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COVER STORY

Courts, legislature consider key transgender rights issues

By Chase Scheinbaum
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After revealing on the MTV reality show “True Life” that she was born a male, Domaine Javier received a letter from California Baptist University, where she was studying nursing. The school was giving her the boot, claiming she committed fraud when she checked a box for “female” on matriculation papers. Last week, a Riverside judge waved off an attempt to dismiss her case against the university, setting the stage for what could be a long and important legal battle over transgender rights. Meanwhile, lawmakers in the state Assembly last week also passed two bills granting rights to transgender Californians.

One of the bills, AB 1266, co-authored by Assemblyman Tom Ammiano, D-San Francisco, would grant transgender students the right to use public school restrooms and play on athletic teams of their chosen gender. The other would make it simpler for transgender people to adjust name and gender on a driver’s license.

The civil rights of transgender people have been largely untested owing to the very recent expansion of protections to the small minority. California in 2011 included transgender rights under its anti-discrimination law, the Unruh Civil Rights Act. But if laws surrounding the issue are fuzzy, they may not remain so for long. The movement on both fronts could forge into shape

an area of civil rights law that remains inchoate.

“This shows the nobility of what a legislature can do,” Ammiano said in a statement Thursday about the bill he co-wrote. The Assembly approved AB 1266 with a 45-24 vote and sent it to the state Senate for consideration.

Policies relating to transgender students have become more commonplace in recent years. Javier’s complaint of being wrongly booted, while based on gender, is actually a civil rights double-whammy: The 26-year-old Riverside nursing student could, for the first time, force California courts to weigh whether religiously affiliated organizations with public characteristics, in this case a Christian school that accepts public money and accepts students of any religion, are beholden to discrimination laws. *Domainlor Javier Cabading v. California Baptist University, et al.*, RIC1302245 (Riverside Super. Ct., filed Feb. 25, 2013).

A ruling on the double-barreled case would potentially set a statewide precedent for religious organizations of a public nature, while simultaneously testing protections afforded to transgender people. Last week, Judge Matthew C. Perantoni ruled in an opinion delivered orally from the bench that the case would move forward.

However preliminary, the ruling demonstrates that “California law recognizes that Javier has a legal claim here,” said Suzanne B. Goldberg, director of Columbia Law

School’s Center for Gender and Sexuality Law. Goldberg was not in the courtroom to hear the opinion but said it’s “enormously significant” that the case can proceed.

“What this case stands for is the proposition that a religious institution which makes services available to the public and receives public funds — they can no longer discriminate based on religious views,” said Javier’s attorney, Paul J. Southwick of Davis Wright Tremaine LLP. Southwick has brought the case along with Timothy Volpert, of the same firm, free of charge to the client.

The school’s religious affiliation “doesn’t give them carte blanche to discriminate on whatever basis they want,” Southwick said.

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Javier’s complaint alleges that the university breached her contract of admission in addition to violating the Unruh Civil Rights Act. It seeks \$500,000 to compensate for the loss of scholarships and wages, and for enduring “humiliation and emotional distress” in the ordeal.

However, the university’s lead lawyer, James J. McDonald, of Ir-

vine-based Fisher & Phillips LLP, said Friday that the judge denied the defense’s attempt to have the case dismissed because a factual record was needed to proceed.

McDonald posits that the university is not subject to the Unruh Act because it is not a business enterprise, and that Javier cannot claim breach of contract because “she failed to exhaust administrative remedies.”

Javier, 26, is a United States citizen born in the Philippines. She immigrated to the United States in 2007. Before applying to California Baptist University, she was a student at Riverside City College where she was crowned homecoming queen and was a member of the Alpha Gamma Sigma Honors Society of California Junior Colleges. She also sang in her Catholic church choir.

Her expulsion from the private Christian school came in August 2011, shortly after she had been admitted “with honors” and awarded more than \$5,000 in academic and singing scholarships.

In a letter, the school’s dean of students accused her of “fraud” and “concealing identity.” They later banned her from the campus entirely. Today, she is back at Riverside City College, studying nursing.

Christian Baptist University, which did not respond to a request for comments, is affiliated with the Southern Baptist Convention, but its 6,000 students are not required to identify or be affiliated with any Christian denomination.