NO. 20-1222

In the Supreme Court of the United States

Julie Dalessio,
Petitioner
v.

UNIVERSITY OF WASHINGTON, a Washington Public Corporation;
Eliza Saunders, Director of the Office of Public Records;
Alison Swenson, Compliance Analyst;
Perry Tapper, Compliance Officer;
Andrew Palmer, Compliance Analyst; and
John or Jane Does 1-12.
Defendant-Appellees
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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BACKGROUND

Under color of the Washington Public Records Act (RCW 42.56 et seq.), the University of Washington (UW) Office of Public Records produced personal, privileged information, including protected health information, in electronic public records.

The Ninth circuit, on appeal of summary judgment dismissal, decided:

> "With respect to the release of Dalessio's health and medical information, a § 1983 claim cannot be sustained under the ADA or HIPAA. *See Vinson v. Thomas*, 288 F.3d 1145, 1155–56 (9th Cir. 2002) ("[A] comprehensive remedial scheme for the enforcement of a statutory right creates a presumption that Congress intended to foreclose resort to more general remedial schemes to vindicate that right." (internal quotation marks and citation omitted))." DktEntry/49-1 at 3 (App. at 4)

QUESTIONS PRESENTED

1. Does a "comprehensive remedial scheme for the enforcement of a statutory right" under the Americans with Disabilities Act (ADA) [42 U.S.C. 12101 et seq.] foreclose resort to a 42 U.S.C. § 1983 claim to vindicate the right?

2. Did the Ninth circuit court of appeals so far depart from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the district court, as to call for an exercise of this Court's supervisory power?

PARTIES TO THE PROCEEDING

Petitioner/ Plaintiff is
Julie Dalessio, a former classified employee of the University of Washington.

Respondents/ Defendants are:

The University of Washington, a State public corporation,

Named parties are Employees/Officers of the University Office of Public Records and Open Public Meetings with proven personal involvement in the unlawful disclosures of protected health information.

- Eliza Saunders, Director of the Office of Public Records;
- Alison Swenson, Compliance Analyst;
- Perry Tapper, Compliance Officer;
- Andrew Palmer, Compliance Analyst;

Unnamed are university employees, John or Jane Does 1-12, who participated in the unlawful searches and disclosures.

RELATED PROCEEDINGS

Dalessio v. University of Washington, et al,
No. 19-35675, U. S. Court of Appeals for the Ninth Circuit.

- Rehearing denied October 30, 2020. DktEntry/ 51 (App. at 1)
- Judgment entered August 10, 2020. DktEntry/ 49-1 (App. at 2)

No. 2:17-cv-00642-MJP, U.S. District Court for Western Washington, Seattle

- Reconsideration denied 7/9/19. Dkt. 188 (App. at 6)
- Final Partial Summary Judgment entered 6/7/19 Dkt. 176 (App. at 13)
- Partial Summary Judgment entered 2/11/19. Dkt. 153 (App. at 30)
- Order granting absolute immunity to Defense counsel, Jayne Freeman and staff. 4/6/18. Dkt. 80 (App. at 49)
- UW removed this case to U.S. District Court on 4/24/2017. Dkt. 1 (App. at 103)

Dalessio v. University of Washington

- No. 17-2-07812-3, King County Superior Court filed 3/28/2017 (App. at 106)

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JURISDICTION

The judgment of the Ninth Circuit court of appeals was entered on August 10, 2020. (App. B)

Petitioner filed a Petition for Panel Rehearing and for Rehearing *En Banc* which was denied on October 30, 2020. (App. A)

This petition was timely filed (pursuant to November 3, 2020 Supreme Court "covid update") and the jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The US Constitution Section 1 of the Fourteenth Amendment provides, in relevant part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Pertinent statutory provisions are set forth in the Appendix. (App. at 107)

42 U.S.C. § 1983

42 U.S.C. § 2000e–5(f–g)

42 U.S.C. § 12101

42 U.S.C. § 12112

42 U.S.C. § 12117

RCW 42.56.050

RCW 42.56.060

PETITION FOR A WRIT OF CERTIORARI

INTRODUCTION

Congress enacted the Americans with Disabilities Act (ADA) [42 U.S.C. 12101 *et seq.*] in 1990:

> "to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce," and "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." § 12101(b).
>
> "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals;"
>
> and
>
> "(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity." § 12101(a)(7)-(8)

Subchapter Title I of the Act prohibits employers from "utilizing standards, criteria, or methods of administration . . . that have the effect of discrimination on the basis of disability." § 12112(b)(3)(A).

Title I in 42 U.S.C. § 12112 (d)(3)(B) provides in pertinent part:

> "information obtained regarding the medical condition or history of the applicant is collected and **maintained on separate forms and in separate medical files and is treated as a confidential** medical record, except that—(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and (C) the results of such examination are used only in accordance with this subchapter."
>
> and
>
> "42 U.S.C. § 12112 (d)(4)(C) Information obtained under subparagraph(B) **regarding the medical condition or history** of **any employee** are subject to the requirements of subparagraphs (B) and (C) of paragraph (3)." (emphasis added)

The purpose of this confidentiality requirement ". . . was, at least in part, to permit employers to inquire into employees' medical conditions in order to provide reasonable accommodations, while avoiding subjecting employees to the "blatant and subtle stigma" that

attaches to "being identified as disabled." H.R.REP. No. 101-485, pt. 2, at 75 (1990), reprinted in 1990 U.S.C.C.A.N. 303, 357-58;"
Doe v. US Postal Service, 317 F. 3d 339 - Court of Appeals, Dist. of Columbia Circuit 2003

Under color of the Washington State Public Records Act, University of Washington (UW) employees violate these confidentiality requirements by unauthorized sharing, maintaining and producing employee health information in public records. This is exactly the discriminatory practice that Congress expressly prohibited in enacting the ADA.

The Ninth Circuit's decision allows Washington public employers to obtain and share employee health information without authorization, in violation of Federal health information privacy statutes, under color of the state public records act. In effect, stigmatizing individuals with disabilities or serious medical conditions, precluding them from the opportunity to compete on an equal basis, to pursue employment opportunities.

QUESTION 1: Does a "comprehensive remedial scheme for the enforcement of a statutory right" under the Americans with Disabilities Act (ADA) [42 U.S.C. 12101 et seq.] foreclose resort to a 42 U.S.C. § 1983 claim to vindicate that right?

The Ninth circuit decided:

> "With respect to the release of Dalessio's health and medical information, a § 1983 claim cannot be sustained under the ADA or HIPAA. See *Vinson v. Thomas*, 288 F.3d 1145, 1155–56 (9th Cir. 2002) ("[A] comprehensive remedial scheme for the enforcement of a statutory right creates a presumption that Congress intended to foreclose resort to more general remedial schemes to vindicate that right." (internal quotation marks and citation omitted))." (App. at 4)

THE NINTH CIRCUIT court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, AND decided the question in a way that conflicts with relevant decisions of this Court.

a. <u>There is no "comprehensive remedial scheme for the enforcement of a statutory right" to health information privacy under the ADA.</u>

The overwhelming majority of ADA cases in federal courts are related to the provision of public services and public accommodations, which areas are addressed in Titles II and III. Titles II and III contain their own enforcement provisions in §§ 12133 and 12188 respectively.

The Vinson case, cited by the Ninth circuit (above) is based on claims "they denied him vocational rehabilitation services in violation of his rights under Title II of the ADA and section 504 of the Rehabilitation Act." (Vinson v. Thomas) This is **Not Applicable as Precedent.**

The Vinson court found:

> "Vinson may not proceed against Thomas in her individual capacity on his claim under 42 U.S.C. § 1983, predicated upon her alleged violation of Title II of the ADA and section 504 of the Rehabilitation Act, because that claim is barred by the comprehensive remedial scheme of those Acts." Vinson v. Thomas

ADA SUBCHAPTER II specifies procedures for enforcement in § 12133: "The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title."

And:

> "After Vinson filed his lawsuit, the DLIR reopened his case and he was granted vocational rehabilitation benefits, including schooling at his requested pace of study."
>
> Vinson v. Thomas, 288 F.3d 1145 9th Circuit 2002

Vinson's failure to accommodate claim was apparently barred by evidence of State actions to determine eligibility and eventually provide reasonable accommodations.

Title II "remedial schemes" are not applicable to claims brought under subchapter Title I.

The Ninth circuit court did not identify any "remedial scheme" that would foreclose petitioner's 42 U.S.C. § 1983 claim. There is no evidence, and respondents have never alleged any precluding circumstances. The university refused any corrective action ("The University must respectfully deny your claim... "sorry that we cannot remedy this situation for you; the University is only able to resolve claims for which we have legal liability." (Dkt. 56-1 at 20)).

If the ADA did contain any provisions that would preclude Dalessio's claims, "[t]he burden ... lies with the defendant in a § 1983 action to prove preclusion." Bullington v. Bedford County, 905 F. 3d 467 6th Circuit 2018, quoting Charvat v. E. Ohio Reg'l Wastewater Auth., 246 F. 3d 607, 615 (6th Cir. 2001)

The Petitioner claims a cause of action arising under Title I, 42 U.S.C. § 12112, which creates a statutory right to employee health information privacy, and prescribes the due process required for sharing and maintaining employee health information:

> "information obtained regarding the medical condition or history . . . is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record." § 12112(d)(3)(B)

Relevant Title I Enforcement provisions are in 42 U.S.C. § 12117:

"The powers, remedies, and procedures set forth in sections 2000e–4, 2000e–5, 2000e–6, 2000e–8, and 2000e–9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment."

"To exhaust administrative remedies for an ADA claim, a plaintiff must file a timely charge with the Equal Employment Opportunity Commission ("EEOC") See 42 U.S.C. § 2000e-5; 42 U.S.C. § 12117(a)." Bullington v. Bedford County, 905 F. 3d 467 6th Circuit 2018

Unlike Bullington, here there is no question that the petitioner filed a timely charge with the EEOC. (Dkt. 113-12 at 18)

When there is no "remedial scheme" for the enforcement of a statutory right provided under the ADA, § 1983 provides a remedy for actions under color of law which contravene federally protected rights to health information privacy, whether those rights derive from the Constitution or from a federal statute.

Regarding 42 U.S.C. §1983:

""This law is clearly corrective in its*163 character, intended to counteract and furnish redress against State laws and proceedings, and customs having the force of law, which sanction the wrongful acts specified."" Adickes v. SH

Kress & Co., 398 US 144 - Supreme Court 1970
quoting Jones v. Alfred H. Mayer Co., 392 U. S. 409 (1968).

b. There is no evidence of congressional intent to foreclose resort to the § 1983 remedy to vindicate employee rights to health information privacy under the ADA.

""In those cases in which the § 1983 claim is based on a statutory right, `evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute's creation of a comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983.'" *Fitzgerald*, 555 U.S. at 252, 129 S.Ct. 788 (quoting *Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 120, 125 S.Ct. 1453, 161 L.Ed.2d 316 (2005))."
Bullington

The ADA does not create any "enforcement scheme" that is incompatible with individual enforcement. Unlike the Health Insurance Portability and Accountability Act (HIPAA), which incorporates administrative provisions in 42 U.S.C. § d5(a) specifying fines for violations and enforcement by the HHS secretary or state attorney general, the ADA specifically provides for enforcement by "**any person.**" (in 42 U.S.C. § 12117).

In every case that decided that § 1983 claims based on statutory rights under the ADA are barred by any "scheme," evidence proved that procedures

were in place and actions were taken to provide reasonable accommodations, or the Plaintiff did not qualify for or participate in programs for accommodations, or did not exhaust administrative remedies for an ADA claim. None of these conditions are applicable here.

Remedies provided under Titles II and III are not applicable.

> "The ordinary inference that the remedy provided in the statute is exclusive can surely be overcome by textual indication, express or implicit, that the remedy is to complement, rather than supplant, § 1983." Rancho Palos Verdes v. Abrams, 544 US 113 - Supreme Court 2005

One cannot overlook **that Congress expressly provided in the ADA that**:

> "Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter." 42 U.S.C. § 12201(b)

Congress clearly did not intend for remedies provided under the ADA to be exclusive or limited.

c. Federal Courts have not Squarely Addressed Whether § 1983 Claims Based on Statutory Rights Created by the ADA Are Foreclosed.

In Bullington v. Bedford County, 905 F. 3d 467 6th Circuit 2018, the court recognized:

"We have not squarely decided whether plaintiffs can use § 1983 to enforce the ADA."

And

"we do not need to reach a conclusion on this issue because Bullington's § 1983 claims allege constitutional violations, not violations of the ADA itself."

In Bullington's case, she conceded that she did not file a charge with the EEOC, and the court dismissed her claims based on ADA statutory violations. But the court found that:

"Bullington pleaded "that Defendant Cooper violated her federal constitutional rights secured by the 14th amendment to be free from discrimination and retaliation as a result of her illness/disability." R. 28 (Second Am. Compl. ¶ 14) (Page ID #90) (emphasis added). She has also alleged "that Bedford County is liable for the violation of [Bullington's] federal constitutional rights pursuant to 42 U.S.C. § 1983 in failing to provide proper supervision and training to prevent this type of unlawful, discriminatory abuse." Id. ¶ 15 (Page ID *472 #90) (emphasis added). Thus, Bullington's § 1983 disability discrimination claims are being brought pursuant to the Fourteenth Amendment's Equal Protection Clause, not the ADA. (Bullington)

"Based on the Supreme Court's analysis in Fitzgerald, we have identified "three key components" to consider when examining congressional intent to preclude a constitutional claim: the statute's (1) text and history, (2) its remedial scheme, and (3) the contours of its rights and protections. Boler, 865 F.3d at 402-06. We have also stated that "[t]he burden ... lies with the defendant in a § 1983 action to prove

> preclusion." Charvat v. E. Ohio Reg'l Wastewater Auth., 246 F.3d 607, 615 (6th Cir. 2001). After reviewing the ADA for these components, we conclude that the Congress did not intend, by enacting the ADA, to preclude § 1983 claims for disability discrimination."
> Bullington v. Bedford County, 905 F. 3d 467 6th Circuit 2018

The Bullington court remanded the action to the district court for further evaluation as to "whether justice requires that Bullington have an opportunity to amend her complaint in light of this opinion." *id.*

In the petitioner's case, her appointed *pro bono* attorney emphasized constitutional claims under the Fourth and Fourteenth amendments, based partially on unlawful disclosures of protected health information along with other privileged information. (App. at 61, 66, 69, 72, 82, 93-99)

These constitutional claims were dismissed at summary judgment, when the court decided:

> "None of the information concerning Plaintiff which appears in any document she has produced as evidence can be described as "shocking," "degrading," "egregious," "humiliating," or "flagrant." (App. at 21)
>
> And:
>
> "See City of Ontario, Cal. v. Quon, 560 U.S. 746, 761 (2010) (no Fourth Amendment violation where there were "reasonable grounds for suspecting that the search [was] necessary for a noninvestigatory work-related purpose." (App. at 3)

The Ninth district apparently decided that, under color of the public records act, UW employees were justified in searching for and producing privileged information, as long as that information is not judged as "shocking," "degrading," "egregious," "humiliating," or "flagrant." (The Ninth circuit did not consider the petitioner's assertions that, as a public employee, Dalessio has a due process property right to her personnel file, and that UW violated that right as well.)

With dismissal of constitutional claims, the Ninth circuit decided that § 1983 claims based on violations of ADA statutory rights are foreclosed by some unspecified "remedial scheme." (App. at 4)

The Ninth circuit overlooked the fact that there is no "remedial scheme" in the Act that forecloses § 1983 claims.

The Ninth circuit did not consider that 42 U.S.C. § 12112 confidentiality provisions proscribe practices that are discriminatory in effect, in order to carry out the basic objectives of the Fourteenth amendment Due Process and Equal Protection Clauses. (see § 12101 (b)(4) "to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment.")

> "When Congress seeks to remedy or prevent unconstitutional discrimination, § 5 authorizes it to enact prophylactic legislation proscribing practices that are discriminatory in effect, if not in intent, to carry out the basic objectives of the Equal Protection Clause." **Tennessee v. Lane, 541 US 509 - Supreme Court 2004**

The ADA creates a statutory right to employee health information privacy that can be enforced under § 1983, without having to invoke the constitution.

See also:

"but the Eleventh Amendment does not extend its immunity to units of local government. See Lincoln County v. Luning, 133 U. S. 529, 530 (1890). These entities are subject to private claims for damages under the ADA without Congress' ever having to rely on § 5 of the Fourteenth Amendment to render them so." Board of Trustees of Univ. of Ala. v. Garrett, 531 US 356, 2001

The record includes sufficient evidence that UW employees disclosed information subject to the ADA's confidentiality requirement, thus **"subjecting employees to the "blatant and subtle stigma" that attaches to "being identified as disabled."** H.R.REP. No. 101-485, pt. 2, at 75 (1990), reprinted in 1990 U.S.C.C.A.N. 303, 357-58;

"Title 42 U. S. C. § 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

> In Maine v. Thiboutot, 448 U. S. 1 (1980), we held that this section "means what it says" and authorizes suits to enforce individual rights under federal statutes as well as the Constitution. Id., at 4."
>
> Rancho Palos Verdes v. Abrams, 544 US 113 - Supreme Court 2005

As the Supreme Court made clear in Maine v. Thiboutot, § 1983 provides a remedy for actions under color of law which contravene federally protected rights, whether those rights derive from the Constitution or from a federal statute.

d. THIS CASE IS THE APPROPRIATE VEHICLE FOR RESOLVING THE QUESTION PRESENTED

The Ninth district court's ruling is not based on underlying facts, but is generalized to encompass all 42 USC 1983 claims based on state employees acting under color of law, in violations of statutory rights created by the ADA.

The respondents violated 42 U.S.C. § 12112 health information privacy provisions under Title I of the ADA, and do so under color of the State public records act.

The question here is simply whether 42 U.S.C. § 1983 claims based on proven, repeated violations of ADA statutory rights by a public corporation and its employees are precluded when there is nothing in the Act identifying preclusion or

providing a remedy, and congress has expressly provided:

> "Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter." 42 U.S.C. § 12201(b)

The Ninth circuit finding, if allowed to stand, allows the university and any public agency to continue its unlawful practices, under color of the public records act, acting under some misguided notion that it is their prerogative to expose to the public the personal information of employees who request accommodations or medical leave.

> "that view would force employees to choose between waiving their right to avoid being publicly identified as having a disability and exercising their statutory rights — including the rights to FMLA leave and to "reasonable accommodations" for their disabilities, see 42 U.S.C. § 12112 — that may depend on disclosure of their medical conditions. Such a result would run directly counter to Congress's purpose in enacting the ADA, which was, at least in part, to permit employers to inquire into employees' medical conditions in order to provide reasonable accommodations, while avoiding subjecting employees to the "blatant and subtle stigma" that attaches to "being identified as disabled." H.R.REP. No. 101-485, pt. 2, at 75

(1990), reprinted in 1990 U.S.C.C.A.N. 303, 357-58;,"

". . . returning employees to the very bind Congress sought to avoid by enacting the confidentiality requirement."

Doe v. US Postal Service, 317 F. 3d 339 - Court of Appeals, Dist. of Columbia Circuit 2003

A 2008 amendment to § 12101 was included, in part:

"to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations . . ." see FINDINGS AND PURPOSES OF PUB. L. 110–325 (b)(5) in § 12101

The University has not complied with their obligations under the ADA. Obtaining, maintaining and producing medical information in public records, without consent, is a violation of federal statutes.

The ADA gives employees the right to health information privacy. Failure to enforce that right results in unpleasant lawsuits where the court further exposes the medical condition to the public (in opinions widely available on websites such as Google Scholar), and the plaintiff is subjected to prejudice and judged by the court on a legal standard of whether the health information is "shocking," "degrading," "egregious," "humiliating," or "flagrant." (App. at 21)

Respondents deprived Ms. Dalessio of her right to health information privacy, and tens of thousands of current and former University employees are at risk of being denied protections Congress promised them under the ADA.

Therefore, this court should grant this petition, and stop the Respondents' unlawful practices.

QUESTION 2: Did the Ninth circuit court of appeals so far depart from the accepted and usual course of judicial proceedings, or sanction such a departure by the district court, as to call for an exercise of this Court's supervisory power?

STATEMENT OF THE CASE

I. FACTS (see Complaint App. at 52)

Ms. Dalessio worked for over sixteen years as a public employee, in a classified staff position with the University of Washington (UW). In the last year of her employment, she requested accommodations for a medical condition. As a result, she was required to undergo physical and psychological evaluations, and subjected to harassment and abuse by her supervisor, which led to her resignation under terms of a confidential settlement agreement.

Several years after her resignation, she discovered that UW had acquired and maintained protected health information in violations of ADA and HIPAA health information confidentiality requirements, when UW employees provided

electronic copies of these records in response to a request under the Washington Public Records Act (RCW 42.56 *et seq.*) from a belligerent neighbor, for all public records pertaining to Ms. Dalessio.

University employees searched Disability Services, Human Resources, payroll, benefits, UW Medicine and other records, made electronic copies of privileged documents and transmitted these in public emails to the UW Office of Public Records.

Despite applicable exemptions under the Public Records Act and prohibitions in state and federal laws, UW obtained and distributed protected information. The university maintains these records in publicly accessible files, and disclosed them in responses to public records requests. The university produced Dalessio's confidential information (including Social Security Number) to her hostile neighbor.

The university produced "information contained in the claim files and records of injured workers," "requests for accommodation for disability or serious medical condition," comments by other employees about disabilities, medical testing results, confidential settlement agreements, performance evaluations, employee identification number, date and place of birth, citizenship, and other personal data, including medical id numbers and social security number.

After Dalessio complained to University officials, rather than provide reassurances that disclosures would not reoccur, the University continued these practices, reproducing thousands

of additional pages of confidential and sensitive personal information in additional Public Records.

Ms. Dalessio fulfilled all exhaustion requirements under the ADA and Washington State law and was denied any administrative remedies before filing her "COMPLAINT FOR INVASION OF PRIVACY/ PUBLIC RECORDS VIOLATIONS; BREACH OF CONTRACT; DEFAMATION/LIBEL; DISCRIMINATION/ RETALIATION; NEGLIGENCE" in King County Superior Court, (App. at 106) pursuant to the parties' employment settlement agreement.

The university removed this case to federal court, stating: "In this Complaint, Plaintiff alleges claims arising under the following law of the United States:"
a.45 CFR Parts 160 & 164 (HIPPA) b. 20 U.S.C. § 1232g(a)(4) and 34 CFR Part 99 (FERPA)
c. 5 U.S.C. § 552(b)(6) (Freedom of Information Act)(FOIA) d. 42 U.S.C. § 2000e (Title VII of the Civil Rights Act)(section 704(a)) e. 42 U.S.C. §12101 (Americans with Disabilities Act) (ADA)
f. 42. U.S.C. §1983 g. 42 U.S.C §1981. (App. at 103-104)

The university does not deny disclosures of personally identifiable, confidential information in response to public records requests (described App. at 74-79) "the documents speak for themselves." Dkt. 107 at 7 and 9-10

The university would not agree to stipulated motions to seal records before its summary judgment motions, and UW Special Assistant Attorney General, Jayne Freeman published Ms.

Dalessio's confidential information (including SSN, Date and place of birth, and health information) in the court record, necessitating court action to seal the records. (App. at 67-72)

Rather than provide reassurances that this would not happen again, Ms. Freeman would not discuss alternative methods for presenting the evidence and determined to publish the records in court electronic records, necessitating several motions and orders to seal court records. (Dkts. 36, 172, 187-1; DktEntry/16-1, DktEntry/26)

With this lawsuit ongoing, Respondents continued to produce even more protected, confidential information in public records productions, including SSN, Date and place of birth, home address and phone, physical and psychological evaluations, medical and insurance id numbers. (Dkt. 184 at 3-5)

II. THE DISTRICT COURT PROCEEDINGS

• The University moved for summary judgment dismissal.

• UW special assistant attorney general, Jayne Freeman published privileged and protected personal information about Dalessio in the electronic court records, in violations of FRCP 5.2, and rules of professional conduct. (App. at 67-72)

• UW objected to discovery, (Dkt. 58, Dkt. 52-1, 56-2, 56-3, 57-1, 66-1), and did not certify their partial responses or identify withholding based on objections. (Dkts. 56-2, -3, Dkt. 66-1)

• With Dalessio's *pro se* motions to compel (Dkts. 52, 59), UW's counter motions for protection from

discovery and motion for summary judgment unheard,

- The district court found that Dalessio "has articulated colorable claims and that the complexity of the issues warrants appointment of counsel to assist her in this proceeding." Dkt. 65 at 2
- The appointed *pro bono* attorney amended Dalessio's complaint to plead constitutional claims. (App. at 52)
- The district court granted absolute immunity to defense counsel, Ms. Freeman and her staff for unlawful disclosures. (App. at 50)
- After UW attorneys again failed to participate in good faith production of disclosures and discovery, Dalessio's appointed attorney filed renewed motions to compel, to which UW responded with motions for protection.
- The court granted Dalessio's motion to compel initial disclosures, which UW finally partially provided as ordered, twenty months after commencement of this lawsuit, almost two months after filing their second, renewed motion for summary judgment.
- The district court did not issue any decision regarding pending discovery motions and motions for sanctions.
- The district court dismissed all US constitutional, state tort and breach of contract claims at Summary Judgment.

- The district court did not issue any decisions regarding Dalessio's claims arising under the Washington state constitution.

• The district court denied Dalessio's request for reconsideration and permission to amend the complaint.

III. THE APPELLATE PROCEEDINGS

• Ms. Freeman filed notice of intent to unseal the records that the district court previously sealed, to again publish protected health information and other privileged information in the electronic court records.

• Following Dalessio's motion, the Appellate Commissioner decided to maintain the records under seal. DktEntry/36

• The Appellate court affirmed the findings of the District court, and Ignored Dalessio's claims arising under the Washington state constitution. (App. at 2)

• The Appellate court ignored Dalessio's appeal regarding jurisdiction and claims against Ms. Freeman, and denied Dalessio's request for rehearing. (App. at 1)

QUESTION 2: Did the Ninth circuit court of appeals so far depart from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the district court, as to call for an exercise of this Court's supervisory power?

Authority

> "We must determine, viewing the evidence in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact and whether the district court correctly

applied the relevant substantive law. See Delta Sav. Bank v. United States, 265 F.3d 1017, 1021 (9th Cir.2001), cert. denied, 534 U.S. 1082, 122 S.Ct. 816, 151 L.Ed.2d 700 (2002). EEOC v. Luce, Forward, Hamilton & Scripps, 345 F. 3d 742 (9th Cir. 2003)

a. Did the Ninth Circuit err in granting summary judgment when there are questions of material fact?

The district court granted summary judgment dismissal, despite the fact that there were at least thirteen questions of fact as described by Dalessio's *pro bono* attorney in her response. Dkt. 130 at 4-10

The court overlooked material points of fact and law.

The court's determination that "there were "reasonable grounds for suspecting that the search [was] necessary for a noninvestigatory work-related purpose" (App. at 3) is not supported by any evidence, expert testimony or otherwise. This is a material fact that is genuinely disputed.

The university did not produce any evidence or testimony of reasonable grounds for suspecting that the search was necessary for any purpose. (Dkts. 29, 30, 120, and 121, Declarations of Defendants Palmer, Swenson, Tapper, and Saunders are the only defendant testimonies in evidence. These persons did not testify regarding any necessity for the searches.)

The university did not produce any evidence of any grounds for searching disability services records or any privileged, confidential records.

Ms. Dalessio has never been accused of, investigated or disciplined for abuse, neglect, exploitation, abandonment, or other acts involving the victimization of individuals or other professional misconduct.

The court's determination that "None of the information concerning Plaintiff which appears in any document she has produced as evidence can be described as "shocking," "degrading," "egregious," "humiliating," or "flagrant" (App. at 21) is a material fact that is genuinely disputed.

The evidence of repeated unlawful disclosures, even while this lawsuit was ongoing, is evidence of flagrance. Ms. Dalessio has testified regarding the "shocking," "degrading," "egregious," and "humiliating," nature of the disclosures. (Dkt. 131) This is a disputed question of fact.

The university did not produce any state of mind evidence. None of the parties admitted any mistake or accidental disclosure, or represented that they were acting in compliance or in "good faith," yet the court determined that they were "entitled to good faith immunity under RCW § 42.56.060." (App. at 4)

This is a disputed issue of fact and law. The court's interpretation of the Washington public records act as an entitlement to immunity conflicts with the Washington constitution and laws.

Article 1, SECTION 12:

> "No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon

the same terms shall not equally belong to all citizens, or corporations."

Article 1, SECTION 8:

"No law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature."

"The state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as a private person or corporation." RCW 4.92.090 Act of March 25, 1963, ch. 159, 1963 Wash. Sess. Laws 753 (codified as amended at WASH. REV. CODE § 4.92.090 (2004))

The court's finding of "good faith" immunity is incompatible with its finding of Negligence. "the Court need not and does not reach the issue of whether Defendants' conduct was more than merely negligent." (App. at 24)

It is a question of fact whether the disclosures were in compliance with the public records act, or whether the unlawful disclosures were the result of negligence or "more than merely negligent."

Under the public records act, immunity is provided to a "public agency, public official, public employee, or custodian" "if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of this chapter." (RCW 42.56.060)

The district court admitted that compliance was not considered in its judgment.

> "The statement that a party released a document "pursuant to the PRA" (i.e., in response to a request made under that statute) is factual; to describe such an act as "in compliance with" the PRA is a legal conclusion which appears nowhere in the Court's order." Dkt. 160 at 6 (Order on Plaintiff's Motion for Relief Pursuant to FRCP 60(a))

There is a question of fact whether the university has any procedures in place for preventing unlawful disclosures.

> "a deprivation may be the consequence of a mistake or a negligent act, and the State may violate the Constitution by failing to provide an appropriate procedural response. In a procedural due process claim, it is not the deprivation of property or liberty that is unconstitutional; it is the deprivation of property or liberty without due process of law — without adequate procedures."
>
> Daniels v. Williams, 474 US 327 - Supreme Court 1986

The university did not produce any evidence that any procedures were in place to prevent unauthorized disclosures of employee health information. Regarding petitioner's motion to compel disclosures, the district court decided:

> "Plaintiff's request for identification and production of documents regarding the University of Washington's policies and procedures concerning the Public Records Act is DENIED. Any documents Defendants intend to

> introduce as part of their defense have already been produced."
>
> "Plaintiff's request for identification and production of documents regarding the job description and training of Ms. Saunders, Ms. Swenson, Mr. Tapper, Mr. Palmer and John/Jane Does 1-12 is DENIED." Dkt. 133 at 2

The University did not produce any documents regarding any employee training or the job responsibilities of any of the unnamed participants.

The court ignored the public record evidence of unlawful practices, and other evidence in the record. (App. at 65-80)

> "t]his court only considered 9 pages of personal and confidential information given to Betz, and overlooked many others."
>
> "the very information cited by her attorney as "[t]he evidence... already in the record identifying Plaintiff's protected health information that was produced pursuant to the PRA to David Betz." (See App. at 12)

The court did not consider any evidence in the record regarding the university's practice of producing confidential information in public records.

The University has unofficial practices of producing health information in Public Records. (Dkt. 162-1 at 3 "Per Meg, health info not exempt unless highly offensive." (also Dkt. 48 at 4-5)

Summary Judgment cannot be granted when there are Issues of Material Facts.

b. Did the Ninth Circuit err in assigning the Burden of Proof to the non-moving party in summary judgment?

The appeals court decided:

"There is no proof defendants violated Dalessio's Fourth or Fourteenth Amendment rights." (App. at 3)

The district court decided:

"Second, she presents no evidence (by way of expert testimony or otherwise) that the sampling of third party information which she presents is statistically significant; i.e., represents a sufficiently large enough percentage of UW's total annual PRA production to legally constitute proof of a "pattern or practice" (a term for which Plaintiff provides no legal definition)." (App. at 27)

As the moving party in summary judgment, it is UW's burden to prove "that there is no genuine dispute as to any material fact." FRCP 56 (a)

UW did not present any evidence, by way of expert testimony or otherwise, that their practice of searching for and producing disability services and other privileged, personally identifiable employee records, was justified or reasonable.

Ms. Dalessio has described the personal and confidential employee information contained in 24

of 24 (**100%**) UW public record productions. (App. at 65-80) (also Dkts. 184, 131)

Without complete discovery, it is impossible for Dalessio to determine any "statistical significance" based on "UW's total annual PRA production." Dalessio's motion to compel discovery was not addressed by the court before summary judgment.

UW did not present any evidence, by way of expert testimony or otherwise, that the unlawful disclosures were limited to 100% of the public records productions of her personal information plus the **personal information of nineteen other employees described in the complaint** (App. at 75-79) or whether the unlawful disclosures occur in a small enough percentage of UW's total annual PRA productions to legally constitute proof of no "pattern or practice."

UW objected to every discovery request, and only provided partial disclosures twenty months after commencement of this lawsuit, almost two months after filing their second motion for summary judgment.

The court refused to consider evidence that Dalessio obtained through a new public records request.

Dalessio produced this evidence to her appointed attorney as soon as possible after she received it. (Dkts. 174, 182, 184) Her attorney diligently but unsuccessfully, attempted to work with UW attorneys to admit this public record evidence under seal before the summary judgment

hearing. (Dkt. 172 at 3) The court did not consider these facts. (App. at 8-10)

If Dalessio's attorney failed to produce evidence in a timely manner, it was due to UW attorneys' uncooperative and unprofessional behavior.

This public record evidence of UW's continuing practice of producing confidential information (including SSN, date and place of birth, protected health information, psychological and medical evaluations, medical ID numbers and other privileged information, (a small portion under seal in Dkt. 175)) is more proof, yet the court decided that the evidence of repeated unlawful disclosure did not "constitute a sufficient percentage of the University's total records production to constitute a "pattern or practice." (App. at 10)
"it did not form a part of the Court's analysis or ruling" (App. at 11)

Without complete discovery, and a full and fair hearing of all the evidence, it is unfair to place the burden of proof on Ms. Dalessio.

c. Was it an abuse of discretion to not allow Plaintiff/Petitioner to amend the Complaint?

Authority

"If the Court determines that the complaint should be dismissed, it must then decide whether to grant leave to amend. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend "should be freely granted when justice so requires," bearing in mind that "the underlying

purpose of Rule 15 ... [is] to facilitate decision on the merits, rather than on the pleadings or technicalities." Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir.2000) (en banc) (internal quotation marks omitted). Nonetheless, a court "may exercise its discretion to deny leave to amend due *1210 to `undue delay, bad faith or dilatory motive on part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party . . ., [and] futility of amendment.'" Carvalho v. Equifax Info. Servs., LLC, 629 F.3d 876, 892-93 (9th Cir.2010) (alterations in original) (quoting Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962))."

In re Adobe Systems, Inc. Privacy Litigation, 66 F. Supp. 3d 1197 - Dist. Court, ND California 2014

There was no "undue delay, bad faith or dilatory motive on part of the movant, repeated failure to cure deficiencies by amendments previously allowed", or "undue prejudice to the opposing party."

Immediately after the Court determined that the complaint should be dismissed, Dalessio moved to reconsider and amend her complaint, arguing, in part, that ADA regulations can be enforced through an individual claim for injunctive relief. (Dkt. 184 at 8, 9,)

Ms. Dalessio has a right of action against UW for violations of 42 U.S.C. § 12112, Title 1 of the ADA, and if her 42 U.S.C. § 1983 claim is dismissed,

her claim can be cured by pleading a right of action under 42 U.S.C. § 2000e–5(g).

The court did not consider this argument, instead finding:

> "The Court understood that Plaintiff was citing to alleged ADA violations in attempting to establish her § 1983 claims and addressed the ineffectuality of that argument with case law "which holds that § 1983 is not available to vindicate rights under the ADA."" (App. at 10-11)

If the petitioner's claim can be cured by pleading a right of action under 42 U.S.C. § 2000e–5, then justice requires that leave to amend should be granted, "to facilitate decision on the merits, rather than on the pleadings or technicalities."

Dalessio also requested leave to amend her complaint, to name UW for tort claims, after the court noted (in App. at 25):

> "Plaintiff does interpose a provision in Washington law which states that the State of Washington is liable for damages for the tortious conduct of its employees (RCW 4.92.090) but the State of Washington is no longer a defendant in this case and the statute is inapplicable to the individual defendants."

The court decided:

> "Plaintiff's failure to name UW as a defendant on any of her other claims cannot be cured at this point." (App. at 12)

The court's impatience with this lawsuit does not justify dismissal on a technicality.

The court overlooked that UW was named for Dalessio's claims for declaratory relief, and did not consider whether Saunders is properly named in her official capacity for pleading actions against the UW in all other claims.

Dalessio originally named UW as the sole defendant in this action in King County Superior Court, pursuant to the parties' employment settlement agreement. If her appointed attorney should have named UW rather than Ms. Saunders (who may or may not be legally accountable as the director of the University office of public records (RCW 42.56.580(1), WAC 478-276-060),[1] then justice requires that leave be given to amend her complaint.

d. Did the Ninth Circuit err in failing to issue any decision regarding petitioner's claims arising under the Washington State Constitution?

The court did not issue any decision regarding claims under the Washington Constitution. (see Complaint, App. at 91-96)

"in violation of Article I, Section 7 of the Washington Constitution." (App. at 92)

[1] This remains a question of material fact and law. See Dkt. 89, depicting mail sent by the district court to Eliza Saunders, filed *sua sponte* by the court. (App. At 115)

"Dalessio has a constitutionally protected expectation of privacy in personal identifying information based on Article 1, Section 7 of the Washington State Constitution." (App. at 100)

The Ninth circuit did not consider these claims in any decision. Dalessio presented the following authority in her opening brief:

"Washington's constitution provides broader protection than the Fourth Amendment, and there are no explicit limitations on the right to privacy recognized under the state constitution." McCarthy v. Barrett, 804 F. Supp. 2d 1126, 1145 (W.D. Wash. 2011), citing State v. Cheatam, 25 150 Wn.2d 626, 81 P.3d 830 (2003);

"Although the United States Supreme Court has not yet recognized the right to confidentiality under the federal constitution, our state constitution affords a more robust privacy guaranty. The writers of our constitution insightfully drafted article I, section 7 to protect individual rights." . . .

"our state constitution guarantees citizens' fundamental privacy interest in avoiding disclosure of personal details. WASH. CONST. art. I, § 7. This court has long recognized that article I, section 7 often affords greater privacy than does the federal constitution. E.g., Blomstrom v. Tripp, 189 Wn.2d 379, 399-400, 402 P.3d 831 (2017); State v. Athan, 160 Wn.2d 354, 365, 158 P.3d 27 (2007); State v. Gunwall, 106 Wn.2d 54, 64-67, 720 P.2d 808 (1986)."

Washington Public Employees Association et al v. WASHINGTON STATE 450 P.3d 601, 609 Supreme Court of Washington (Oct. 24, 2019)

Dalessio is guaranteed a heightened right to privacy under the Washington constitution.

Does the ruling constitute final judgment when the courts have not issued any decision regarding this substantial claim?

e. Did the Ninth Circuit err in failing to issue any ruling regarding petitioner's appeal of federal jurisdiction over state claims?

Authority

"Under Gibbs, a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity in order to decide whether to exercise jurisdiction over a case brought in that court involving pendent state-law claims. When the balance of these factors indicates that a case properly belongs in state court, as when the federal-law claims have dropped out of the lawsuit in its early stages and only state-law claims remain,[7] the federal court should decline the exercise of jurisdiction by dismissing the case without prejudice. Id., at 726-727. . . ."

Carnegie-Mellon Univ. v. Cohill, 484 US 343 - Supreme Court 1988 referring to Mine Workers v. Gibbs, 383 U. S. 715 (1966)

Dalessio raised issues of jurisdiction in her opening brief (DktEntry/21 at 38), motion to strike (DktEntry/27 at 4) and reply (DktEntry/31 at 3), and opening reply (DktEntry/ 33-1 at 7).

The respondents/defendants did not include any Statement of Jurisdiction, "In a statement preceding the statement of the case in its initial brief" as mandated in Federal Rule of Appellate Procedure 28-2.2.

Issues regarding jurisdiction were overlooked in the Ninth circuit decision. (App. at 2)

In another information privacy case, the Ninth circuit decided that, even though the plaintiff requested federal jurisdiction over state claims:

> "The district court did not abuse its discretion by declining to exercise supplemental jurisdiction over Padron's state law claims because Padron failed to state a federal claim. See Ove v. Gwinn, 264 F.3d 817, 826 (9th Cir. 2001) (standard of review; court may decline supplemental jurisdiction over related state law claims once it has dismissed all claims over which it has original jurisdiction)." Padron v. CITY OF PARLIER Court of Appeals, 9th Circuit, 2019

The court overlooked Dalessio's opening brief argument (DktEntry/21 at 38), and did not issue any decision regarding jurisdiction over her Breach of Contract claim.

> "Even when a party fails to object to removal, this court reviews de novo whether the district court has subject matter jurisdiction. See Schnabel, 302

F.3d at 1029; Campbell v. Aerospace Corp., 123 F.3d 1308, 1311 (9th Cir. 1997).

"A district court's decision to enforce or refusal to enforce a forum selection clause is reviewed for an abuse of discretion. See Murphy v. Schneider Nat'l, Inc., 362 F.3d 1133, 1137 (9th Cir. 2004) (enforcing forum selection clause).

"Because forum selection clauses are presumptively valid, they should be honored "absent some compelling and countervailing reason." Bremen, 407 U.S. at 12, 92 S.Ct. 1907.

When the district court dismissed the federal-law claims in summary judgment, the "district court has discretion to remand to state court a removed case involving pendent claims upon a proper determination that retaining jurisdiction over the case would be inappropriate." Carnegie-Mellon

The facts that the district court did not issue any opinion regarding claims under the Washington constitution and incorrectly decided the case under inapplicable state laws, emphasizes the abuse of discretion.

f. Did the Ninth Circuit overlook relevant employment contract law and err in application of irrelevant Washington state construction contract law?

The court overlooked Washington courts' opinions extending the discovery rule to numerous cases involving professional malpractice (Peters v. Simmons, 552 P. 2d 1053 - Wash/ Supreme Court

1976) and in a case arising out of confidential business memoranda (Kittinger v. Boeing, 585 P. 2d 812 - Wn. App., 1st Div. 1978). (DktEntry/21 at 36-37)

The Ninth Circuit decided:

> "the discovery rule does not apply. See *1000 Va. Ltd. P'ship v. Vertecs Corp.*, 146 P.3d 423, 430–32 (Wash. 2006) (en banc) (applying the discovery rule narrowly to construction contracts where latent defects are alleged)." (App. at 3)

The Ninth Circuit decision is improperly based on a Washington court decision that **applies narrowly to construction contracts** where latent defects are alleged (as opposed to construction contracts where latent defects are not alleged). This restriction is not applicable to employment contracts.

There is no question that this lawsuit was timely filed after Dalessio discovered the breach, and there was no way she could have known about the breach before her belligerent neighbor produced the confidential and privileged records in discovery, to be used as evidence in his adverse possession lawsuit against her.

This case merits, and there is precedent for application of the discovery rule.

g. Did the Ninth Circuit err in its application of irrelevant Washington state law regarding "good faith immunity" for reporting child abuse to authorities rather than pertinent

Public Records laws and the Washington Constitution?

The ninth circuit decided: "defendants were entitled to good faith immunity under RCW § 42.56.060. See Whaley v. State, Dep't of Soc. & Health Servs., 956 P.2d 1100, 1106 (Wash. App. 1998)." (App. at 4)

But the "good faith" immunity described in Whaley v. State comes under RCW 26.44.060(1), not the Public Records Act (RCW § 42.56.050 et seq).

The immunity provided by RCW 26.44.060(1)(a) applies to "**any person** participating in good faith in the making of a report" of child abuse to authorities, and provides for penalties for false reporting.

By extending the immunity afforded by RCW 26.44.060 to the PRA, which is **limited to public agencies and employees**, this court's decision conflicts with the Washington State Constitution Article 1, SECTION 12:

"No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations."

h. Did the Ninth Circuit err in failing to issue any decision regarding petitioner's appeal of the finding of absolute immunity for defense counsel, Ms. Freeman? (App. at 50)

Authority

"Defense counsel, even if court-appointed and compensated, are not entitled to absolute immunity. See Tower v. Glover, 467 U.S. 914, 923 (1984); Sellars v. Procunier, 641 F.2d 1295, 1299 n.7 (9th Cir. 1981)." FTC v. Affordable Media, LLC, 179 F. 3d 1228 - 9th Cir.1999

Absolute immunity does not extend to defense counsel.

Ms. Dalessio is not on trial, and Ms. Freeman is not acting as a prosecutor or a witness in this action.

Freeman has done nothing to remedy the effects of her actions. Dalessio's personal information remains on the internet, available for purchase.

Rather than provide reassurances that this would not happen again, Freeman refused to discuss alternative methods for presenting the evidence, necessitating several motions to seal the court records. Dkt. 36, 172, 187-1 DktEntry/16-1, DktEntry/26

The court did not issue any decision on appeal.

i. Did the district court err in failing to issue mandatory sanctions for violations of court rules by defense counsel, Ms. Freeman?

The court ignored numerous incidents of misconduct and claims for sanctions (Dkts. 23, 42, 47, 48, 57, 58, 100, 110, 145, 147) for Freeman's violations of court rules and rules of professional conduct.

The district court's appointment of a *pro bono* attorney and restarting of discovery, followed by more than a year and hundreds of hours of work attempting to obtain relevant information, met by UW's continued discovery abuses, and even personal abuse (Dkts. 78, 144), only to have the court ignore motions for relief, made the situation impracticable for Dalessio's attorney.

The court's refusal to acknowledge Freeman's violations of rules of professional conduct (RPC 4.1(1), 4.4 (a), and 8.4 see Dkt. 23 at 4), and court rules (FRCP 11(b) see Dkt. 48 at 4; FRCP 26, 33, 34, 37 see Dkt. 57 at 9-11), (FRE 402, 403 see Dkt. 57) encourages continuing abuses that distract from the issues, and overburden the court and the parties. Dkts. 23, 42, 48, 57, 58, 78, 100, 110, 145, 147

When sanctions are mandatory, as Pursuant to FRCP 37(c), it is not up to the court's discretion.

j. Is it a Due Process violation for a court to ignore, or to reject without sufficient analysis, substantial claims?

Was the petitioner's right to a fair trial, as guaranteed by the due process clause of the Fourteenth Amendment, violated where the district court frequently misconstrued Dalessio's arguments, misinterpreted facts, ignored questions of fact, applied irrelevant case law, and completely ignored claims under the Washington State Constitution?

The district court so far departed from the accepted course of judicial proceedings, as to call for an exercise of this Court's supervisory power.

REASONS FOR GRANTING THE PETITION

Privacy violations and misuse of personal information in the digital age can lead to a range of harms, including discrimination in employment, health care, housing, access to credit, and other areas; unfair price discrimination; domestic violence; abuse; stalking; harassment; entrapment; and financial, emotional, and reputational harms.

Privacy harms disproportionately affect low-income people and people with disabilities or serious medical conditions.

UW employees are subjected to increased risk for healthcare discrimination and fraud, identity theft, and other forms of victimization that can result from indiscriminate and unlawful disclosures of personal information, as well as employment discrimination based on disabilities or medical conditions.

This case provides an ideal vehicle for addressing the question: Does a "comprehensive remedial scheme for the enforcement of a statutory right" under the Americans with Disabilities Act (ADA) [42 U.S.C. 12101 et seq.] foreclose resort to a 42 U.S.C. § 1983 claim to vindicate that right?

This question of law is entirely independent of the issues presented in Question 2.

The fact is that employees of the UW wrongfully obtained, distributed, and published

Ms. Dalessio's medical information, and continue to retain this information in public records, in violations of the ADA and HIPAA.

UW employees should reasonably know that obtaining, maintaining and producing medical information in public records, without consent, is a violation of federal statutes, yet they search for and produce this personal classified employee health information to the general public under the public records act.

The Ninth Circuit's decision, if left to stand, allows Washington public agencies to violate health information privacy statutes with impunity under color of the public records act, denying employees the very right Congress promised by enacting the ADA confidentiality requirement.

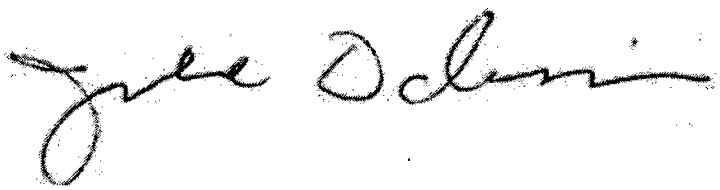
If the Ninth Circuit's decision is left to stand, state entities will be virtually immune to court proceedings, allowing discrimination based on perception of disability to continue with impunity.

The Court's decision effects over 40,000 current UW employees, and tens of thousands of former employees. Many potential lawsuits could be avoided by enforcing UW compliance with health information confidentiality laws.

> "the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis." 42 U.S.C. § 12101(a)(8)-(9)

For the reasons set forth above, a writ of certiorari should be granted.

Respectfully submitted February 24, 2021,



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