No. S258784

IN THE

SUPREME COURT OF CALIFORNIA

EVAN MINTON
Plaintiff and Appellant,
v.
DIGNITY HEALTH
Defendant and Respondent.

After a Published Opinion
of the First Appellate District, Division Four
Case No. A153662

On appeal from an Order of the
San Francisco County Superior Court, No. CGC-05-17558259
Hon. Harold E. Kahn

APPELLANT'S ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

Defendant Dignity Health's petition for review of the Court of Appeal's unremarkable reversal of the dismissal of Plaintiff Evan Minton's complaint should be denied. The Court of Appeal correctly concluded Mr. Minton's complaint adequately alleges that Defendant failed to provide Mr. Minton full and equal access to medical care in violation of the Unruh Act when it canceled Mr. Minton's scheduled hysterectomy because he is transgender.

Instead of explaining why review is "necessary to secure uniformity of decision or to settle an important question of law," as required by the California Rules of Court, Defendant's petition assumes that review should be granted because Defendant disagrees with the Court of Appeal's ruling. There is no conflict with precedent or unsettled question of law, however, presented by the Court of Appeal's determination that a public accommodation denying a service based on a protected characteristic violates the Unruh Act.

Defendant's primary argument is that it cannot be liable for violating the Unruh Act because it did so on the basis of its religious beliefs. Having been "soundly rejected" by prior opinions of this Court, Slip Op. 10, Defendant's argument does not present an unsettled question of law. In *North Coast Women's Care Medical Group, Inc. v. Superior Court*, this Court held that compliance with the Unruh Act does not violate health care

providers' free exercise rights under the U.S. and California Constitutions, even when it burdens their religious beliefs, because the "Act furthers California's compelling interest in ensuring full and equal access to medical treatment" and is narrowly tailored. 44 Cal. 4th 1145, 1157–59 (2008). Defendant attempts to manufacture a unique question for review by distinguishing the facts of this case from those in *North Coast*, and arguing that this case involves religious doctrine and implicates a religious institution. Crucially, though, Defendant does not explain why those factual distinctions merit review—in particular given that the Court has already addressed a situation in which a religious institution objected to a law on the basis of "doctrinal prohibitions." Pet. 8. In *Catholic Charities of Sacramento, Inc. v. Superior Court*, this Court held that a religiously-affiliated non-profit is still subject to liability for violating a neutral, generally applicable law, even when that law conflicts with the institution's religious doctrine. 32 Cal. 4th 527, 542 (2004). The Court of Appeal's Opinion did not stray from the holdings of these cases and did not generate an important question of law left unaddressed by *North Coast* and *Catholic Charities*.

The petition also rests on the faulty premise that questions relating to Defendant's purported application of its Ethical and Religious Directives ("ERDs") to deny Mr. Minton care are ripe for resolution. Not true. Mr. Minton alleges, and both courts below found, that Defendant "refused

to allow [Mr. Minton's doctor] to perform the hysterectomy at Mercy hospital *because of Minton's gender identity*," Slip Op. 7 (emphasis added)—not "because the procedure is prohibited by" the ERDs, as Defendant now contends. Pet. 7. No evidence has been developed regarding the ERDs or their application in this case, and Defendant's assertions that go well beyond the scope of—and contradict—the allegations in the operative complaint cannot be considered at the demurrer stage. Tellingly, in the opening five paragraphs of Defendant's "Statement of the Case," Defendant cites to the complaint only once.

As the Court of Appeal correctly held, while Defendant "may be able to assert reliance on the Directives as a defense to Minton's claim" at a *later* stage of the case, Defendant's present contention "that its action was motivated by adherence to neutral Directives and not at all by Minton's medical condition or sexual orientation" is "contrary to the allegations in the complaint" and therefore "not susceptible to resolution by demurrer." Slip Op. 7. The fact disputes on which the petition is based are outside of the scope of the operative complaint and improper grounds for review. *See Metcalf v. County of San Joaquin*, 42 Cal. 4th 1121, 1129 (2008) ("[T]his fact-specific issue does not present an issue worthy of review.").

Defendant's petition fails to identify any cognizable ground for review. Well-settled precedent supports the Court of Appeal's ruling that Mr. Minton adequately alleged a violation of the Unruh Act by Defendant,

and Defendant's petition fails to show that review of that ruling is necessary to secure uniformity of decision or to settle an important question of law. This Court should deny the petition and return this case to the trial court, where Defendant will have the opportunity to develop evidence, if any, in support of its defenses to Mr. Minton's well-pleaded allegations.

BACKGROUND

A. Summary of Operative Complaint[1]

Mr. Minton, a transgender man, was scheduled to undergo a hysterectomy at Mercy San Juan Medical Center ("MSJMC") on August 30, 2016. Slip Op. 2. In Sacramento County, Defendant does business as MSJMC. *Id.* Defendant is a tax-exempt nonprofit corporation that is one of the largest hospital providers in California and is the fifth-largest health system in the United States. *Id.*; Record on Appeal ("ROA") at 149 ¶ 3.

Mr. Minton sought to undergo a hysterectomy as part of his treatment for gender dysphoria. Slip Op. 2. As summarized by the Court of Appeal:

> The medical diagnosis for the feeling of incongruence between one's gender identity and one's sex assigned at birth, and the resulting distress caused by that incongruence, is gender dysphoria. The widely accepted standards of care for treating gender dysphoria include medical steps to affirm one's gender identity and help an individual transition from living as one gender to another.

[1] As this case has not yet advanced past the pleadings stage, no discovery has occurred, and the allegations in the complaint must be accepted as true.

Id. (internal quotation marks omitted). Mr. Minton's gender identity—the gender he knows himself to be—is male, although he was assigned the sex of female at birth. ROA at 150-51 ¶¶ 9, 11.

It was the professional opinion of Mr. Minton's treating physician and surgeon, Dr. Lindsey Dawson, and two mental health professionals that the hysterectomy was medically necessary to treat Mr. Minton's gender dysphoria. Slip Op. 2. Dr. Dawson was ready and willing to perform the procedure at MSJMC, where she had admitting privileges. ROA at 153-54 ¶¶ 19–23. Dr. Dawson routinely performs hysterectomies for cisgender (i.e., non-transgender) female patients at MSJMC, as do other physicians. Slip Op. 3.

The day before Mr. Minton's hysterectomy was scheduled to take place, however, Defendant cancelled the procedure. *Id.* at 2. On August 29, Mr. Minton informed a nurse at MSJMC that he is transgender. *Id.* Then on August 30, Dr. Dawson received a call from MSJMC, notifying her that the surgery was cancelled. *Id.* Dr. Dawson contacted MSJMC to contest the cancellation of Mr. Minton's medically necessary surgery and inquire about what had happened. ROA at 154 ¶ 23. MSJMC's president, Brian Ivie, told Dr. Dawson that she would "never" be allowed to perform a hysterectomy on Mr. Minton at MSJMC. Slip Op. 2–3.

Defendant's discriminatory decision to cancel the scheduled procedure and deny Mr. Minton full and equal access to care caused him to

suffer "great anxiety and grief." *Id.* at 3. When Mr. Minton learned that his surgery was canceled, he was so "shocked, hurt, and distraught" that he sank to the floor and then collapsed entirely. ROA at 154 ¶ 25. Mr. Minton's overall course of treatment was also in jeopardy, as his hysterectomy needed to be completed three months before another transition-related surgery, which was already scheduled for late November, making the timing of his surgery particularly sensitive. Slip Op. 3.

Dr. Dawson and Mr. Minton spent considerable time and energy pressuring Defendant to reverse the cancellation of his hysterectomy, including conducting interviews with the media, working with a legal services attorney to explore legal remedies, and reaching out to politically-connected people Mr. Minton knew to ask them to speak up on Mr. Minton's behalf. *Id.* at 4–5; ROA at 155-56 ¶¶ 29–34. During this time, Mr. Ivie suggested that Dr. Dawson could perform Mr. Minton's surgery at Methodist Hospital of Sacramento, a non-Catholic hospital that was also owned by Defendant. Slip Op. 3–4. However, "it was not immediately clear that this was a viable option." *Id.* at 5. Dr. Dawson would need to obtain emergency admitting privileges at Methodist Hospital, she was not familiar with the facilities or staff there, it was not clear whether the hospital was within Mr. Minton's insurance coverage network, and the other hospital was 30 minutes from MSJMC, making it difficult for her to fit Mr. Minton's procedure in with her other

commitments at MSJMC. *Id.* at 3–5; ROA at 156 ¶ 35. Eventually, Dr. Dawson was able to perform Mr. Minton's hysterectomy at Methodist Hospital. Slip Op. 3.

Mr. Minton subsequently sought relief under Civil Code Section 51, the Unruh Civil Rights Act, which guarantees all persons in California "full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." Slip Op. 2. Mr. Minton's verified complaint for declaratory and injunctive relief and statutory damages concluded by claiming that "[b]y preventing Dr. Dawson from performing Mr. Minton's hysterectomy to treat gender dysphoria, defendant discriminated against Mr. Minton on the basis of his gender identity." *Id.* at 3.

B. Orders Below

Defendant filed a demurrer to the complaint, which was initially sustained with leave to amend. *Id.* at 3–4. Mr. Minton then filed the operative First Amended Verified Complaint, to which Defendant again demurred. *Id.* at 4–5. The trial court issued an order sustaining the demurrer without leave to amend. *Id.* at 5. The trial court assumed, based on the allegations in the operative complaint, that Defendant's decision to cancel Mr. Minton's procedure was substantially motivated by his gender identity. *Id.* The court determined, however, that because Mr. Minton ultimately obtained his hysterectomy three days later, he had not been

deprived of full and equal access to the care at issue. *Id.* Mr. Minton timely filed a notice of appeal to the Court of Appeal, First Appellate District. *Id.*

On September 17, 2019, the Court of Appeal reversed the trial court, holding that Mr. Minton alleged a violation of the Unruh Act. *Id.* at 1. The appellate court first held that Defendant's decision to deny Mr. Minton access to a hysterectomy because of his gender identity, when physicians are routinely permitted to perform hysterectomies at MSJMC to treat conditions other than gender dysphoria, constituted intentional discrimination. *Id.* at 7. Further, even though Mr. Minton eventually obtained access to the care he needed at an alternative hospital facility, it was the refusal of service by Defendant at MSJMC that "denied [Mr. Minton] full and equal access to health care treatment, a violation of the Unruh Act." *Id.* at 9.

Even though Defendant contends that the refusal was pursuant to what it argues is a "neutral" policy—the ERDs for Catholic Health Services promulgated by the U.S. Conference of Catholic Bishops—the Court of Appeal determined that defense "is not susceptible to resolution by demurrer" because it relies on disputed facts. *Id.* at 7. Although the trial court summarily granted Defendant's request for judicial notice of the ERDs, the trial court did not judicially notice any facts about the ERDs or their specific application to this case. *Id.* at 3. The Court of Appeal found

that, because Defendant's "contention that its action was motivated by adherence to neutral Directives and not at all by Minton's medical condition or sexual orientation" was "contrary to the allegations in the complaint," that contention was "not suitable for resolution by demurrer." *Id.* at 7 (citing *North Coast*, 44 Cal. 4th at 1161 (defendant physicians can "offer evidence at trial that their religious objections were to participating in the medical insemination of an unmarried woman and were not based on plaintiff's sexual orientation, as her complaint alleged")).

Finally, the Court of Appeal rejected Defendant's arguments that Mr. Minton's claim is barred by the religious freedom and free speech guarantees of the California and U.S. Constitutions. *Id.* at 10. The court stated that those "arguments were soundly rejected in *North Coast*." *Id.* (citing *North Coast*, 44 Cal. 4th 1145, 189 P.3d 959). Applying *North Coast*, the court held that "any burden the Unruh Act places on the exercise of religion is justified by California's compelling interest in ensuring full and equal access to medical treatment for all its residents, and that there are no less restrictive means available for the state to achieve that goal." *Id.* at 10–11. Citing this Court's opinions in both *North Coast* and *Catholic Charities*, the Court of Appeal concluded that preventing a hospital from discriminating based on protected characteristics in its provision of services does not infringe on its rights to free speech or free exercise of religion. *Id.* at 11.

LEGAL STANDARD

A petition for review "must explain how the case presents a ground for review under [California Rule of Court] 8.500(b)." Cal. R. Ct. 8.504(b)(2). As relevant here, this Court may order review of a Court of Appeal decision "[w]hen necessary to secure uniformity of decision or settle an important question of law." *Id.* 8.500(b)(1).

ARGUMENT

I. Defendant Identifies No Important or Unsettled Questions Warranting Review.

Defendant contends that "[r]eview is warranted given the potentially significant impact of the Opinion on Catholic health care," and "to consider the required balancing of constitutional interests of institutional Catholic health care, prohibited medical procedures, and public accommodations law." Pet. 11. Neither of these constitutes an important or unsettled question of law requiring this Court's review. Cal. R. Ct. 8.500(b)(1).

A. The Court of Appeal Concluded That Mr. Minton Alleged Intentional Discrimination in Accordance With Settled Unruh Act Precedent.

Contrary to Defendant's assertions, Mr. Minton pled a valid claim for intentional discrimination on the basis of his gender identity. Specifically, Mr. Minton alleged in the operative complaint that Defendant cancelled his hysterectomy because he was a transgender man undergoing

the procedure as a treatment for gender dysphoria.[2] *See* Slip Op. 7. Meanwhile, Defendant routinely allows physicians to perform hysterectomies on cisgender female patients at MSJMC to treat a range of conditions. *See id.*; Pet. 17–19. Defendant's decision to cancel Mr. Minton's surgery, and bar his physician from ever performing it on him at MSJMC, constituted intentional discrimination on the basis of gender identity, in violation of the Unruh Act.

Defendant claims that it based its decision to cancel Mr. Minton's surgery on the ERDs, and that a decision so motivated could not possibly constitute prohibited intentional discrimination because the ERDs are "facially neutral" in that they do not explicitly call for denial of care to transgender patients. Pet. 16. Aside from being "contrary to the allegations in the complaint," Slip Op. 7, Defendant's argument misconstrues the scope of prohibited intentional discrimination under the Unruh Act and relevant precedent.

[2] Gender dysphoria is a serious medical condition resulting from a sense of incongruence between one's gender identity and one's sex assigned at birth, as experienced by transgender individuals like Mr. Minton. *See* ROA at 149-57 ¶¶ 3, 11-16, 43. The diagnosis of gender dysphoria is inextricably intertwined with a patient's gender identity, such that a health care institution's citing an individual's gender dysphoria as the basis for a denial of care supposedly distinct from the patient's identity as a member of the protected class of transgender people cannot cure the illegality of that decision. *See* Slip Op. 7.

Defendant asserts that it denied Mr. Minton the surgery at issue based on its interpretation of the ERDs as applied to the health care needs of transgender people, and specifically its view that gender dysphoria does not constitute a sufficiently "serious physical condition or pathology" to justify the provision of treatment that impacts "bodily integrity" and/or the patient's fertility. *See* Pet. 16–19. First, Defendant's interpretation and application of the ERDs goes well beyond the scope of the allegations in the operative complaint. Second, regardless of the claimed "facial neutrality" of the ERD provisions at stake, Defendant acknowledges that its deliberate practice is to apply the ERDs to transgender patients in a way that consistently denies those patients hysterectomies as treatment for gender dysphoria, while allowing other patients to undergo identical procedures at the same facilities. The Court of Appeal therefore rightly concluded Mr. Minton's Unruh Act claim for gender identity discrimination was properly pled and may proceed into factual development through discovery.

California courts have rejected similar attempts to construe policies and practices that operated to deny members of protected classes full and equal access to business establishments as "facially neutral" and therefore legally valid. In *Hankins v. El Torito Restaurants*, the defendant restaurant characterized its policy of only allowing customers access to an upstairs restroom (and denying all customers access to an employee restroom

located on a lower level) as facially neutral despite the policy's adverse impact on customers who could not access the upstairs restroom due to mobility impairments. 63 Cal. App. 4th 510, 517–18 (1998). The restaurant further argued that its rule against customer use of the ground-floor employee restroom was justified by nondiscriminatory and generally applicable health and safety concerns about allowing customers to pass through a food storage and preparation area en route to and from the restroom. *Id.* at 518–19. The appellate court rejected these contentions and upheld the lower court's determination that the defendant had violated the Unruh Act by applying and enforcing its restroom rules in a way that prevented patrons with mobility-impairing disabilities from accessing any of the restroom facilities on its premises. *Id.* Similarly, Defendant cannot escape liability for intentional discrimination pursuant to the Unruh Act, or conjure up an unsettled question of law, simply by asserting that its denial of medically necessary health care to Mr. Minton stemmed from its interpretation of the ERDs—even if they do not reference transgender people or gender dysphoria in so many words.

Defendant's attempts to attack the Court of Appeal's Opinion, and by extension Mr. Minton's operative complaint, as improperly reliant on a disparate impact theory of discrimination are similarly unavailing. Though Defendant seeks to rely on *Koebke v. Bernardo Heights Country Club* in support of its contention that it should be immune to claims of

discrimination where its denial of care was based on a "facially neutral" policy, the holding and procedural history of the *Koebke* case actually illustrate why Mr. Minton's analogous claim should be permitted to proceed into discovery. 36 Cal. 4th 824 (2005).

The *Koebke* plaintiffs, a lesbian couple, alleged that the defendant country club had denied them full and equal membership privileges relative to heterosexual couples, on the basis of their sexual orientation. The club claimed that its policies, which tied specific membership privileges to proof of legal marriage at a time when same-sex couples were not able to marry in California, were facially neutral in that they did not explicitly reference sexual orientation and had not been adopted with the specific intent to exclude gay people's participation. Nonetheless, the Supreme Court reversed a previous grant of summary judgment to the defendant, holding that the plaintiff couple "should be allowed to try to establish that….[the club's] policy was discriminatorily applied in violation of the [Unruh] Act", relying at least in part on the existence of "significant evidence" in the record that the club had applied its supposedly neutral policy inconsistently and otherwise engaged in intentional discrimination. *Id.* at 854–55.

Here, the Court of Appeal appropriately determined that Mr. Minton should be allowed to proceed into discovery so as to engage in the type of factual development that informed the *Koebke* court's analysis of whether the denial of privileges at issue rested on a fair interpretation of a broadly

applicable rule or instead was the product of discriminatory choices about the application of the defendant's ostensibly neutral policy. *See Roth v. Rhodes*, 25 Cal. App. 4th 530, 538 (1994) ("A policy or a classification, in itself permissible, may nevertheless be illegal if it is merely a device employed to accomplish prohibited discrimination."). The Court of Appeal thus relied on settled law when it concluded that "Dignity Health's contention that its action was motivated by adherence to neutral Directives and not at all by Minton's medical condition or [gender identity], contrary to the allegations in the complaint, is not susceptible to resolution by demurrer." Slip Op. 7. As the Court of Appeal noted, this Court addressed a very similar argument in *North Coast*, when it held that the defendants' purported sexual-orientation-neutral reasons for denying the health care at issue warranted fact-finding at trial. *Id.* (citing *North Coast*, 44 Cal. 4th at 1161). To the extent questions exist about the specific motivations for Defendant's decision to deny care to Mr. Minton, those questions are fact-specific and inappropriate for resolution in a demurrer proceeding where courts are required to accept well-pleaded allegations as true. Such fact-dependent questions must be resolved at later stages of the litigation with the benefit of a full evidentiary record.

B. The Court of Appeal Applied Settled Precedent To Reject Defendant's Religious Freedom Claims.

The petition claims that the Court of Appeal's Opinion misapplied this Court's decisions regarding religious freedom claims and consequently violated Defendant's constitutionally protected rights as a religiously-affiliated institution in a range of ways. But the Court of Appeal simply followed the clear guidelines for assessing religious freedom claims set out by this Court in the *North Coast* and *Catholic Charities* cases, and applying that settled precedent, concluded that Mr. Minton's allegations were sufficiently pled to reject Defendants' religious freedom arguments at this stage in the case.

1. Settled Precedent Holds That Religious Objections Do Not Exempt Institutions from Complying With the Unruh Act

Defendant first argues that the Opinion violates its rights of expression and freedom of religion because it "force[s] [MSJMC] to violate the ERDs" by providing health care on a nondiscriminatory basis. Pet. 34. But as the Court of Appeal recognized, this Court considered—and rejected—nearly identical arguments in the *North Coast* and *Catholic Charities* cases. Neither the California Constitution nor the U.S. Constitution protects Defendant from accountability for discriminating against Mr. Minton in violation of the Unruh Act. *See, e.g., North Coast*, 44 Cal. 4th at 1150 ("Do the rights of religious freedom and free speech, as

guaranteed in both the federal and the California Constitutions, exempt a medical clinic's physicians from complying with the Unruh Civil Rights Act's prohibition against discrimination based on a person's [protected status]? Our answer is no.").

The First Amendment does not protect religiously-affiliated institutions from complying with neutral laws of general applicability. The U.S. Supreme Court has "never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition." *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 879 (1990). The Supreme Court's decision in *Masterpiece Cakeshop* reaffirmed this stable and enduring precedent, stating that religious "objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law." *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719, 1727 (2018).[3]

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[3] Defendant argues that the Opinion conflicts with *Masterpiece Cakeshop*, but that holding rested on the adjudicator's "hostility" toward sincere religious beliefs. *Id.* at 1732. *Masterpiece Cakeshop* is easily distinguishable from the matter here, as the Court of Appeal did not strike down a ruling applying an antidiscrimination law to a faith-based objector *because of the objector's religious beliefs*. Further, Defendant's

To the extent that Defendant has religious objections to providing patients like Mr. Minton equal access, the Court of Appeal is correct that this Court has "soundly rejected" the idea that this creates an exemption from compliance with the Unruh Act. Slip Op. 10. This Court has twice held that even under strict scrutiny, the burden on religious people or religiously-affiliated entities in complying with neutral laws of general applicability to provide equal access to medical care "is insufficient to allow them to engage in such discrimination" because California has a "compelling interest in ensuring full and equal access to medical treatment" and "there are no less restrictive means for the state to achieve that goal." *North Coast*, 44 Cal. 4th at 1157 ("Here, defendant physicians contend that exposing them to liability for refusing to perform the . . . medical procedure for plaintiff infringes upon their First Amendment rights to free speech and free exercise of religion. Not so."); *Catholic Charities*, 32 Cal. 4th at 562 (holding that while complying with a neutral law of general applicability "would be religiously unacceptable" to Catholic Charities, the organization must nevertheless comply with the law).

As noted in both cases, persons or organizations may balance their religious objections with the public's right to equal access under the law by

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unsupported accusations that the Court of Appeal exhibited "animosity to religion," Slip Op. 11, likewise fail to demonstrate how the Opinion contradicts the central holding in *Masterpiece*.

choosing not to provide services that they do not wish to provide equitably. *Catholic Charities*, 32 Cal. 4th at 562 ("Catholic Charities may, however, avoid this conflict with its religious beliefs simply by not offering coverage for prescription drugs."); *North Coast*, 44 Cal. 4th at 1159 ("To avoid any conflict between their religious beliefs and the state Unruh Civil Rights Act's antidiscrimination provisions, defendant physicians can simply refuse to perform the IUI medical procedure at issue here for any patient.").[4] Thus, Defendant's claims that the Opinion is "forcing" or "compelling" it to provide services to which it has religious objections are unfounded. *See* Pet. 34.

This Court has also already settled the question of whether a religiously-affiliated medical provider must comply with the Unruh Act. If Defendant chooses to open its doors to the general public, it may not discriminate in its provision of services. *See Catholic Charities*, 32 Cal. 4th at 565 ("When followers of a particular sect enter into commercial

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[4] Freedom of expression also does not provide an exemption to the Unruh Act here. This Court has directly addressed this question, holding that compliance with a statute regulating health care "is not speech," because "simple obedience to a law that does not require one to convey a verbal or symbolic message cannot reasonably be seen as a statement of support for the law or its purpose." *Catholic Charities*, 32 Cal. 4th 527; *see also North Coast*, 44 Cal. 4th at 1150. As the United States Supreme Court noted in *Masterpiece Cakeshop*, the sort of unchecked religious exemption from the rule of law Defendant seeks is "inconsistent with the history and dynamics of civil rights laws that ensure equal access to goods, services, and public accommodations." *Masterpiece Cakeshop*, 138 S. Ct. at 1727.

activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity."). Under the circumstances of the present case, if a hospital provides hysterectomies to some patients, it may not legally deny hysterectomies to other patients on the basis of a medical diagnosis that is inextricably bound up with the protected status of transgender identity.

2. Defendant is Not a Church and Its Religious Affiliation Does Not Excuse It From the Full and Equal Access Requirement

Defendant next argues that its status as a religiously-affiliated medical provider constitutionally insulates it from any interpretation of the "full and equal access" requirement of the Unruh Act that would require Defendant to provide alternative accommodations for patients it discriminates against. Pet. 22–23. Even if the "full and equal access" mandate of the Unruh Act could be met by "alternative" accommodation—which it cannot—this question is not raised by this litigation at this stage. As the Court of Appeal correctly concluded, "[t]he facts alleged in the amended complaint are that Dignity Health initially did not ensure that

Minton had 'full and equal' access to a facility for the hysterectomy." *Id.* at 10.[5]

As a legal matter, what Defendant actually seeks is a determination that it and other religiously-affiliated care providers are under no obligation to offer "full and equal" access to treatment under the Unruh Act, on the basis that courts cannot inquire into their reasons for refusing care to patients. Pet. 23. This Court has already rejected that proposition in *North Coast* and *Catholic Charities*, holding that application of state law to a religiously-affiliated nonprofit corporation that objects to the law on religious grounds "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." *Catholic Charities*, 32 Cal. 4th at 542–43.

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[5] Throughout this litigation, Defendant has conflated an accommodation that would *avoid liability* under the Unruh Act and an accommodation that might *minimize the harm and damages* resulting from an Unruh Act violation. Pet. 22. But the Court of Appeal did not make such an error, recognizing that Mr. Minton's pleading properly alleged a violation of the Act in the moment Defendant cancelled Mr. Minton's scheduled procedure at MSJMC. *Id.* The Court of Appeal simply contemplated a potential scenario, as described in *North Coast* dicta, in which an objecting health care provider could "'avoid any conflict between their religious beliefs and the state Unruh Civil Rights Act's antidiscrimination provisions . . . by ensuring that every patient requiring [a procedure] receives "full and equal" access to that medical procedure through a [hospital] physician lacking defendants' religious objections.'" Slip Op. 9–10 (quoting *North Coast*, 44 Cal.4th at 1159, 81 Cal.Rptr.3d 708, 189 P.3d 959 (alterations in original)).

Additionally, Defendant is not a church, so this case does not raise questions about the applicability of the ecclesiastical abstention doctrine to the Unruh Act. *Cf. Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (1952) (upholding a church's "[f]reedom to select the clergy"); *Means v. U.S. Conference of Catholic Bishops*, No. 1:15-CV-353, 2015 WL 3970046, at *13 (W.D. Mich. June 30, 2015), *aff'd* 836 F.3d 643 (6th Cir. 2016) (holding ecclesiastical abstention doctrine precluded claims against *church sponsors* of a Catholic health care system). Mr. Minton is not seeking a judicial ruling regarding the establishment or adoption of the ERDs, so this case does not require the Court to sit in judgment of the Catholic Church or Defendant's adoption of particular religious doctrines. In fact, even though the court in *Means* dismissed the claims against the church sponsors of a Catholic health care system, the court distinguished them from the hospital that cared for the plaintiff, noting that the plaintiff was "not left without recourse to vindicate her rights to appropriate and necessary medical care," as she could still pursue a suit against the health care providers, since she "has a right to remedy in a secular court for medical malpractice without needing to resolve doctrinal matters." *Means*, 2015 WL 3970046, at *14. A remedy against the health care providers who harmed him is all Mr. Minton seeks here as well.

Defendant's constitutional religious freedom claims do not provide a basis for review of the Opinion, since the Court of Appeal's Opinion

applied precedent from this Court and the United States Supreme Court addressing and rejecting very similar contentions.

II. Review Is Not Necessary To Secure Uniformity Of Law Because No Conflict Exists.

Defendant's petition also fails to explain why review is "necessary to secure uniformity of decision." Cal. R. Ct. 8.500(b)(1).

The Court of Appeal's holding that Mr. Minton properly pled a violation of the Unruh Act is consistent with every other California court's previous holding. Indeed, Defendant does not claim otherwise or identify why review is necessary to secure uniformity of law. The closest Defendant comes to arguing that the Opinion creates a "conflict" is in the most general terms—it allegedly "creates an untenable conflict with the Constitution's 'guarantee[]' of religious freedom," citing to Article I, Section 4 of the California Constitution. Pet. 8. However, the appellate court's Opinion simply applies prior California Supreme Court precedent, as both *North Coast* and *Catholic Charities* reject arguments that parties' free exercise rights are violated by having to comply with the law in such contexts. Slip Op. 10–11. The court's holding that Mr. Minton properly alleged intentional discrimination by Defendant against him is not only consistent with this Court's holding in *North Coast*, but directly based on the holding that religious beliefs are not a defense to liability under the Unruh Act. *North Coast*, 44 Cal. 4th at 1158.

CONCLUSION

For the above reasons, the Opinion below overruling the demurrer and allowing Mr. Minton to pursue his Unruh Act claim for intentional discrimination was consistent with controlling law. Mr. Minton has pled a claim for intentional discrimination based on his gender identity as a transgender man, in violation of the Unruh Act, and it is well-settled that Defendant's religious affiliation does not provide it blanket immunity from Unruh Act liability. The Opinion does not create any need to secure uniformity of decision or to resolve an important question of law. Moreover, the arguments presented in Defendant's petition turn on facts not alleged in the complaint, and so cannot serve as a proper basis for review at this stage of the case. The petition for review should therefore be denied.

Respectfully submitted,

DATED: November 22, 2019 COVINGTON & BURLING LLP

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CERTIFICATE OF WORD COUNT

Pursuant to rule 8.504(d) of the California Rules of Court, I hereby certify that the text of this answer contains 5,608 words, including footnotes. In making this certification, I have relied upon the word count of Microsoft Word, used to prepare the answer.

DATED: November 22, 2019

Respectfully submitted,

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