Nos. 23-1394, 23-1452

In the United States Court of Appeals for the Fourth Circuit

JESSE HAMMONS,
Plaintiff-Appellant-Cross-Appellee,

v.

UNIVERSITY OF MARYLAND MEDICAL SYSTEM CORP., *et al.*,
Defendants-Appellees-Cross-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, HON. DEBORAH K. CHASANOW
(NO. 20-CV-2088)

CROSS-REPLY BRIEF OF DEFENDANTS-APPELLEES-CROSS-APPELLANTS

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INTRODUCTION

This cross-appeal is a conditional one. If the Court concludes that Hammons' claims are moot—as it should, *see* No. 23-1394, Dkt. Nos. 6-1, 22, 33-1, 40—then the Court need not pass on Hammons' discrimination claims under Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116(a). The University of Maryland Medical System Corporation (UMMS) and University of Maryland St. Joseph Medical Center (St. Joseph) are content to leave Hammons with his $874.63 judgment—plus attorney's fees and costs to be determined later—and move on.

But if the Court rejects UMMS and St. Joseph's mootness arguments, the Court must then confront this cross-appeal. Although Hammons received a full recovery on his Section 1557 claims from St. Joseph, he wants to see UMMS, St. Joseph's parent company, held liable as well. That goes too far. Hammons may think it bad policy, but nothing in Section 1557 prohibits owning a company that violates antidiscrimination law. The law holds only the perpetrator of the alleged violation responsible. And that should make no difference to Hammons, who can (and has) fully recovered from St. Joseph for his losses. The only reason for Hammons to care about UMMS's liability is if he wants to try to force policy change at UMMS. But Article III means Hammons is entitled compensation for the inconvenience

of rescheduling his hysterectomy, not change how UMMS and St. Joseph practice medicine.

To his credit, Hammons does not defend the district court's holding that UMMS may be held liable "for discrimination that occurs in any of its hospitals." JA1000. The common-law principle of corporate separateness, which Section 1557 incorporates, does not permit that result. Hammons, after all, does not contend that UMMS and St. Joseph do not respect the corporate formalities or that UMMS established St. Joseph's separate corporate identity to perpetrate a fraud on its patients and creditors.

Hammons instead argues that UMMS is directly liable under Section 1557 because it signed agreements permitting St. Joseph to continue to operate—as it has since its founding in 1864—as a Catholic hospital. But Hammons' Section 1557 claim is based on the cancellation of a scheduled hysterectomy, not those agreements. Cancelling Hammons' surgery was St. Joseph's decision alone, and St. Joseph alone is legally responsible.

Finally, UMMS and St. Joseph continue to preserve their argument that St. Joseph's conduct in cancelling Hammons' procedure is not proscribed by Section 1557. Although that argument is presently foreclosed by Circuit precedent, that precedent may soon be abrogated. In all events, if the Court reaches this cross-appeal, it should reverse.

ARGUMENT

I. DEFENDANTS HAVE NOT ENGAGED IN SEX DISCRIMINATION.

St. Joseph does not deny anyone treatment because of their sex. No patient, male or female, may receive a hysterectomy for gender-transition purposes. *See* JA956 (explaining that St. Joseph "does not deny care to any transgender patient" but that "direct sterilization" is prohibited and "gender reassignment surgery is not permitted if it is removal of healthy organs"); JA562 ("We do not do sterilization—man, woman, whomever—here at St. Joe's."). By contrast, any patient, male or female, can receive a hysterectomy to treat a life-threatening condition, such as extreme uterine bleeding. JA338; JA956; JA1443; JA1455. St. Joseph's policy against interventions for the purpose of facilitating gender transition is therefore "best understood" as one "that targets specific medical intervention," not "one that classifies on the basis of" sex. *Eknes-Tucker v. Governor of Ala.*, 80 F.4th 1205, 1227 (11th Cir. 2023); *accord L.W. ex rel. Williams v. Skrmetti*, 83 F.4th 460, 481-482 (6th Cir. 2023).

This Court nonetheless concluded in *Kadel v. Folwell*, 100 F.4th 122 (4th Cir. 2024) (en banc) that the denial of gender-transition interventions constitutes sex-based discrimination. But the Supreme Court may soon disagree, either in *United States v. Skrmetti*, No. 23-477, or in reviewing

Kadel and the consolidated case of *Crouch v. Anderson*, No. 24-90 (conferenced Dec. 6, 2024). Defendants therefore preserve their arguments regarding sex discrimination for future review, as a reversal in either *Skrmetti* or *Kadel* and *Crouch* would require reversing the district court and further briefing. *See* Resp.-Opening Br. 42.

Hammons contends that even if St. Joseph's policy does not discriminate on the basis of sex, the district court's statutory holding could be affirmed on the alternative ground that St. Joseph's policy is "explicitly based on disapproval of the fact that gender-affirming surgery fails to conform to a person's sex assigned at birth." Hammons Resp.-Reply Br. 21. But whether that constitutes sex discrimination prohibited by Section 1557 is intertwined with the questions presented for review in the pending petitions. *See, e.g.*, Petition 27-29, 35 n.6, *Crouch v. Anderson*, No. 24-90 (U.S. July 25, 2024).

To the extent Hammons seeks to smear St. Joseph with accusations of transgender animus, the record confirms that St. Joseph is not motivated by hate towards its transgender patients. Hammons does not contend that the cancellation of his particular hysterectomy was motivated by hostility towards transgender patients, nor could he. All agree that Dr. Cunningham, St. Joseph's chief medical officer, made the decision to cancel Hammons'

hysterectomy following a very brief phone call that referenced only the hospital's general policy against performing gender-transition-related hysterectomies—not any hostility toward Hammons in particular or transgender patients generally. *See* JA589-594.

Hammons instead appears to contend that St. Joseph's overall policy against gender-transition interventions is motivated by animus, primarily citing a National Catholic Bioethics Center policy paper. Hammons Resp.-Reply 21 (citing JA825-826). But Dr. Cunningham did not specifically remember the paper and only "may have" seen it before, JA563, making the paper not particularly probative of St. Joseph's motivations in denying gender-transition interventions.

Hammons also cites a statement recorded by his gynecologist that was supposedly made by a different St. Joseph's physician at a staff meeting called to discuss gender-transition interventions. Hammons Resp.-Reply 21 (citing JA1427). At that same meeting, St. Joseph doctors and executives gave multiple other reasons for shying away from gender-transition interventions, ranging from the Catholic prohibition against removing healthy organs to the "PR nightmare" that would result if St. Joseph had its Catholic affiliation revoked by the Baltimore Archdiocese. JA1424-1425. Separately, Keith Riddle, St. Joseph's executive responsible for ensuring

compliance with the Catholic Church's Ethical and Religious Directives for Catholic Healthcare (ERDs), cited the ERDs' principles of bodily and functional integrity and prohibition against direct sterilization in response to an internal question about gender-transition interventions. JA956 (statement by Riddle); JA324-325 (Riddle was Vice President of Mission Integration, "who is in charge of ensuring that the ERDs are followed"). Hammons is wrong to portray one offhanded statement as the true motivation for St. Joseph's not providing gender-transition interventions.

In fact, St. Joseph embraces its transgender patients. Riddle emphasized that a transgender male patient had recently "delivered a baby . . . with great care from the staff." JA956.; *see also* JA1349 (Riddle testifying that "the head of the nursing unit there stayed with that patient throughout the night to make sure that everything was done perfectly well and the patient was cared for" and that "[t]he staff at the hospital does not discriminate against anyone"). Hammons' gynecologist recalled that delivery being discussed at the staff meeting regarding gender-transition interventions. *See* JA1424-25; JA1443. And Hammons' gynecologist testified that St. Joseph staff "were very accommodating, very understanding and very nice to [his] trans patients" and that he had "never had . . . an

experience to the contrary." JA1444. Hammons' attempt to paint St. Joseph's staff as bigots finds no support in the record.

II. UMMS IS NOT LIABLE UNDER SECTION 1557.

At the very least, UMMS is not liable for St. Joseph's alleged discrimination. Section 1557 incorporates the hornbook principle of corporate separateness. *See* Resp.-Opening Br. 43-52. St. Joseph's Section 1557 violations therefore cannot be imputed to UMMS merely because UMMS is St. Joseph's parent company. *Id.* at 45-46. The district court erred in holding otherwise. *Id.*

Hammons does not disagree. *See* Hammons Resp.-Reply Br. 22-29. He instead argues (at 22-23) that UMMS is liable for its own conduct in agreeing that St. Joseph's Board would retain "the authority and responsibility for maintaining Catholic identity by assuring the operationalization of the" ERDs. JA1036. But the "articulation of general policies and procedures" in some way connected to a future Section 1557 claim is not grounds to hold a corporate parent liable. *United States v. Bestfoods*, 524 U.S. 51, 72 (1998) (quotation marks omitted). And Hammons has not alleged that UMMS entering into a purchase agreement calling for St. Joseph to continue to be operated in accordance with its Catholic identity was, by itself, a Section 1557 violation. Hammons' Section 1557 claim instead

arises from the cancellation of his hysterectomy. But because UMMS did not require or direct that decision—which was St. Joseph's alone to make—UMMS is not a proper defendant.

1. Hammons does not defend the district court's error in imputing St. Joesph's actions to UMMS. He instead argues that the district court held UMMS liable for its "own illegal conduct." Hammons Resp.-Reply Br. 22. That makes little sense. The only Section 1557 violation alleged is the cancellation of Hammons' hysterectomy. JA41. But UMMS did not cancel Hammons' hysterectomy; St. Joseph did. *See* JA593.

Nothing in the record suggests otherwise. It was Dr. Cunningham, St. Joseph's chief medical officer, that ordered the surgery canceled. JA589, JA593, JA776. And Dr. Cunningham's decision was based on St. Joseph's policy against providing gender-transition interventions, JA582—a policy that UMMS does not share, JA158. UMMS therefore did not engage in any discrimination that Section 1557 prohibits.

2. Hammons instead faults UMMS for signing the Asset Purchase and Catholic Identity Agreements requiring St. Joseph to comply with the ERDs. Hammons Resp.-Reply Br. 22-23. But Hammons does not contend that agreeing to "a 'framework within which to continue authentic Catholic traditions and practices' " violates Section 1557. JA977. For good reason.

There is nothing about UMMS's commitment to allowing St. Joseph to continue as a Catholic hospital that inherently discriminates against any patient, much less based on a class protected by Section 1557.

There is also nothing in UMMS's commitments regarding St. Joseph's Catholic identity that required Hammons' hysterectomy to be canceled. Although UMMS agreed that St. Joseph would follow the ERDs, JA1042, the ERDs on their face do not forbid gender-transition interventions—they do not even mention the words "transgender" or "transition." *See* JA386-415. St. Joseph's policy against gender-transitioning interventions is based on general language in the ERDs requiring that physicians preserve the "bodily and functional integrity" of their patients and that "[t]he well-being of the whole person . . . be taken into account in deciding about any therapeutic intervention or use of technology." JA825; *see* JA774, JA956 (St. Joseph personnel citing these provisions as reasons for not providing gender-transition interventions); *see also* JA599, JA765-766, JA770 (St. Joseph personnel citing the ERDs generally as the reason for not providing gender-transition interventions). UMMS's agreement to allow St. Joseph's Board to exercise the "authority and responsibility" for operationalizing these broad, facially unobjectionable mandates does not constitute a Section 1557 violation. JA1036.

This might be a different case if UMMS was "directly a participant in the wrong complained of," *Bestfoods*, 524 U.S. at 64, or if UMMS "forced the subsidiary to take the complained-of action, in disregard of the subsidiary's distinct legal personality," *Pearson v. Component Tech. Corp.*, 247 F.3d 471, 487 (3d Cir. 2001). *Cf.* Hammons Resp.-Reply Br. 23-24. But UMMS was not even *aware* of Hammons' cancelled procedure. UMMS gave control of treatment decisions entirely over to St. Joseph; "UMMS executives and administrators neither control nor are involved in St. Joseph's day to day affairs, including but not limited to decisions regarding the provision and scheduling of patient-specific care." JA305. St. Joseph—and St. Joseph alone—has "final say over whether a surgery can take place." JA776. St. Joseph takes "no directive from UMMS" with respect to "the practice of Catholic theology and in the practice of the ERD[s]." JA185-186. UMMS therefore could not be directly responsible for cancelling Hammons' hysterectomy.

St. Joseph also had complete control over the policy resulting in the cancellation of Hammons' operation. St. Joseph follows its own counsel in interpreting the ERDs. The National Catholic Bioethics Center or a Catholic ethicist mutually chosen by St. Joseph and the Baltimore Archdiocese audits St. Joseph's adherence to the ERDs, and St. Joseph's CEO, the Chair of St.

Joseph's Board, and the Baltimore Archdiocese would work together to address any issues identified by an audit. JA1047. UMMS would not have a seat at the table. *See id.*; *see also* JA1043 (specifying that the Catholic Identity Agreement will apply "only to the operations of" St. Joseph and "[i]n no event will" apply to UMMS). St. Joseph's Board also has the discretion to decline to follow the ERDs should they ever be amended in a way that imposes an undue burden on St. Joseph's operations. JA1036. If the ERDs were amended to expressly forbid transgender care, St. Joseph would have the unilateral authority to depart from them.

Again, "it is hornbook law that the exercise of control" that a parent has over a subsidiary "will not create liability beyond the assets of the subsidiary." *Bestfoods*, 524 U.S. at 61-62 (quotation marks omitted). "That control includes the election of directors" and "the making of by-laws." *Id.* at 62 (quotation marks omitted); *accord id.* at 72 (explaining that the "articulation of general policies and procedures, should not give rise to direct liability") (quotation marks omitted). Thus, as Hammons' own authority explains, direct liability of a parent company does not flow from "general supervision consistent with [its] investor status, such as . . . articulation of general policies and procedures, that indirectly resulted in" wrongful conduct. *Good v. American Water Works Co.*, No. 2:14-cv-01374, 2016 WL

5402230, at *9 (S.D. W.Va. Sept. 26, 2016) (quotation marks omitted) (cited at Hammons Resp.-Reply Br. 24). The only discriminatory act alleged is the cancellation of Hammons' procedure, and there are no allegations—much less record evidence—that UMMS played any role in that decision.

3. That fact distinguishes Hammons' authorities. The athletics organization held directly liable for Title IX violations in *B.P.J. by Jackson v. West Virginia State Board of Education*, was responsible for implementing the very statute the plaintiff alleged constituted sex discrimination. 98 F.4th 542, 554 (4th Cir. 2024). In *Tomei v. Parkwest Medical Center*, a court held on summary judgment that a parent corporation could potentially be responsible for the alleged Section 1557 violations of its subsidiary—notwithstanding the rule that a parent "may not be held liable for the acts of [its subsidiary] solely by reason of its status as [a] parent corporation"—because the parent directly contracted for the failed video-interpreting services that gave rise to the plaintiff's claim. No. 3:19-cv-000041, 2022 WL 703656, at *7 (E.D. Tenn. Mar. 8, 2022). The court concluded the direct contract was sufficient to create a genuine issue of fact about whether the parent "exercise[d] more control over [its subsidiary] and its policies relating to accommodations than typically exercised in a parent/subsidiary corporate relationship." *Id.* (ellipses and quotation marks

omitted). But there is nothing approaching that kind of control by UMMS here. *See* JA236 (Dr. Cunningham explaining that she did not consult with anyone else in determining that Hammons' hysterectomy could not take place at St. Joseph).

UMMS and St. Joseph have already explained why *Silva v. Baptist Health South Florida, Inc.* 856 F.3d 824 (11th Cir. 2017); *T.S. by & through T.M.S. v. Heart of CarDon, LLC,* No. 1:20-cv-01669, 2021 WL 981337, at *9 (S.D. Ind. Mar. 16, 2021), *aff'd*, 43 F.4th 737 (7th Cir. 2022); and *Doe One v. CVS Pharmacy, Inc.*, No. 3:18-cv-01031, 2022 WL 3139516 (N.D. Cal. Aug. 5, 2022), do not control. Resp.-Opening Br. 50-52. All of these cases feature direct involvement in the allegedly illegal conduct well beyond anything that can be ascribed to UMMS. *Id.* Yet Hammons has no response.

Hammons ends (at 28) by retreating to the district court's attempt to reason from legislative history. *See* JA999-1000. But as UMMS and St. Joseph have already explained, that history shows only that Congress wanted to extend liability across activities within an organization—not that Congress wanted to abrogate background principles of corporate separateness. Resp.-Opening Br. 47. Title IX's amendment history may show that St. Joseph as a whole, and not just its surgery department, is liable for Section 1557 violations by its surgery department. *Id.* It does not demonstrate that

UMMS is responsible for Section 1557 violations by St. Joseph's surgery department. *Id.* Again, Hammons has no response.

4. In the end, it's not even clear why Hammons *cares* that UMMS is held liable for St. Joseph cancelling his hysterectomy. There is no risk that Hammons will be unable to recover from a covered entity—*he already has*. *See* JA1071-1072. If Hammons' real goal is to force UMMS to divest St. Joseph, that is not an appropriate use of the Article III judiciary. This Court and the district court exist to resolve "live dispute[s] between adverse parties, thereby preventing the federal courts from issuing advisory opinions." *Laufer v. Naranda Hotels, LLC*, 60 F.4th 156, 161 (4th Cir. 2023) (quoting *Carney v. Adams*, 592 U.S. 53, 58 (2020)). Hammons' suit sought redress for the inconvenience of having to schedule his hysterectomy at another hospital; he has received it. Hammons may *also* want to force a hospital that has operated according to Catholic tenets for over a century to conform to his conception of the greater good, but the judiciary is not a "vehicle for the vindication of value interests." *Hollingsworth v. Perry*, 570 U.S. 693, 707 (2013) (quoting *Diamond v. Charles*, 476 U.S. 54, 62 (1986)). Hammons' attempt to use the courts to force policy changes upon UMMS and St. Joseph should be rejected.

CONCLUSION

For the foregoing reasons and those in the pending motions to dismiss and the response-opening brief, this Court should dismiss the appeal for lack of jurisdiction. In the alternative, the Court should affirm the dismissal of the constitutional claims and reverse the judgment on the statutory claim.

Respectfully submitted,

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Dated: April 14, 2025

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the type-volume limitations of Fed. R. App. P. 28.1(e)(2)(B) and 32(a)(7)(B) because it contains 3,015 words, excluding the parts of the brief exempted by those rules, as counted using the word-count function on Microsoft Word software. This brief complies with the typeface and type style requirements because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Georgia font.

Dated: April 14, 2025

/s/ Sean Marotta
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CERTIFICATE OF SERVICE

I hereby certify that, on April 14, 2025, I electronically filed the original of the foregoing document with the clerk of this Court by using the CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: April 14, 2025

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