

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

MARY SCOTT DOE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 09-CV-0755 (AW)
)	
BARACK OBAMA, <i>et al.</i> ,)	
)	
Defendants.)	
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**PLAINTIFFS' MOTION FOR RECONSIDERATION OF MEMORANDUM
OPINION GRANTING DEFENDANTS' MOTION TO DISMISS**

Plaintiffs hereby move under Rule 59(e) for reconsideration of the Court's Memorandum Decision of November 24, 2009 Memorandum Opinion granting Defendants' Motion to Dismiss, on the grounds that the Court overlooked Plaintiffs' arguments and authorities regarding the standing of human embryos, including Plaintiff Mary Scott Doe, *as human beings*, to raise the issue as to whether the Thirteenth Amendment prohibits Defendants from enslaving human embryos.

Standard Governing Motion for Reconsideration

The Federal Rules of Civil Procedure do not mention a "motion for reconsideration." Even so a 'motion for reconsideration' is treated as a motion to alter or amend judgment under Rule 59(e) if it is filed within ten days of entry of judgment. Fed.R.-Civ.P. 59(e). "Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence." *Publisher's Resource, Inc. v. Walker-Davis Publications, Inc.*, 762 F.2d 557, 561 (7th Cir. 1985); *accord Harsco*

Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985), *cert. denied*, 476 U.S. 1171 (1986). As to the first ground's "manifest error" justification, a motion for reconsideration will be granted only where the court has overlooked matters or controlling decisions which might have materially influenced the earlier decision. *Quarles v. Smith (In re Quarles)*, 1997 U.S. Dist. LEXIS 13992, *9 (W.D. Va. Aug. 25, 1997), *aff'd*, 165 F.3d 19 (4th Cir. 1998), quoting *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. New York State Dep't of Environmental Conservation*, 831 F. Supp. 57, 60 (N.D.N.Y. 1993), *aff'd in part, rev'd on other grounds*, 17 F.3d 521 (2d. Cir. 1994) (quoting in turn *Park South Tenants Corp. v. 200 Central Park South Associates, L.P.*, 754 F. Supp. 352, 354 (S.D.N.Y.), *aff'd*, 941 F.2d 112 (2d Cir. 1991)). A motion for reconsideration is therefore appropriate where the Court has overlooked an argument the consideration of which could have changed the result that the Court reached. *See, e.g., Royal Ins. Co. of America v. Miles & Stockbridge P.C.*, 142 F. Supp. 2d 676, 677 n. 1 (D. Md. 2001) (granting motion for reconsideration to consider overlooked argument and entering summary judgment on basis of that argument in favor of movant).

ARGUMENT

I. The Court Made a Manifest Error of Law In Overlooking Plaintiffs' Argument That Human Embryos, As Human Beings, Have Standing To Assert Their Right to Freedom From Slavery And Involuntary Servitude Under the Thirteenth Amendment.

In granting Defendants' Motion to Dismiss, the Court initially acknowledged in its Memorandum Opinion that "[t]he Plaintiffs claim that President Obama's Executive Order 13505 issued on March 29, 2009, which removes some of the prior limitations on federally funded human embryo stem cell research, violates the

frozen embryos' constitutional rights to due process, equal protection, *and freedom from involuntary servitude under the Fifth, Fourteenth, and Thirteenth Amendments.*" (Mem. Op., pp. 1-2 (emphasis added).) The Court further acknowledged that "Plaintiffs' complaint requests that this Court invalidate Executive Order 13505 and enjoin its implementation because it allows for federal funding of stem cell research that destroys human embryos in violation of the Dickey-Wicker Amendment and *violates the embryos' constitutional rights to due process and equal protection guaranteed by the Fifth and Fourteenth Amendments and to freedom from slavery and involuntary servitude guaranteed under the Thirteenth Amendment.*" (Mem. Op., p. 4 (emphasis added).)

The Court concluded that "all Plaintiffs lack standing[.]" (Mem. Op., p. 6.) In determining that the human embryos represented by Plaintiff Mary Scott Doe lacked standing, the Court relied on *Roe v. Wade*, 410 U.S. 113 (1973), *Roe v. Casey*, 464 F. Supp. 483 (E.D. Pa. 1978), *Doe v. Shalala*, 862 F. Supp. 1427 (D. Md. 1994), *vacated sub nom. Int'l Found. For Genetic Research (Michael Fund) v. Shalala*, 57 F.3d 1066 (4th Cir. 1995), *cert. denied*, 126 S. Ct. 116 (2005), and *Sherely v. Sebelius*, No. 1:09CV1575(RCL), 2009 WL 3429349 (D.D.C. Oct. 27, 2009). (Mem. Op., pp. 7-8.) Based on its review of this case law, the Court held that "in order to establish an injury in fact, the embryos must be able to show an 'invasion of a legally protected interest,' which embryos do not possess *as they are not considered to be persons under the law.*" (Mem. Op., p. 8 (emphasis added).)

The Court thereby fully addressed and rejected Plaintiffs' claims that the embryos are "persons" who have standing to assert Fifth and Fourteenth Amendment

constitutional rights not to be deprived of life and liberty without due process and to the equal protection of the laws. The Court, however, did not address and entirely overlooked Plaintiffs' wholly independent and separate claims and arguments that the embryos are *human beings* who have legally protected rights and interests to be free from slavery and involuntary servitude *under the Thirteenth Amendment*, and that the embryos, *as human beings*, have standing to sue to remedy violations of these Thirteenth Amendment rights.

The Court did not mention the Thirteenth Amendment during its discussion of the embryos' standing to sue, and none of the cases relied on by the Court involved a claim brought under the Thirteenth Amendment. The Court also overlooked Plaintiffs' arguments that the Thirteenth Amendment, unlike either the Fifth or Fourteenth Amendments, nowhere uses the term "person"; that the Supreme Court has held that the Thirteenth Amendment applies to "all the human race," i.e., to all human beings (which Plaintiffs contend includes pre-natal human beings), *see Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 69 (1873) (describing the Thirteenth Amendment as "this grand but simple declaration of the personal freedom *of all the human race* within the jurisdiction of this government") (emphasis added); and that therefore one does not have to be a "person", but only a human being, in order to be a slave or involuntary servant entitled to be freed from the bonds of slavery or involuntary servitude by bringing suit under the Thirteenth Amendment.

The Court should therefore grant the motion for reconsideration and address the argument whether the embryos have standing, as human beings, to sue under the Thirteenth Amendment for their freedom from the slavery of human embryo

stem cell research, or whether, as the Government argues, the “universal freedom” guaranteed by the Thirteenth Amendment, *see Slaughter-House Cases*, 83 U.S. (16 Wall.) at 69, is restricted to just those human beings who qualify as “persons” within the meaning of the Fifth and Fourteenth Amendments and, that, given this purported, implicit personhood limitation on the reach of the Thirteenth Amendment, a slave must be a “person” with full civil rights under the Fifth and Fourteenth Amendments in order to be able to sue to remedy a violation of the Thirteenth Amendment.

II. The Court Made a Manifest Error In Determining That the Injury to the Embryos Was Not Fairly Traceable and Redressable.

The Court also made a manifest error in further determining that the embryos’ injury “is not ‘fairly traceable’ to the Defendants’ act of issuing and implementing Executive Order 13505,” because “it is the *independent* decision of parties not currently before this court that cause the alleged harm.” (Mem. Op., p. 8 (emphasis added).) The Court thereby overlooked the Plaintiffs’ arguments that the decisions of genetic parents to donate unused embryos are not “independent” because, under the both the NIH Draft and the final Guidelines for implementing Executive Order 13505, parents are allowed to be kept in the dark about material information that could influence a decision in favor of options other than donating their embryos for destructive and enslaving human embryo stem cell research. Specifically, the Guidelines do not require potential donors to be informed about the option of human embryo adoption (unless the clinic at which the potential donor seeks treatment itself offers an adoption program), and also do not require potential donors to

be informed that embryos will be killed or destroyed by the stem cell derivation process.

The Court further ruled that it would also find the embryos lack standing in this case because their injury is not “fairly traceable” to the Defendants’ act of issuing and implementing Executive Order 13505, i.e., that it is not “redressable,” because “parents of the unused embryos could still donate the eggs to private institutions for research purposes.” (Mem. Op., p. 8.) The Court thereby overlooked Plaintiffs argument that, as a practical matter, if Plaintiffs were to prevail on their Thirteenth Amendment claim, the resulting order and judgment of the Court would likely have a profound negative impact on the continuation of any human embryonic stem cell research within the United States regardless of funding source, *given that the Thirteenth Amendment reaches private action, not just state action like the Fifth and Fourteenth Amendments. See, e.g., Christian Feigenspan v. Bodine*, 264 F. 186, 194 (D. N.J. 1920) (“By the Thirteenth Amendment the right of an individual to buy, sell, possess, transport, and use another human being was absolutely prohibited”), *aff’d sub nom. National Prohibition Cases*, 253 U.S. 350 (1920).

CONCLUSION

In view of the foregoing, Plaintiffs respectfully request that the Court grant their motion for reconsideration, and the Court fully address and decide the claims and arguments of the Plaintiffs regarding the standing of the human embryos, *as human beings*, to sue for their freedom from slavery and involuntary servitude under the Thirteenth Amendment, which grants universal freedom to “all the human

race,” including pre-natal human beings such as human embryos.

Respectfully submitted,

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