No. 19-1135

IN THE

Supreme Court of the United States

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

Petitioner,

v.

EVAN MINTON,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT

SUPPLEMENTAL BRIEF FOR PETITIONER

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The Court appears to have been holding this petition pending its decision in *Fulton v. City of Philadelphia*, No. 19-123. *Fulton* does not directly address the issues raised in this case. *See Fulton*, slip op. at 10-13 (noting that *Fulton* did not involve a "public accommodation" law and the Court thus had no need to reach the "constitutional issue[s]" that arise when such laws burden the free exercise of religion). The Court should accordingly grant certiorari on both questions presented here.

First, the Court should grant certiorari to address whether it violates the Free Exercise Clause to compel a religiously affiliated hospital to perform or allow medical procedures that violate its beliefs. It is undisputed that the elective sterilization surgery requested by Respondent would have violated the Ethical and Religious Directives for Catholic Health Care Services, which provide "authoritative guidance on certain moral issues that face Catholic health care today." Pet. 7, 14-15. Yet the California state courts held that the Free Exercise Clause provides *no protection whatsoever* in this context. *See* Pet. 18-20. As explained in the Petition and five supporting amicus briefs, this is an issue of paramount national importance in light of a coordinated national advocacy campaign that seeks to compel religious hospitals to perform or allow contraception, sterilization, and abortion procedures that violate

their deeply held beliefs. *See* Pet. 31-35; Pet. Reply 1, 4 n.1; Providence St. Joseph Amicus Br. 11-15.[1]

Plenary review in this case is imperative. Although a majority of the Court in *Fulton* found it unnecessary to reconsider *Employment Division v. Smith*, 494 U.S. 872 (1990), this case directly implicates several important questions about the scope of *Smith* that warrant certiorari in their own right. This case addresses whether *Smith*'s holding—which addressed only individuals—applies equally to religious *organizations* or *institutions*. *See* Pet. 18-19; *Fulton*, slip op. at 1-2 (Barrett, J., concurring) (noting open question on this issue); *Hosanna-Tabor v. EEOC*, 565 U.S. 171, 189 (2012) (First Amendment "gives special solicitude to the rights of religious organizations"). This case also addresses whether, notwithstanding *Smith*, the church autonomy doctrine protects a religious hospital's decisions about which procedures are consistent with its beliefs and institutional healing ministry. *See* Pet. 20-21; Catholic Medical Ass'n Br. 10-16. And this case addresses whether a lawsuit that seeks to coerce a religious hospital to allow procedures that violate its faith and religious directives can be brushed aside as a mere "incidental" burden on the exercise of religion. Pet. 21.

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[1] These attacks on religious hospitals have continued even while this Petition has been pending. Recently introduced legislation in California would force the University of California to end all affiliations with religious hospitals that impose "policy-based restrictions on care." *See* SB-379, https://bit.ly/35zzq95.

In short, precisely because this Court has not reconsidered *Smith*, it should grant certiorari here to give "careful consideration" to the protection conferred by the Free Exercise Clause when application of a public accommodation law intrudes upon "the promise of the free exercise of religion enshrined in our Constitution." *Bostock v. Clayton Cty., Ga.*, 140 S. Ct. 1731, 1753-54 (2020); *see also Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1723-24 (2018) (noting the "difficult" and "delicate" questions that arise when an anti-discrimination law conflicts with the "right of all persons to exercise fundamental freedoms under the First Amendment"); *Obergefell v. Hodges*, 576 U.S. 644, 679-80 (2015) ("The 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…."). Regardless of the ongoing validity of *Smith*, the California state courts' holding that the Free Exercise Clause provides exactly zero protection to a religious hospital against coercion to violate its deeply held beliefs is untenable and warrants this Court's plenary review. *See Trinity Lutheran Church v. Comer*, 137 S. Ct. 2012, 2021 n.2 (2017) (rejecting notion that "any application of a valid and neutral law of general applicability is necessarily constitutional under the Free Exercise Clause").

Second, the Court should grant certiorari to address whether the First Amendment's protections against coerced association or expression bar claims that would compel a religious hospital to perform or

allow procedures that violate its beliefs. This issue was also raised in *Fulton* (as the third question presented), but the Court ultimately did not reach it in light of its ruling for the petitioners on other grounds. But this issue is squarely presented here and provides an independent constitutional basis for dismissing Respondent's claims. *See* Pet. 23-28. Just as in *NIFLA v. Becerra*, 138 S. Ct. 2361, 2371 (2018), forcing a Catholic hospital to allow certain procedures that violate its faith would severely impair the Church's ability to convey the message that such procedures are wrong.

CONCLUSION

The Court should grant the petition for certiorari.

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