subject to unwelcome harassment
3. That the harassment is based on a protected characteristic…
4. That the harassment is sufficiently severe or pervasive that it alters the condition of education [here access to justice] and creates an abusive…environment
5. That there is a basis for institutional liability

Protected Group Membership: all Petitioners are members of at least 2 often all four of the Protected statuses as to equal

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[4] To state a cognizable claim for hostile learning environment harassment …, a plaintiff must allege: (1) that she is a member of a protected group, (2) that she has been subject to unwelcome harassment, (3) that the harassment is based on a protected characteristic, her disability, (4) that the harassment is sufficiently severe or pervasive that it alters the conditions of her education and creates an abusive educational environment, and (5) that there is a basis for institutional liability. *See Brown*, 68 F.3d at 540 (citing *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 66-73, 106 S. Ct. 2399, 2405-09, 91 L. Ed. 2d 49 (1986)).

rights to access to justice (see grid attached to Bourassa Reconsideration as to Matters of 1st Impression.)

Unwelcome: the unwelcome nature is why these petitions have been brought as have ADA complaints been made, judicial conduct complaints have been made[5], numerous single justice appeals attempted. There is no question that it is unwelcome.

Protected Groups: As the Petitioners have laid out, the petitioners, and those similarly situated who are pro se, are clearly a protected group explicitly under the language under the Article XII that states that one is allowed to exercise one rights equally in the court whether "by himself, or his council at his election". This is clearly a substantive right, although it appears as though it may have never been framed as equal rights, against discrimination. That is exactly the legal analysis and relief that petitioners seek.

Similarly, the right to one's affiliation under the first amendment under the US Constitution and expressed in the judicial conduct code amendment of 2007 as "political affiliation" renders the Petitioners members of a protected group that has a right to have a discrimination-free access to justice and certainly the right to relief from a hostile environment based on that membership in a protected group. Although, again this

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[5] Petitioners estimate over 50 cases have been submitted to the Judicial Conduct Commission – although they know from responses for almost all, that none of those have been docketed.

conceptual frame appears not to have perhaps ever been used for this Court to analyze from.

Sufficiently severe or pervasive that it alters the condition of [access to justice] and creates an abusive… environment: In the petitions, the petitioners reported physical responses of the pervasive nature of the discrimination and hostility they have faced. see Evans, where she attempted to file a Single Justice appeal after, the discriminatory and intrusive personal nature of the public interrogation she experienced. After which she was unable to keep her composure and was unable to complete writing out a request for reasonable accommodations at the clerk's desk the day her trial was scheduled and had to leave the building.

See Adjartey, where after the Judge accused WAFT members frequently of practicing law without a license was then harassed in the hallway by a lawyer who acted and reflected upon the judge's characterization; he yelled at her and accused her and a WAFT member of engaging in unlicensed practice of law and implied criminality. The impact of the harassment was so traumatizing she filed a bar complaint. The trauma was sufficiently severe that she was no longer able to function in court. In fact, she received had a doctor's order not to self-represent in court due to the stress. The Petitioners can provide additional examples but there are just two. (See

Adjartey's Reconsideration reminding this Court of explicit retaliation and coercion *revisited in the last few months).*

The general characterization of the conditions in the WHC are expressed in that WAFT members no longer go alone even to file documents. Numerous incidents in the courtroom documented with the judge questioning people and accusing them and threatening them based on their status as members of WAFT (a subset is documented in petitions here); and the presumption that they won't be believed; their sworn testimony does not carry weight; they are not allowed to argue the statutes or the case law; and if they do the court presumes they cannot be relied upon, again a number or examples given.

The environment is severe and pervasive[6]: in the court itself, in the clerk's area, in the hallway, and clearly abusive both objectively and subjectively.

Institutional liability: WAFT members sued the WHC itself clearly laying the responsibility for the discrimination and the climate of the Court on its combined leadership: both the Judges

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[6] These are the kind of experiences that *Gluckman* citations refer to as emblematic of a hostile environment: "…. of the sharply-pointed, crudely-crafted, and frequently-launched "slings and arrows" that courts have found sufficient to establish severe and pervasive harassment that alters a plaintiff's working conditions. *See e.g., Harris,* 510 U.S. at 19-20, 114 S.Ct. at 369 (describing allegations of gender-based insults, statements that made plaintiff "the target of unwanted sexual innuendos," and orders by supervisor that plaintiff retrieve coins from his front pants pocket and bend over to pick up items intentionally dropped)" and more.

and the Clerk Magistrate are identified in the petitions.

This conforms with the legally responsible parties and the reality of those who created a significant shift to an unsafe context some time around the winter of 2015/2016.

The jurisprudence as to the Clerk-Magistrate's role states:

Clerk-Magistrate (institutional responsibility)

"It is well-documented that a clerk-magistrate like Lawlor "performs many roles that are crucial to the fair and efficient administration of justice in a District Court." Matter of Powers, 465 Mass. 63, 66 (2013). See id. at 66-68 (discussing duties of clerk-magistrate). Most pertinent here, the clerk-magistrate is part of the over-all "senior management team" in each court house, "working collaboratively to ensure the fair, effective, and efficient administration of justice." Id. at 68." *Perullo v. Advisory Committee on Personnel Standards*, 476 Mass. 829, 836 (2017)."

Petitions quoted extensively from the Judicial Conduct Code and other Court documents or Guidance regarding the responsibilities of the Judges, including *Rule 2.3: Bias, prejudice, and harassment*:

> "A) A judge shall perform the duties of judicial office, including administrative duties, without bias, prejudice, or harassment
>
> (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice or engage in harassment, including bias, prejudice, or harassment based upon a person's status or condition. **A judge shall also not permit court personnel or other subject to the judge's direction and control to engage in such prohibited behavior.**" [emphasis added]

The *Guckenberger* citations go on to require that for a "claim of hostile learning environment discrimination" "the relevant factors must be viewed **both objectively and subjectively.**" Brown, 58f. 3d @540. "to state the hostile

environment claim for discrimination by unlawful harassment a Plaintiff must show that the alleged harassment creates an objectively hostile or abusive…environment and that the punitive victim subjectively perceives the environment to be abusive."

That petitioners experiences the environment at WHC as hostile is sufficiently demonstrated by the extensive efforts pro se litigant had to go to to create these multi-party petitions and bring them before the court. The proof of "alleged harassment" that creates "an objectively hostile or abusive …environment" can be demonstrated both in terms of clear examples of disparate behaviors that the WHC has not denied (see Evans' Motion for Reconsideration as to undisputed facts).

It is further demonstrated by the behavior of others around WAFT members and those who are pro se homeowners and tenants such as, the refusal of attorneys that had been willing to do LAR no longer willing to do LAR, the internalization of the impact of the discrimination that some members of WAFT have tried to hide their membership while relying upon the WAFT resources of emotional support, networking and guidance.

Perhaps the most striking, of course, is the assessment by the Worcester Chief of Police of his interaction with the Chief Judge and the Clerk-Magistrate collectively as "the opposition" or the "other side" versus the WAFT (although only recently revealed to WAFT, the key interaction with the Worcester Chief

of Police occurred about May 2016, see attached affidavit). WAFT members believe that the attempt to lean on the Worcester Chief of Police to stirp them of the first amendment rights to gather in protest seems like a clearly hostile act reported by an *objective* and, the court must acknowledge, reasonable observer.

There is no question in the minds (and heart, bodies and spirits) of the WAFT members that the change to an aggressive prosecutorial stance by the Court embodied in the Judges and Clerk-Magistrate toward WAFT members and proactive acts of discrimination have set the dangerous tone for the entire Court's climate and consequently created a hostile environment wherein the Petitioners (and knowledgeable observers) do not believe that they have access to an impartial court.

In conclusion, this Court is uniquely empowered and responsible in our Constitution and statutorily (and it appears in the Common Law going back hundreds of years) to address the failure of an inferior court as to its public duty to the Inhabitants of the Commonwealth. Here that failure is cloaked in a modern understanding of a claim as to intersecting discriminations, all of them apparently substantive rights in our courts, and the right to an end to a hostile environment to exercise those equal rights to access justice. Please reconsider direct relief so as to end this hostile climate and repair our constitutional rights to access justice equally,

Respectfully submitted,

Janet Montgomery
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Date: 5/9/19

CERTIFICATE OF SERVICE

I, the below signed, hereby certify that a true and correct copy of the above and foregoing has been furnished to all opposing parties by pre-paid First Class Mail, U.S.P.S.

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Re: Docket #15H85SP003287, #15H85SP003288, #16H85SP003289,

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