

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOHN & GRACE HUMMASTI,)
PLAINTIFFS)

CIVIL NO. 06-251-ST

VS.)

JOHN G. BUCKMASTER, MD.,)

OREGON HEALTH AND)
SCIENCES UNIVERSITY,)

LOVEJOY SURGICENTER,)
DEFENDANTS)

Plaintiff's Response To Defendant's Reply

In Response to Defendant's Reply to Plaintiff's Motion to Compell USM provide Service and Process, Plaintiff's aver that this Court has Jurisdiction over Plaintiff's Section 1983 claims because Congress enacted 42 USC Section 1983 to provide Due Process of Law for claims of "person's of color" such as Grace Hummasti who are or were deprived of a known right, privilege or immunity "under the color of state law" because they, as a separate class of Plaintiffs, are persons of color who cannot obtain Due Process of Law for a redress of their grievances in State Courts due to such status as persons of color.

Plaintiffs aver that Section 1983 provides a jurisdictional remedy where there was a deficiency or inadequate remedy in State Courts where a Federal Question arose as to the rights, privileges and immunities of persons of color who resided in one of the states but were effectively deprived of the same under the color of state law. In essence, they as

a class or as an individual were deprived of their rights, privileges and immunities by white persons due to their newly acquired American Citizenship.

Within this context, Section 1983 acts a statute “involving diversity jurisdiction *between classes* of citizens;” as opposed to differing citizenship based upon diverse state residency requirements of “ordinary diversity” cases.

Thus, Section 1983 acts as a statute to allow Federal Jurisdiction to enforce Equal Protection of the Law for diversity cases where there are diverse classes of Citizens under Dred Scott v. Stanford, and Plessy v. Furgeson.

Plaintiff need not remind the Defendants Counsel of such elementary and rudimentary jurisdictional principals of Due Process of Law.

In regards thereto, Plaintiffs need not claim or even show a “deliberate indifference” or deliberate disregards of a known right, privilege or immunity. They only need to show that as a person of color (here, Grace Hummasti is a person of color of Arabic descent, geneology or possessing such DNA,) they were deprived a right [to Due Process of Law] “under the color of State law as an official custom or policy of the State.” Monell v. New York City Dep't of Social Services, 436 U.S. 658 (1978).

In the instant case, the law that was used by Defendants according to custom or policy of all the Defendants, as State actors or employees was ORS 677.097.

That law requires Defendants to follow specific statutory procededures before the Defendants may acquire informed consent to do genetic research or testing or perform any other medical procededure.

Plaintiffs aver that at this stage of the proceedings, without discovery by taking a deposition or the Court (Jurors) hearing the testimony of Defendant John Buckmaster,

Plaintiffs aver that the Defendants had not informed Plaintiff's that they were going to do genetic research and failed to obtain Plaintiff's informed consent to perform an abortion or to do genetic research as required by Oregon and Federal Law or Regulations. See **Declaration of Grace Hummasti**.

Relevant thereto, Plaintiffs aver that in deciding an issue of credibility or decision making in the context of medical malpractice, under ORS 677.097, et. seq., the only one who can decide such a matter is the Jury. Therefore, Dismissal is not warranted at this stage of the proceedings since the ultimate trier of facts is the Jury and a subjective inquiry as to what Defendants decided was their duty under ORS 677.097, et. seq., towards Plaintiffs is a matter solely within the providence of the Jury.

From a factual standpoint, where as here, in the instant case, Defendants' use of a standardized consent form which substantially follows the requirements of 45 CFR §46.116, et. seq., but which, as used in practice, (or in reality, as it is actually used according to Defendants' custom or practice) disregarded a known right of Plaintiffs to be fully and completely informed of which medical procedure Defendant intended or could use (absent a [proceedural] medical improbability) before acquiring informed consent from them merits this Courts intervention by injunctive relief or use of a Federal "Regulatory or Monitoring" Decree.

It should be noted here that, as set for in Plaintiffs submitted Memorandums and **Letter to Dr. Peter Kohler, M.D., dated October 4, 2002**, the US Secretary of the Department of Health and Human Services has previously found Defendants OHSU to be in **SERIOUS NONCOMPLIANCE** with 45 CFR Section 46.116, et. seq. relevant to Informed Consent!

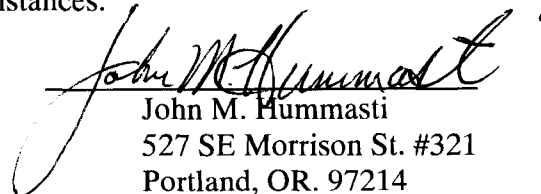
Therefore, Plaintiffs have met their burden of proof with regards to the use of a custom, practice, or policy of enforcing or regulating abortion in Oregon with deliberate indifference or callous disregards to, or for, a known right to procedural due process involving informed consent under ORS 677.097 and 45 CFR Section 46.116, et. seq..

Without losing sight of Defendant's statutory obligations under ORS 677.097 and 677.099, by an examination of Defendant, this Court or a reasonable jury could find that enforcement of or regulation of abortion through the customary use or practice of informed consent procedures which **omit** an explanation of a Dilation and Extraction procedure (Partial Birth Abortion Banned by US Congress in 2003 pursuant to 18 USC Section 1531) using "large Beier's forceps" *could*, in the context of the facts and circumstances of the instant case, constitute fraud or misrepresentation under ORS 677.188 and ORS 677.190 and be a direct violation of 45 CFR 46.116, et. seq.!

In conclusion, Plaintiffs respectfully request that this Court Order Defendants not to file any more dilatory¹ pleadings.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that this Honorable Court Deny Defendants Motion to Dismiss and for any other relief that this Court deems justs and equitable under the circumstances.

Dated this 15th day of May, 2006.


John M. Hummasti
527 SE Morrison St. #321
Portland, OR. 97214

¹ It should be noted here that Defendants Counsel mailed their Reply In Support of Defendants Motion to Dismiss to Plaintiff's **Old** (NW Kearney St) Address, which delayed Plaintiff's time to respond thereto, after Defendants have mailed pleadings and filings to Plaintiffs present (SE Morrison) address. This tactic warrants sanctions being imposed upon Defendant's' Counsel since they knew Plaintiff's current address.

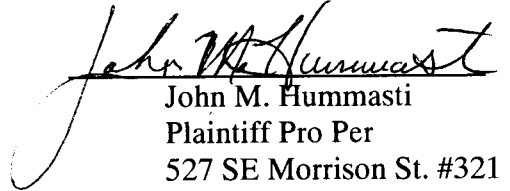
CERTIFICATE OF SERVICE

I, John Mauritz Hummasti, hereby declare that I have served by Regular US Mail, a true copy of the attached "Plaintiff's Reply to Defendants Response in Support..." on the Defendants by placing the Attached in an Addressed, Sealed Envelope with prepaid postage affixed thereon addressed to:

Kari A Furnanz -Attorney At Law
HOFFMAN, HART AND WAGNER
ATTORNEYS AT LAW
Twentieth Floor
1000 SW Broadway
Portland, OR. 97205

and depositing the same in a US Postal Collection Box on this date.

Dated this 15th day of May 2006.


John M. Hummasti
Plaintiff Pro Per
527 SE Morrison St. #321
Portland, OR. 97214-2364