

No. 21-1289

Supreme Court, U.S.  
FILED

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In The  
**Supreme Court of the United States**

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FOSTER TAFT,

*Petitioner,*

v.

VENTURA COUNTY MEDICAL CENTER,  
CAROL LASHBROOK,

*Respondents.*

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**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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FOSTER TAFT,  
Plaintiff, Petitioner, pro se

9 Carriage Square  
Oxnard, CA 93030  
805-983-7657

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## QUESTIONS PRESENTED

1. Does 42 U.S.C. §1983 confer a private cause of action for privacy violations of HIPAA, in particular 164.502(a)?

Within this issue, the court would point out that a private right of action is different than a private right. Also, the court would have to determine whether 45 U.S.C. 164.502(a) confers a private right.

2. Does 5 U.S.C. §552a(1) and §551(1) of the Privacy Act, which applies to agencies of the federal government, apply to a state hospital, as a "state actor", entangled with substantial federal regulation and funding, or do, only, people with medical records in a federal agency, proper, have a private right of action for unauthorized disclosures and violations of federal privacy laws.

## **PARTIES TO THE PROCEEDING**

There are no other parties.

## **CORPORATE DISCLOSURE STATEMENT**

There is no parent or publicly held company owning 10% or more of the corporation's stock.

## **PROCEEDINGS**

*United States Court of Appeals for the Ninth Circuit*  
21-55216 *Foster Taft v. Ventura County Medical Center,*  
*Carol Lashbrook* Memorandum 12/23/2021

*United States District Court Central District of California* CV-7856-DDP-(Ex) *Foster Taft v. Ventura County Medical Center, Carol Lashbrook* Judgment 1/6/2021  
Motions to Reopen, for Relief, to Amend denied 1/15/2021 2nd Motion for Relief, Reopen, Amend denied 2/11/2021

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### **CITATIONS OF REPORTS**

21-55216 Memorandum 12/23/2021 Taft v Ventura Cty. Med. Ctr., 2021 U.S. App. LEXIS 38047 Case 2:20-cv-07856-MWF-E Doc. 38 Filed 02/11/21: Order Relief from Judgment denied No Report citation found.

Case 2:20-cv-07856-MWF-E Doc. 34 Filed 01/15/21: Order Reopen Relief from Judgment denied Taft v Ventura Cty. Med. Ctr., 2021 U.S. Dist. LEXIS 198290

Case 2:20-cv-07856-MWF-E Doc. 31 Filed 01/06/21: Judgment Taft v Ventura Cty. Med. Ctr., 2021 U.S. Dist. LEXIS 3548

Case 2:20-cv-07856-MWF-E Doc. 28 Filed 01/04/21: Order No Report citation found.

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### **STATEMENT OF BASIS FOR JURISDICTION**

The judgment (Memorandum) from the Ninth Circuit, was filed 12/23/2021. Rule 13.1 of this court states a petition is timely if filed within 90 days after entry of judgment. 90 days from 12/23/2021 is 3/23/2022. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

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### **STATUTES**

45 CFR §164.502(a) Standard. A covered entity or business associate may not use or disclose protected health information, except as permitted or required by

this subpart or by subpart C of part 160 of this subchapter.

42 U.S.C. §1983. Civil action for deprivation of rights Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, 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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

5 U.S.C. §552a(b) "Conditions of Disclosure. – No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains," unless disclosure of the record would be – . . . (1)-(12) none of which apply.

5 US Code 552a(g)(1)(D) CIVIL REMEDIES. – Whenever any agency fails to comply with any other provision



of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

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## STATEMENT OF THE CASE

### INTRODUCTION

Federal laws provide some protections for private health information. For most there really is no publicly recognized cause of action for redress of violations.

There is a special privilege for people with their information in congressionally created government agencies. 5 U.S.C. 552a(g)(1)(D) gives those individuals a right to bring a civil action against a negligent agency. Although VCMC is not a federal agency, the Court has provided for accountability and responsibility by obligating entities/persons to meet higher government standards as a "state actor" when there is sufficient entanglement between the two.

Most every adult is familiar with the great aura of privacy rights the Health Insurance Portability and Accountability Act of 1996 (HIPAA) is supposed to support, yet it does not provide for a private cause of action for the unauthorized disclosure of medical records. However, 42 U.S.C. §1983 does provide access to the courts for violations of rights, and it is the absence of a

private cause of action in HIPAA that opens the door for a §1983 claim. *Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 121 (2005). This is functionally inconsistent with the Ninth's and district court's rulings that, HIPAA does not provide a private cause of action, therefore it cannot provide a basis for a §1983 claim. App. 2, App. 9, App. 16.

Despite victims seeking justice for violations of privacy rights, federal courts have sidestepped issues and obfuscate the basis of decisions.

TAFT sought redress for unauthorized disclosure of his medical records. And, he raised two avenues that provide the appropriate access to the court, court precedence of "state actors" and the §1983 statute.

The lower courts ignored the issue of entanglements for the "state actor" access and ignored the issue of privacy rights in HIPAA. For their analysis, the courts used the distinctly different issues, private cause of action, and privacy rights, as if they were interchangeable.

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## FACTS

Following an automobile collision and before any litigation, Foster Taft (TAFT) gave Farmers Insurance Exchange a limited authorization for the medical records of two days to give to Ventura County Medical Center (VCMC). A written note prohibiting the release of any other past medical history, etc. was given directly

to VCMC. Carol Lashbrook, of VCMC's records department, sent TAFT's medical records to Farmers that greatly exceeded the authorization and in spite the prohibition. 2:20-cv-07856-DDP-E Doc. 1

The excessive disclosure of medical information violated 45 CFR §164.502(a) and 5 U.S.C. §552(a)b.

VCMC receives federal funding through Medi-Cal and Medicare, and is subject to extensive federal legal and regulatory frameworks and oversight. 2:20-cv-07856-MWF-E Document 37-1, p. 3, Lines 14-17.

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#### **BASIS OF ORIGINAL FEDERAL JURISDICTION**

The District Court had subject matter jurisdiction over the claims of violations of 45 CFR §164.502 and 42 U.S.C. §1320d-6 (2/17/2009) under 28 US Code §1331.

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#### **PROCEDURAL HISTORY**

TAFT's initial complaint in the district court raised the issue of a private cause of action through §1983 for violations of 45 CFR §164.502(a). Without allowing oral argument, the district court struck TAFT's late attempt to file an amended complaint with a 5 U.S.C. 552a(b) claim, and ruled, An alleged HIPAA violation cannot form the basis for a §1983 claim. *Huling v. City of Los Banos*, 869 F. Supp. 2d 1139, 1154 (E.D. Cal. 2012). App. 8, App. 15.

TAFT attempted to reopen the case two more times and file an amended complaint raising the issue of VCMC as a State Actor, but the district court denied the motions finding the Privacy Act only applied to government agencies and did not provide a private right of action for disclosure of medical records. App. 19. And that it had already denied the prior motions and the case was closed.

TAFT appealed to the Ninth Circuit.

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## ARGUMENT

### 42 U.S.C. §1983

The district court citing *Huling* recited, "if there is no basis for a private right of action under the particular federal statute, that statute does not create a federal right for purposes of section 1983." App. 8, App. 15.

Neither does it preclude a federal right.

A procedural "private right of action" is not the same as a substantive personal right of privacy, although the court presents them as if they are interchangeable or interdependent.

There is faulty connection. Whether or not there is a private cause of action has no bearing on whether or not there is federal privacy right in HIPAA, to base a §1983 claim on. The district court, further referenced *Huling* saying, Because HIPAA provides no private right of action, it cannot form the basis of a section

1983 claim. App. 9, App. 16. This is contrary to this court's *Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 121 (2005) ruling that the presence of a private means of redress would preclude a §1983 action.

The Ninth Circuit states that, "HIPAA itself does not provide a private cause of action." Citing *Webb v. Smart Document Sols.*, 499 F.3d 1078, 1081 (9th Cir. 2007). App. 2. Which is true. Then they leap to the conclusion that, "An alleged HIPAA violation therefore cannot provide a basis for a §1983 claim." *Gonzaga Univ. v. Doe*, 536 U.S. 273, 282-83 (2002). App. 2.

Again, a private right of action is a different issue than a privacy right, although the Ninth Circuit treats them interchangeably as they shore up their conclusion with *Gonzaga's* rule that, it takes a conferred right to support a §1983 cause of action, App. 2, *Gonzaga* at 283, as if that was determined by the absence of the procedural private cause of action in HIPAA. HIPAA does provide privacy rights, just not a private cause of action.

And, if the Ninth was suggesting it takes a private cause of action in HIPPA to support a §1983 claim, that is contradicted by *Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 121 (2005) ruling that the presence of a private means of redress would preclude a §1983 action.

*Gonzaga* was about the Family Education Rights and Privacy Act of 1974 (FERPA), not HIPAA, although it does provide three factors for inquiry as to whether or not a statute confers a right, 1) did Congress intend the provision benefit the individual, 2) is

the right protected not vague and amorphous, and 3) is the provision mandatory rather than precatory.

In Title 45 of the CFR under Part 164 Security and Privacy, Subpart E Privacy of Individually identifiable Health Information, §164.502(a) states, "A covered entity or business associate may not use or disclose protected health information except as permitted or required by this subpart or by subpart C of part 160 of this subchapter." That "protected" health information may not be disclosed, is intended to benefit the person who has information with the entity. The very word "Privacy," in the Part and Subpart labels, propounds a benefit for the person who has health information with a covered entity. The term "may not" disclose is mandatory. The statute is clear. The covered entity may not disclose the information. Thus, all three prongs support the recognition that a right is conferred on people, to privacy of their health information. Therefore the right supports a §1983 cause of action.

The opening paragraph in the Ninth's own ruling in *Webb* acknowledges regulations promulgated by DHHS to implement HIPAA "provide for an individual's" access to his own health records, and Under HIPAA "an individual has the right" to obtain copies . . . *Webb v. Smart Document Sols.*, 499 F.3d 1078, 1080 (9th Cir. 2007). HIPAA is about personal rights.

5 U.S.C. §552a(1) and §551(1), also, demonstrate individuals are entitled to a private cause of action for unauthorized disclosures of private information.

### State Actor

The Ninth Circuit ruled that The Privacy Act of 1974 governs records maintained by agencies of the federal government and does not apply to state hospitals, even if they accept federal funding. App. 2.

The Ninth Circuit ignored the extensive federal regulation of VCMC and the issue as to whether the overwhelming entanglement qualifies VCMC as a state actor for the purpose of 5 U.S.C. §§ 552a(1) and 552a(g)(1)(D).

*Brentwood Academy v. Tennessee Secondary School Athletic Assn.*, 531 U.S. 288, 295 (2001) states, “state action may be found if, though only if, there is such a “close nexus between the State and the challenged action” that seemingly private behavior “may be fairly treated as that of the State itself.” *Jackson*, supra, at 351. This is contrary to the Ninth’s ruling.

VCMC not only receives federal funding through Medi-Cal and Medicare, they are subject to extensive federal legal and regulatory frameworks and program oversight, all factors weighed in finding an organization subject to federal law as a federal State Actor.

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### CONCLUSION

Since HIPAA does provide for individual rights, a §1983 claim is supported and may be asserted for violations of 45 CFR §164.502(a). The dismissal should be reversed.

Since VCMC is subject to extensive federal laws and regulations and receives substantial federal funding they are liable for violations of 5 U.S.C. §552a(1) of the Privacy Act as a "state actor." An amended complaint should be allowed.

Respectfully submitted,

FOSTER TAFT

Plaintiff, Petitioner, pro se

9 Carriage Square

Oxnard, CA 93030

805-983-7657