

No. 19-1135

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

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DIGNITY HEALTH D/B/A  
MERCY SAN JUAN MEDICAL CENTER,

*Petitioner,*

v.

EVAN MINTON,

*Respondent.*

—◆—  
**On Petition For A Writ Of Certiorari  
To The California Court Of Appeal  
First Appellate District**

—◆—  
**PROVIDENCE ST. JOSEPH HEALTH'S AMICUS  
CURIAE BRIEF IN SUPPORT OF PETITIONER**

—◆—  
LEWIS BRISBOIS BISGAARD & SMITH LLP

JEFFRY A. MILLER

jeff.miller@lewisbrisbois.com

*Counsel of Record*

LANN G. MCINTYRE

lann.mcintyre@lewisbrisbois.com

701 B Street, Suite 1900

San Diego, CA 92101

Telephone: 619.233.1006

Facsimile: 619.233.8627

*Counsel for Amicus Curiae Providence St. Joseph Health*

## **QUESTIONS PRESENTED**

- (1) Does the Free Exercise Clause of the First Amendment bar a state-law claim that seeks to compel a religiously-affiliated hospital to allow medical procedures that violate its longstanding, deeply held religious beliefs?
- (2) Do the First Amendment's free expression and free association guarantees bar a state-law claim that seeks to compel a religiously-affiliated hospital to allow—and thereby endorse and be associated with—medical procedures that violate its longstanding, deeply held religious beliefs?

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**INTEREST OF THE AMICUS CURIAE<sup>1</sup>**

Providence St. Joseph Health (“Providence”) is a not-for-profit health care system created in 2016 when Providence Health & Services and St. Joseph Health came together with the goal of improving the health of the communities they serve. Providence is one of the nation’s largest non-profit health care systems. With fifty-one hospitals, more than 800 physician clinics, senior services, supportive housing and many other health and educational services, the health system and its partners employ more than 119,000 caregivers, including 25,000 physicians, which serve patients and communities across seven states—Alaska, California, Montana, New Mexico, Oregon, Texas and Washington. Like Petitioner, Providence is currently defending an identical lawsuit that attacks its refusal to perform a hysterectomy procedure that violates its fundamental, religious beliefs. Providence has a clear and present interest in having this issue decided by this Court to prevent an infringement of its right to freely exercise and express its religion.

Providence’s mission is to serve the most vulnerable and poor members of the community with dignity and respect. This reflects the legacy of its founders, the Sisters of Providence and Sisters of St. Joseph of Orange, who brought health care and other social

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<sup>1</sup> No counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus, their members, and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Both parties were timely notified and have consented to the filing of this brief.

services to the West to improve health more than a century ago. Today, Providence has continued this tradition by striving to create health for a better world, while ensuring the continued vibrancy of Catholic health care in the United States.

As one of the largest health care organizations in California and the nation, Providence is committed to extending its role in the community far beyond the hospital setting. Over the years, Providence has partnered with schools, community groups, and local organizations to tackle factors that contribute to health and quality of life, including such issues as affordable housing, access to nutritious food, quality education, and accessible health care. Providence is a significant provider of care and charity care to Medi-Cal and other underserved patients.

As a Catholic health system, Providence has an interest in maintaining its freedom to follow its religious principles because its Catholic ministries may not perform certain procedures, including elective sterilization. Because Providence is embedded in the health care world of California and other Western states, and remains committed to providing its patients and communities with access to quality health care in accordance with its Catholic beliefs, Providence has a significant interest in the outcome of the issues presented in the Petition for Writ of Certiorari and strongly supports the grant of certiorari in this case.



### SUMMARY OF ARGUMENT

As a Catholic health care provider, Providence’s Catholic ministries may not provide certain limited procedures—primarily abortion, sterilization, and euthanasia—that are contrary to the Catholic faith, doctrine and teachings. Procedures that induce sterilization are permitted only when their direct effect is the cure or alleviation of a present and serious pathology and a simpler treatment is not available. Respondent seeks an order that would override these policies, which are based on the Catholic doctrine. Like Petitioner, Providence and other Catholic health care institutions find themselves increasingly under attack for adhering to their religious beliefs in their delivery of health care. Providence is currently being sued in a nearly identical case in California—*Knight v. St. Joseph Health Northern California, LLC d/b/a St. Joseph Hospital – Eureka*, No. DR190259 (Cal. Super. Ct., Humboldt County, Mar. 21, 2019). Review is necessary to reconcile the right of citizens to be free from discrimination on the one hand, and the right of religiously-affiliated institutions to exercise fundamental freedoms protected by the First Amendment of free exercise of religion and free expression, on the other hand—freedoms that are the cornerstone of our nation’s unique heritage.

Providence’s Catholic health care ministries are ministries of the Catholic Church and a protected exercise and expression of its religious teachings and doctrines. Respondent Evan Minton (“Minton”) seeks to constrain Petitioner’s First Amendment rights by



requiring Petitioner to perform a procedure that is inconsistent with its religious beliefs, using California's anti-discrimination statute, the Unruh Act, as his source of coercion. If successful, Providence and other religiously-affiliated health care systems will be put to an impossible choice: abandoning their core religious beliefs by allowing direct sterilization or abandoning their core religious beliefs by stopping the performance of medical procedures such as hysterectomies altogether, even when necessary to treat a present and serious pathology. This would detrimentally impact their mission of providing health care to those in need of it, including the most poor and vulnerable of society, whom they have served diligently for over a century. This Court should grant certiorari to address the proper reconciliation of the First Amendment's guarantees of free exercise of religion and free expression and citizen's rights to be free of discrimination.

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### **STATEMENT OF THE CASE**

Amicus hereby adopts and incorporates by reference the Statement of the Case set forth in Petitioner's Brief.



**ARGUMENT**

- I. Catholic-Affiliated Health Systems' First Amendment Rights of Free Exercise of Religion and Free Expression Are Impermissibly Burdened by the Application of State Anti-Discrimination Laws in the Manner Respondent Seeks.**
  - A. Catholic-affiliated health systems like Petitioner are exercising their religious beliefs through their health care ministries.**

The healing ministries of religious health care providers are an expression of deeply held religious beliefs. The decision below, in rejecting Petitioner's First Amendment challenge to Minton's lawsuit, fails to perceive the innate intrusion Minton's lawsuit imposes on religious-affiliated health systems' right to freely exercise and express their religious beliefs by refusing to offer certain medical procedures that are inconsistent with those beliefs and by offering only those procedures and treatments that are consistent with their beliefs about the human person, as is true for any health system.

The decision below holds there is no First Amendment issue with compelling Mercy Hospital to allow elective sterilization at its facilities contrary to the doctrines of its faith. However, as Petitioner notes, a Catholic health care institution like Providence, is required to practice the standards set forth in the Ethical and Religious Directives for Catholic Health Care Services

(“ERDs”). The ERDs are developed and approved by the United States Conference of Catholic Bishops. United States Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services* (6th ed. 2018), <http://www.usccb.org/about/doctrine/ethical-and-religious-directives/upload/ethical-religious-directives-catholic-health-service-sixth-edition-2016-06.pdf>.

Indeed, to be named “Catholic” requires that a Catholic ministry and its practices be consistent with the ERDs’ standards. The ERDs are required to be adopted by the ministry and are enforceable by the local Catholic Bishop. “Catholic health care services must adopt these Directives as policy, require adherence to them within the institution as a condition for medical privileges and employment, and provide appropriate instruction regarding the Directives for administration, medical and nursing staff, and other personnel.” United States Conference of Catholic Bishops, *supra*, at 9, ERD Directive No. 5.

The purpose of the ERDs is, “first, to reaffirm the ethical standards of behavior in health care that flow from the Church’s teaching about the dignity of the human person; [and] second, to provide authoritative guidance on certain moral issues that face Catholic health care today.” United States Conference of Catholic Bishops, *supra*, at 4, Preamble. It is undisputed that the ERDs prohibit Catholic hospitals from allowing permanent sterilization procedures unless necessary to treat a “present and serious pathology.” *Id.* at 19, ERD Directive No. 53.

Religious health care—including that provided by Petitioner—is a ministry provided according to the teachings and values of the Church. As Petitioner demonstrates, the work of the Catholic Church, through the words and actions of its health care ministries, is a constitutionally protected exercise of religion and religious expression. The Petition should be granted to address these important constitutional issues.

**B. Forcing Catholic-affiliated health systems to perform procedures that violate their religious principles is an abridgment of their constitutional rights of free exercise of religion and free expression.**

All persons have the right to exercise fundamental freedoms under the First Amendment, as applied to the States through the Fourteenth Amendment. U.S. Const. amend. I. As this Court expressed in *Obergefell v. Hodges*, 135 S. Ct. 2584, 2607, 192 L. Ed. 2d 609 (2015), “[t]he First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths.” Petitioner, a religious institution, has the right to freely exercise and express its religious beliefs surrounding medical procedures that result in sterilization. The Free Exercise Clause ensures that religious institutions will not be forced to “disavow [their] religious character” in order to participate in public life. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2022, 198 L. Ed. 2d 551 (2017). On the other

hand, so too does the State have the authority to protect the rights of its citizens to be free of discrimination in the provision of goods and services. California and many other states have enacted civil rights acts to protect citizens from discrimination. In California, the Unruh Act provides:

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, . . . medical condition, . . . [or] sexual orientation . . . are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

Cal. Civ. Code, § 51, subd. (b).

The Unruh Act further provides: “‘Sex’ also includes, but is not limited to, a person’s gender,” and “[g]ender’ means sex, and includes a person’s gender identity and gender expression.” *Id.* at § 51, subd. (e)(5).

Based on an alleged violation of the Unruh Act, Minton sought a declaratory judgment from the state court that Petitioner be enjoined from “preventing doctors from performing hysterectomy procedures in its hospitals on the basis of a diagnosis of gender dysphoria.” (*See* Pet. at 11.) This violates Catholic-affiliated health systems’ constitutional rights of free exercise of religion and free expression and is contrary to the ERDs that Catholic health care systems must follow.

ERD Directive Number 53 plainly states “[d]irect sterilization of either men or women, whether permanent or temporary, is not permitted in a Catholic

health care institution. Procedures that induce sterility are permitted when their direct effect is the cure or alleviation of a present and serious pathology and a simpler treatment is not available.” United States Conference of Catholic Bishops, *supra*, at 19, ERD Directive No. 53.

Minton’s use of California’s Unruh Act to force Catholic health care providers to provide specific medical procedures in violation of the ERDs and against their religious principles presents the “difficult question[] as to the proper reconciliation of at least two principles” addressed by this Court in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1723, 201 L. Ed. 2d 35 (2018): the authority of the State to protect its citizens against discrimination and the right of religiously-sponsored institutions to exercise the fundamental freedoms under the First Amendment of religion and freedom of expression. This case is ripe for deciding these exceptionally important issues.

**II. This Court Should Grant Certiorari to Resolve the First Amendment Issues Raised in the Petition That Increasingly Impact the Provision of Crucial Health Care by Religiously-Affiliated Health Care Providers.**

Providence has a more than 100-year tradition of serving the poor and vulnerable based on its Catholic heritage. In 1856, Mother Joseph and four Sisters of Providence established not only hospitals, but schools

and orphanages across the Northwest. In 1912, a small group of Sisters of St. Joseph arrived in Eureka, California, to provide education and health care. These Catholic ministries addressed not just the health care needs of the population, but the broader needs of the community based on the teachings of the Gospel of Jesus Christ as held in the Catholic Church.

Just as its foundresses did over 100 years ago, Providence and St. Joseph, now merged as a single Catholic health care system, provide important services beyond direct health care services consistent with their faith-based mandate to serve the community, and especially the poor and vulnerable who have been historically underserved. Providence commits substantial resources to a wide range of community-based care, including ministries addressing housing insecurity, food insecurity, nutrition education, preventative self-care, and improved access to services for the poor and vulnerable. Indeed, Providence serves over five million unique individuals annually who have Medicaid coverage across the seven western states they serve.

All of Providence's Catholic ministries are governed and guided by Providence's Catholic-based mission of service: "As expressions of God's healing love, witnessed through the ministry of Jesus, we are steadfast in serving all, especially those who are poor and vulnerable." Providence, Our Mission, [providence.org/about/our-mission](https://www.providence.org/about/our-mission) (last visited Apr. 14, 2020). To be named "Catholic" requires that care provided at Catholic-affiliated institutions be consistent with the ERDs.

Providence plays a vital role in California and the six other states it serves. Of the top ten largest health care systems nationally, Catholic-affiliated systems rank second, fourth, and fifth. Tara Bannow, *The eye of the beholder*, Modern Healthcare Hospital Systems Survey, Modern Healthcare, July 15, 2019. Providence is one of the largest of the Catholic Church-affiliated health systems in the country. *Id.* Providence has a significant presence in California as a Catholic health care provider, with eighteen hospitals in California alone.

Providence's work is governed by a Code of Conduct that provides the foundation for Providence's expectations that its work be done in compliance with state and federal laws *and* its ethical commitments. Providence, *Doing the Right Thing Right, Our Code of Conduct* (Jan. 2020) C:/Users/thebi/Downloads/phscode ofconduct.pdf. Adherence to the ERDs is a requirement for continued service as a Catholic health ministry.

Providence and other Catholic-based health systems are now under attack for refusing to provide certain services that are inconsistent with their doctrinal principles and expressly prohibited by the ERDs. And this threat is real, not merely hypothetical. As Petitioner notes, Providence is also a defendant in a nearly identical case—*Knight v. St. Joseph Health Northern California, LLC d/b/a St. Joseph Hospital – Eureka*, No. DR190259 (Cal. Super. Ct., Humboldt County, Mar. 21, 2019). (*See* Pet. at 31.) In *Knight*, plaintiff alleges, based on facts identical to those in *Minton*, that one of the hospitals in the Providence health



system discriminated against him based on his gender identity. Oliver Knight sought to have a hysterectomy as treatment for his gender dysphoria. He alleged the hospital refused to allow a hysterectomy to be performed because “as a matter of religious policy” the hospital was prohibited from providing “sterilization” unless it “alleviat[es] [] a present and serious pathology.” (Compl. at ¶ 23.) *See* United States Conference of Catholic Bishops, *supra*, at 19, ERD Directive No. 53. Knight does not allege the hospital refused or would ever refuse to treat him for anything other than an elective hysterectomy prohibited by the ERDs.

Thus, Mr. Knight alleges he was discriminated against based on his gender identity as a transgender man. By refusing to allow the procedure to be performed at St. Joseph Hospital—Eureka, he claims the hospital violated California’s Unruh Act, Cal. Civ. Code § 51, subd. (b).

Mr. Knight seeks a declaratory judgment that the refusal to allow his surgeon to perform his hysterectomy is a violation of the Unruh Act, and an injunction enjoining the hospital from discriminating on the basis of gender identity or expression, transgender status or diagnosis of gender dysphoria. Significantly, Mr. Knight seeks an order enjoining the hospital from “preventing doctors from performing hysterectomies and related procedures in its hospitals on the basis of a diagnosis of gender dysphoria[.]” (Compl. at 11-12.)

Mr. Knight’s allegations make the ERDs the *centerpiece of his civil rights claim*. He alleges St. Joseph

Health Northern California is required to adhere to proscriptions spelled out in the ERDs. He alleges St. Joseph Health Northern California and all Catholic health care facilities deny “gender-affirming care” for transgender patients because such care is prohibited by Catholic Church policy. (Compl. at 4-6.) According to Mr. Knight, the ERDs display an intent to discriminate against transgender individuals by Catholic hospitals in violation of the Unruh Civil Rights Act. Mr. Knight’s allegations actually demonstrate his case is not about discrimination, but rather religious observance. As the *Knight* case demonstrates, his lawsuit is factually closely aligned and the issues raised by the Petition will continue to arise in future cases if not resolved here.

Indeed, similar claims are being made in a recent New Jersey case, *Conforti v. St. Joseph’s Healthcare Systems, Inc.*, No. 2:17-cv-00050 (D. N.J. Jan. 5, 2017). There, the Catholic hospital declined to perform a hysterectomy as treatment for gender dysphoria and Mr. Conforti sued under the New Jersey Law Against Discrimination (“NJLAD”) (N.J. Stat. Ann. §§ 10:5-1, et seq.) and section 1557 of the Affordable Care Act. St. Joseph’s Healthcare System, a healing ministry of the Catholic Church sponsored by the Sisters of Charity of Saint Elizabeth, is defending the action now pending in the United States District Court, District of New Jersey.

There is a likelihood of similar challenges being made in other states in which Providence and other Catholic-affiliated hospitals have a presence that have

civil rights laws similar to California's Unruh Act.<sup>2</sup> The issues raised in this case will inevitably emerge in cases across the country.

The ACLU and others are using state anti-discrimination laws as vehicles for forcing Providence and other faith-based health systems to violate their core religious beliefs by allowing direct sterilization or abandon their core religious beliefs and mission of serving those who need health care by refusing to perform medical procedures such as hysterectomies altogether, even when necessary to treat a present and serious pathology. Religiously-affiliated health systems must not be put to such an unconstitutional choice in order to avoid the legal, ethical and religious implications of the clash between the ERDs' express prohibition against these procedures and state anti-discrimination laws. The prospect of ongoing litigation is costly and threatens the important Catholic-based mission of Providence and other Catholic-affiliated health care providers to provide critical health care services to those in need, especially the most poor and vulnerable. The unfortunate end result would ultimately be decreased access to care.

This Court should grant review to decide the important questions of the free exercise of religion and free expression by religious institutions that provide important health care services as a ministry of their

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<sup>2</sup> Compliance with the ERDs, however, is not discriminatory treatment *because* of gender identity, but is instead based on compliance with the hospitals' religious beliefs.

Church, especially in light of the dramatic uptick in the number of gender identity discrimination cases based on anti-discrimination laws. To safeguard the essential protections of the First Amendment guarantees of freedom of religion and freedom of expression in all courts in the country, this Court should grant certiorari now.



### CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be granted.

DATED: April 16, 2020

Respectfully submitted,

JEFFRY A. MILLER

*Counsel of Record*

LANN G. MCINTYRE

LEWIS BRISBOIS BISGAARD

& SMITH, LLP

701 B Street, Suite 1900

San Diego, CA 92101

Telephone: 619.233.1006

*Attorneys for Amicus Curiae*

*Providence St. Joseph Health*