No. A153662

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FOUR

EVAN MINTON,

Plaintiff-Appellant,

vs.

DIGNITY HEALTH, d/b/a MERCY SAN JUAN MEDICAL CENTER,

Defendant-Respondent.

Appeal from the Superior Court of the State of California
for the County of San Francisco
The Honorable Harold E. Kahn, Judge Presiding
Superior Court Case No. 17-558259

APPELLANT'S RESPONSE TO AMICUS CURIAE BRIEFS

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Pursuant to California Rule of Court 8.200(c)(6), Appellant Evan Minton responds to the amicus curiae briefs filed in support of Respondent Dignity Health by the Catholic Medical Association ("Catholic Medical") and the Catholic Health Association of the United States and Alliance of Catholic Health Care ("Catholic Health") (collectively, the "Respondent Amici Briefs"). The Respondent Amici Briefs repeat many of the same arguments that Respondent Dignity Health asserts in its brief. The deficiencies in those arguments are already addressed in Mr. Minton's opening and reply briefs, and so are not repeated here. This response focuses on three specific arguments asserted in the Respondent Amici Briefs.

First, the Respondent Amici Briefs misconstrue the factual record in this case. That record consists exclusively of the allegations in Mr. Minton's First Amended Complaint, which must be taken as true for purposes of reviewing the trial court's demurrer ruling. Contrary to the Respondent Amici's implication, the Court cannot consider extraneous purported facts when ruling on the sufficiency of the operative complaint—particularly not when, as here, those purported facts are contradicted by Mr. Minton's well-pleaded allegations.

Catholic Medical argues that the Ethical and Religious Directives ("ERDs")—which, as explained in Mr. Minton's opening and reply briefs, are not in the record—"do not intentionally discriminate based on Minton's

gender dysphoria or expression." Catholic Medical Br. at 21. But Mr. Minton challenges Respondent's *specific* denial of medical care on the basis of Mr. Minton's gender identity, irrespective of what the ERDs do and do not say in the abstract. In other words, it is Respondent's intentional discrimination against Mr. Minton that is at issue here, not the ERDs.

Similarly irrelevant to the issues at hand is Catholic Health's claim that "nothing in the ERDs limits the provision of health care services, in general or with specificity, based on any protected characteristics of the individual." Catholic Health Br. at 19. That assertion is not responsive to Mr. Minton's central allegations in this case. Mr. Minton alleges—and the trial court found—that he was denied a hysterectomy because he is transgender, ROA at 153-54, 431; that Respondent said he would "never" be permitted to have a hysterectomy at the hospital of his choice, *id.* at 154; and that cisgender patients regularly receive hysterectomies at the facility where Mr. Minton sought care, *id.* at 153, 157. These allegations flatly contradict Catholic Health's contrived "facts," and at this stage in the case, only Mr. Minton's allegations matter.[1] *Compare id.* at 153-54, 157, *with*

[1] It is particularly ironic that Catholic Health faults Mr. Minton for his "sole focus on gender identity" in connection with Respondent's denial of medical care. Catholic Health Br. at 20. Mr. Minton's claims "focus" on his gender identity *by necessity*: Mr. Minton's gender identity was the reason Respondent provided for its decision to deny Mr. Minton medical care. ROA at 153-54, 431.

Catholic Health Br. at 20 (asserting without any citation to the record that Mr. Minton "was denied a hysterectomy because his proposed procedure did not meet [the ERDs'] criteria, not because he was transgender," and that Mr. Minton "was treated the same in this Catholic hospital as any other person presenting with these facts, male or female, cis- or transgender").

Second, the "church-autonomy principle" advocated by Catholic Medical is inapplicable here, as Respondent is not a church. That doctrine, rooted in the federal Establishment Clause, provides "constitutional limitations on the extent to which a civil court may inquire into and determine matters of ecclesiastical cognizance and polity in adjudicating *intrachurch* disputes." *Gen. Council on Fin. & Admin. of the United Methodist Church v. Super. Ct. of Cal.*, 439 U.S. 1369, 1372-73 (1978) (Rehnquist, C.J.) (emphasis added). The California Supreme Court has explicitly rejected the proposition that the church autonomy doctrine prevents courts from applying state legislation to religiously affiliated entities, such as Respondent. *Catholic Charities of Sacramento, Inc. v. Superior Ct.*, 32 Cal. 4th 527, 542-43 (2004). In upholding a law that required Catholic Charities, a religiously affiliated nonprofit corporation, to provide contraception coverage to its employees, many of whom were not Catholic, the court observed that applying such state legislation "does not implicate internal church governance" and does not "require [courts] to decide any religious questions," but only requires them to "apply the usual

rules for assessing whether state-imposed burdens on religious exercise are constitutional." *Id.*

Catholic Medical relies primarily on *Means v. U.S. Conference of Catholic Bishop*s, 2015 WL 3970046 (W.D. Mich. June 30, 2015), for its argument that the church-autonomy doctrine can be expanded beyond the limitations recognized by the California Supreme Court to apply to a religiously affiliated *hospital* such as Respondent. *See* Catholic Medical Br. at 17-18. But that case is wholly distinguishable from this one. In *Means*, a Michigan federal district court considered whether the *Church sponsors* of a Catholic health care system could be held liable for its imposition of the ERDs on a Catholic hospital. *Means*, 2015 WL 3970046, at *14. The court noted that while it "must defer to religious institutions in their articulation of church doctrine and policy," the plaintiff would still have recourse to a civil lawsuit against *the hospital* because "the Court's consideration of the legal duty of a physician to provide adequate medical care is not a matter of church doctrine." *Id.* at *13-14. Likewise, here, this Court may properly consider Respondent's legal duty to not discriminate on the basis of gender identity in the provision of health care under California law. Mr. Minton's case is against a hospital for denying him care, not against any religious sponsor of such hospital for promulgating or imposing the ERDs. *See id.* at *14 ("While the application of the ecclesiastical abstention doctrine forecloses inquiry into the policies themselves, Plaintiff

is not left without recourse to vindicate her rights to appropriate and necessary medical care."). Because Mr. Minton does not seek relief that would intrude upon internal *church governance*—e.g., by resolving disputes over the disposition of a church's property or the interactions between a pastor and members of a congregation—the church-autonomy doctrine does not apply. *Cf. Bollard v. Cal. Province of the Society of Jesus*, 196 F.3d 940, 948 (9th Cir. 1999) (noting in the course of rejecting argument that church autonomy doctrine precluded novice's sexual harassment claim against Jesuit order that "while we recognize that applying any laws to religious institutions necessarily interferes with the unfettered autonomy churches would otherwise enjoy, this sort of generalized and diffuse concern for church autonomy . . . does not exempt them from the operation of secular laws").

Third, contrary to Catholic Medical's contentions, the federal Church Amendment does not state that health care entities cannot be required to provide sterilizations—whether by courts or otherwise. The text of the Church Amendment states that "*[t]he receipt* of any grant, contract, loan, or loan guarantee under the Public Health Services Act . . . *does not authorize* any court or any public official or other public authority to require" an entity to perform sterilization procedures. 42 U.S.C. § 300a-7(b) (emphases added). In other words, the receipt of particular federal funds cannot be interpreted to, in and of itself, require health care entities to

provide sterilization procedures. However, nothing in the Church Amendment permits health care providers to disregard other legal mandates relevant to their provision of sterilizing procedures.

The Church Amendment is particularly inapplicable here, where Respondent is already providing hysterectomies, and Mr. Minton is not arguing that the receipt of federal funding compels Respondent to provide sterilizing procedures, or hysterectomies specifically. Instead, he is arguing that Respondent violated the Unruh Act by providing hysterectomies to cisgender women and refusing him equivalent care based on his gender identity. The Church Amendment does not preclude the enforcement of the Unruh Act against Respondent, and even Respondent has not argued that it does. Indeed, Respondent already "make[s] its facilities available for the performance of . . . sterilization procedure[s]" as well as providing personnel to perform sterilization procedures. *Id.* § 300a-7(b)(2). Mr. Minton is only asking that Respondent not discriminate as to *who* gets access to such procedures at its facilities on the basis of gender identity.

In conclusion, for the reasons stated here and in prior briefing, Plaintiff-Appellant Evan Minton respectfully asks this Court to reverse the trial court's November 2017 order and overrule the demurrer.

DATED: May 28, 2019

Respectfully submitted,

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