

16-1271cv

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

JOANNE FRATELLO,

Plaintiff-Appellant,

v.

**ROMAN CATHOLIC ARCHDIOCESE OF NEW
YORK, ST. ANTHONY'S SHRINE CHURCH,
AND ST. ANTHONY'S SCHOOL,**

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

Volume 2

MICHAEL D. DIEDERICH, JR.
Attorney for Plaintiff-Appellant
361 Route 210
Stony Point, NY 10980
(845) 942-0795
Mike@DiederichLaw.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOANNE FRATELLO,

Case No.: 12 civ. 7359
(CS)(CMS)

Plaintiff,

DECLARATION

-against-

ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK,
ST. ANTHONY'S SHRINE CHURCH AND ST.
ANTHONY'S SCHOOL,

Defendants.

-----X

KENNETH A. NOVIKOFF, an attorney duly admitted to practice law in the Courts of the State of New York, declares pursuant to 28 U.S.C. § 1746(2) that the foregoing is true and accurate:

1. I am a Partner in the law firm of Rivkin Radler LLP, counsel for Defendants ARCHDIOCESE OF NEW YORK i/s/h/a ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK, ("Archdiocese"), ST. ANTHONY'S SHRINE CHURCH, (the "Church"), AND ST. ANTHONY'S SCHOOL, (the "School"), (collectively "Defendants"), in the above-captioned matter. As such, I am fully familiar with the facts and circumstances stated herein.

2. I submit this Declaration in support of Defendants' motion pursuant to Fed. R. Civ. P. 56(a), seeking judgment summarily dismissing the Amended Complaint filed by Plaintiff Joanne Fratello ("Plaintiff" or "Ms. Fratello").

3. Annexed hereto as Exhibit "A," is a true and accurate copy of portions of the Archdiocese's website, *available at* <http://buildboldfutures.org/>.

4. Annexed hereto as Exhibit "B," is a true and accurate copy of a letter of reference from Mr. Charles Celauro, dated July 10, 2006.

5. Annexed hereto as Exhibit “C,” is a true and accurate copy of Ms. Joan Wall’s evaluation of Plaintiff, dated March 6, 2007.

6. Annexed hereto as Exhibit “D,” is a true and accurate copy of Ms. Diane Morgiewicz’s evaluation of Plaintiff, dated March 4, 2007.

7. Annexed hereto as Exhibit “E,” is a true and accurate copy of Plaintiff’s self-evaluation, dated February 20, 2007.

8. Annexed hereto as Exhibit “F,” is a true and accurate copy of a letter addressed to Monsignor Reynolds from Plaintiff, dated March 23, 2007.

9. Annexed hereto as Exhibit “G,” is a true and accurate copy of Plaintiff’s counsel’s letter, dated July 19, 2011.

10. Annexed hereto as Exhibit “H,” is a true and accurate copy of Plaintiff’s Equal Employment Opportunity Commission, (“EEOC”), Complaint, dated December 5, 2011.

11. Annexed hereto as Exhibit “I,” is a true and accurate copy of an article entitled “Strong Faith Motivates New St. Anthony Principal,” published in the “Rockland County Journal News,” dated August 28, 2007.

12. Annexed hereto as Exhibit “J,” is a true and accurate copy of Monsignor Reynolds’ evaluation of Plaintiff, dated March 4, 2008.

13. Annexed hereto as Exhibit “K,” is a true and accurate copy of Sister Helen Doychek’s evaluation of Plaintiff.

14. Annexed hereto as Exhibit “L,” is a true and accurate copy of Ms. Margaret Murphy’s evaluation of Plaintiff, dated March 6, 2008.

15. Annexed hereto as Exhibit “M,” is a true and accurate copy of Ms. Lois Dorsey’s evaluation of Plaintiff, dated March 13, 2008.

16. Annexed hereto as Exhibit “N,” is a true and accurate copy of a video of Plaintiff reading the children’s’ book, Little Owl and the Star: A Christmas Story, to a student.

17. Annexed hereto as Exhibit “O,” is a true and accurate copy of an email dated January 7, 2009.

18. Annexed hereto as Exhibit “P,” are true and accurate copies of memoranda and e-mails under Plaintiff’s name to St. Anthony’s teachers.

19. Annexed hereto as Exhibit “Q,” is a true and accurate copy of a portion of the School’s 2011 Yearbook.

I declare the truth of the following subject to the penalties of perjury.

Dated: Uniondale, New York
April 21, 2015

/s/
KENNETH A. NOVIKOFF

GRADES K-8 ([HTTP://BUILDBOLDFUTURES.ORG/ELEMENTARY/](http://buildboldfutures.org/elementary/))

(<http://buildboldfutures.org/elementary/>)

GRADES 9-12 ([HTTP://BUILDBOLDFUTURES.ORG/SECONDARY/](http://buildboldfutures.org/secondary/))

(<http://buildboldfutures.org/secondary/>)

VIDEOS ([HTTP://BUILDBOLDFUTURES.ORG/VIDEOS/](http://buildboldfutures.org/videos/))

(<http://buildboldfutures.org/videos/>)

TOURING TUESDAYS ([HTTP://BUILDBOLDFUTURES.ORG/TOURING-TUESDAYS/](http://buildboldfutures.org/touring-tuesdays/))

(<http://buildboldfutures.org/touring-tuesdays/>)

About Us

2014-2015 New York Archdiocese At a Glance

Superintendent of Schools Office

1011 First Avenue
New York, NY 10022

Total Number of Schools

220

Enrollment

69,787

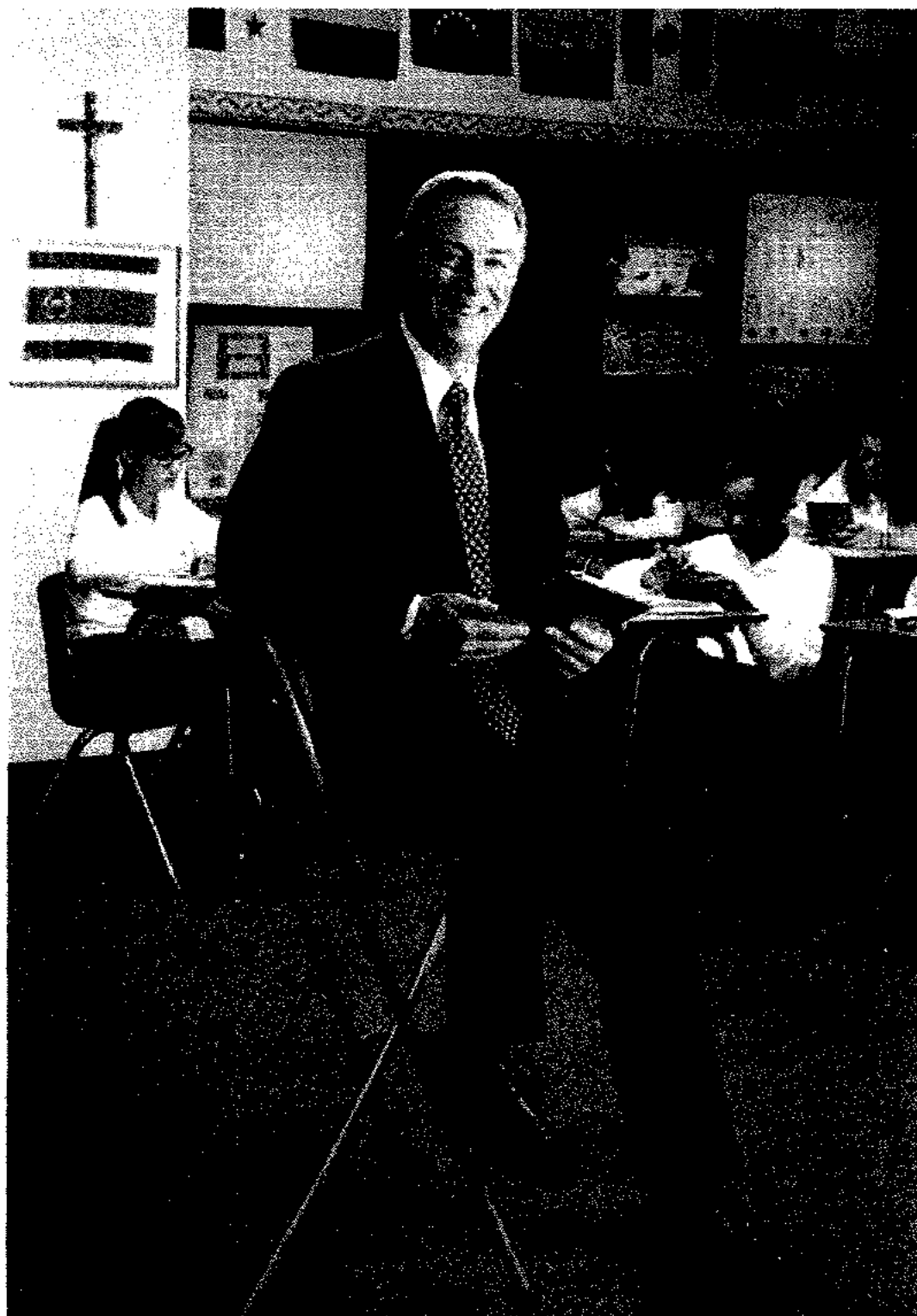
Web

<http://buildboldfutures.org> (<http://buildboldfutures.org>)

(<http://buildboldfutures.org/wp-content/uploads/2014/08/McNiff-web.jpg>) Timothy J. McNiff, Ed.D., Superintendent of Schools and students from Blessed Sacrament School and Sacred Heart of Jesus School in Manhattan.

Our Mission

The mission of the Catholic Schools of the Archdiocese of New York is to ensure our schools are Christ-centered, academically excellent, and welcoming



communities that teach students to be life-long learners and leaders energized by fidelity to Christ, the Church, and one another.

Catholic School Experience

Catholic education in the Archdiocese of New York began in 1805 in St. Peter's Parish in lower Manhattan. Today, Catholic educators in the archdiocese serve more than 71,000 students from Pre-K to twelfth grade in rural, urban and suburban settings throughout the ten southern counties of New York State. Building on more than 200 years of inspiring students, our Catholic schools offer an excellent, nurturing, values-centered education in a structured environment that helps children of all backgrounds realize their fullest potential as human beings.

In Catholic schools today, a love of learning starts in Pre-K and continues

through the years, with 98 percent of our high school seniors graduating and 98 percent of those graduates going on to post-secondary education.

Our Catholic faith is central to what we do, and we proudly teach it. Gospel ideals permeate the substance and structure of our lessons. We share our faith through daily prayer and the regular celebration of Mass as a school community. We foster a spirit of Christian service as an expression of our concern for the needs of others. Character formation and personal spirituality are rooted in the study of Catholic teachings and tradition, as well as sacramental preparation.

Our academic programs grounded in basic skills meet the varied needs of each school community by incorporating technology, advanced math, hands-on science, and foreign language coupled with the various forms of art study. We offer a forward-focused curriculum, integrating technology into classroom instruction, preparing our students to compete in an increasingly complex world.

Our students are motivated to do their best. We help them understand their talents, find meaning in their lives and build on their strengths to achieve success in school and beyond graduation. We provide them with the skills and inspire the self-discipline and confidence needed for them to take their places as compassionate leaders in their communities and in society.

The Catholic school experience is an unparalleled opportunity to develop a child's mind, heart and soul.

EXECUTIVE SUMMARY

“You show me a school that is thriving, and I’ll show you a strong school leader with a vision.”

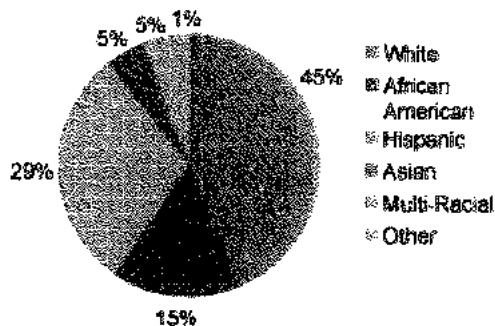
-Timothy J. McNiff, Ed.D., Superintendent of Schools

Catholic schools in the Archdiocese of New York continue to be places where children grow and learn. I firmly maintain, however, it is the adults in our school buildings who make the magic of effective learning happen, specifically our dedicated principals. You show me a school that is thriving, and I’ll show you a strong school leader with a vision, which is why we decided to spotlight some of our exceptional principals in this year’s Annual Report.

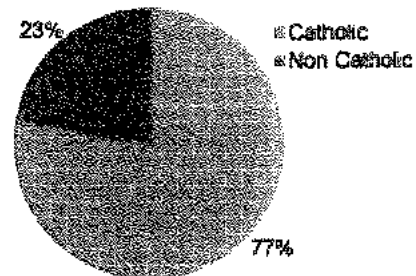
Our strategic plan, Pathways to Excellence, laid out the roadmap for advancing Catholic education in the Archdiocese of New York, but implementing its strategies required resolve and heavy lifting on the part of our principals. While they are supported by a talented team of Regional Boards of Trustees, Regional Superintendents and Regional Business Managers, the principals are ultimately the ones who set the tone for everything that happens in our Catholic schools. [Read More](#)

Excellence Starts at the Top

Racial Diversity in Catholic Schools in the Archdiocese of New York



Faith Diversity in Catholic Schools in the Archdiocese of New York



(<http://buldboldfutures.org/wp-content/uploads/2014/08/Arch-AT-A-GLANCEfdPart1a1chart-web.jpg>)

Six Elementary Schools in the Partnership Network

Manhattan

Mt. Carmel-Holy Rosary (371 Pleasant Avenue)
Our Lady Queen of Angels (229 East 112th Street)
St. Mark the Evangelist (55 West 138th Street)

The Bronx

St. Athanasius (830 Southern Blvd)
Immaculate Conception (378 East 151st Street)
Sacred Heart (1248 Nelson Avenue)

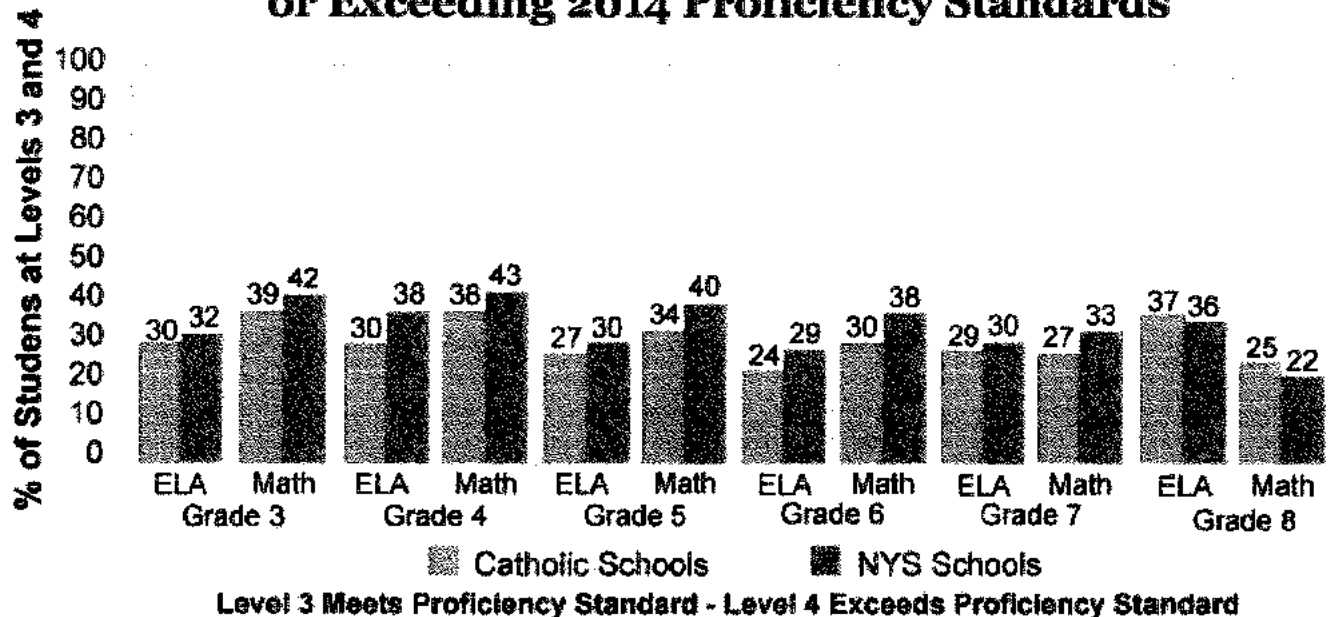
(<http://buldboldfutures.org/wp-content/uploads/2014/08/Chart-web.jpg>)

Total Number of Schools in the Archdiocese of New York, by Region

	Elementary	Early Childhood	Secondary	Special Education
Manhattan	28	2	13	4
Northwest/South Bronx	21	0	6	0
Northeast/East Bronx	21	0	7	0
Staten Island	22	1	7	3
Central Westchester	25	3	9	1
Northern Westchester/Putnam	6	2	1	0
Rockland	5	2	1	0
Ulster/Sullivan/Orange	11	2	2	0
Dutchess	7	1	1	0
Partnership	6			
Totals	152	13	47	8

(http://buldboldfutures.org/wp-content/uploads/2014/08/Chart1_Web.jpg)

Archdiocese of New York Schools Meeting or Exceeding 2014 Proficiency Standards



<http://buildboldfutures.org/wp-content/uploads/2014/08/NYSchart16yr-web.jpg>

Test Results Footnote: * In January 2011, the NYS Board of Regents adopted the New York State P-12 Common Core Learning Standards (CCLS), which include the Common Core State Standards (CCSS) and a small amount of additional standards uniquely added by New York State. The New York State Pre-K through Grade 12 CCLS were implemented in New York State schools at the beginning of the 2012-2013 school year. As part of the Regents Reform Agenda, New York State has embarked on a comprehensive reform initiative to ensure that schools prepare students with the knowledge and skills they need to succeed in college and in their careers. To realize the goals of this agenda, changes are occurring in standards, curricula and assessments. These changes are affecting pedagogy and student learning. As a result of the recently adopted CCLS, this year's test results establish a new benchmark, and future years progress will be measured against these new performance levels. Since CCLS represent a new way of teaching and learning, these results should not be compared to previous years' test scores.

Q FIND A SCHOOL & REQUEST INFORMATION

[\(/school_finder.html\)](/school_finder.html)

ESPAÑOL



<https://www.facebook.com/CatholicSchoolsArchdioceseNewYork>



<https://www.youtube.com/user/BuildBoldFutures>

BILINGUAL PHONE LINE: 646-794-2885

ELEMENTARY CALENDAR ([HTTP://BUILDOLDFUTURES.ORG/ELEMENTARY/ELEMENTARY-CALENDAR/](http://buildboldfutures.org/elementary/elementary-calendar/))

GRADES 9-12 ([HTTP://BUILDOLDFUTURES.ORG/SECONDARY/](http://buildboldfutures.org/secondary/))

VIDEOS ([HTTP://BUILDOLDFUTURES.ORG/VIDEOS/](http://buildboldfutures.org/videos/))

(<http://buildboldfutures.org/videos/>)

TOURING TUESDAYS ([HTTP://BUILDOLDFUTURES.ORG/TOURING-TUESDAYS/](http://buildboldfutures.org/touring-tuesdays/))

(<http://buildboldfutures.org/touring-tuesdays/>)



Elementary Curriculum

Catholic schools in the Archdiocese of New York are renowned for high educational standards and outstanding performance. Our schools are committed to maintaining the highest quality academics and equipping students with the skills needed to succeed in an increasingly competitive world.

With that in mind, the archdiocese has been proactive in embracing The Common Core Learning Standards ("CCLS"), a single set of clear, consistent learning expectations in English Language Arts (ELA) and mathematics designed to help prepare students in grades K-12 for college and career success.

Combined with our robust curriculum known as The Essential Learnings (based on the NYS Standards), the CCLS provide challenging goals that aims to meet the needs of students in the 21st Century. We teach for success throughout life rather than on a single test. Our schools are decidedly future-focused, and incorporate both educational technology and interactive learning.

Within our schools academic excellence is further enhanced by Catholic values which foster the growth of our students as truthful, generous, and joyful people capable of becoming leaders in the Church and our world.

Our specific curriculum goals for each subject are described on the pages that follow. Because the students within our nine-region system have diverse needs, the skilled teachers in each of our schools tailor their lessons to meet the learning styles of their pupils.

Please use the **Search for a School** (<http://buildboldfutures.org/schoolfinder.html>) function to reach your local principal for specific information on how Common Core and Essential Learnings are implemented in that school. To learn more about subject curriculum in the Archdiocese of New York, click on the links below:

Religion

([index.php?page_id=1036](#))

ELA

([index.php?page_id=1039](#))

Math

([index.php?page_id=1045](#))

Science

([index.php?page_id=1044](#))

Social Studies

([index.php?page_id=1050](#))

Educational Technology

([index.php?page_id=1054](#))

Music

([index.php?page_id=1057](#))

Art

([index.php?page_id=1060](#))

Physical Education

([index.php?page_id=1065](#))

([index.php?page_id=1065](#))

ELEMENTARY CALENDAR ([HTTP://BUILDOLDFUTURES.ORG/ELEMENTARY/ELEMENTARY-CALENDAR/](http://buildboldfutures.org/elementary/elementary-calendar/))

GRADES 9-12 ([HTTP://BUILDOLDFUTURES.ORG/SECONDARY/](http://buildboldfutures.org/secondary/))

VIDEOS ([HTTP://BUILDOLDFUTURES.ORG/VIDEOS](http://buildboldfutures.org/videos/))

(<http://buildboldfutures.org/videos/>)

TOURING TUESDAYS ([HTTP://BUILDOLDFUTURES.ORG/TOURING-TUESDAYS/](http://buildboldfutures.org/touring-tuesdays/))

(<http://buildboldfutures.org/touring-tuesdays/>)



Elementary

Graduates move on from Catholic elementary school with a solid academic and social foundation necessary for the academic rigors of high school, college and beyond.

The elementary schools in the Archdiocese are safe, nurturing places that build on a long history of academic and personal success. We educate more than 46,777 elementary and special education students in 170 schools across the 9 Catholic school regions of the Archdiocese, including the John Cardinal O'Connor School in Irvington, NY for students with learning difficulties. They are faith-filled environments that incorporate religious instruction, sacramental preparation and regular participation in Mass, and blend Catholic values into subject curriculum.

Our schools are mission-driven and data informed. Our curriculum follows the National Common Core Learning Standards (CCLS), and students take New York State tests in English Language Arts, Math and Science along with the Iowa Test of Basic Skills. Students perform well on those exams. Test scores are only

one piece of information in a comprehensive system of assessment. Our schools also integrate academic learning with enrichment activities and character development to help students develop spiritually, intellectually, socially and physically.

Q FIND A SCHOOL & REQUEST INFORMATION

(/school_finder.html)

ESPAÑOL



(<https://www.facebook.com/CatholicSchoolsArchdioceseNewYork>)



(<https://www.youtube.com/user/BuildBoldFutures>)

BILINGUAL PHONE LINE: 646-794-2885

Home (<http://buildboldfutures.org>) | Contact (<http://buildboldfutures.org/contact>) |

Careers (<http://buildboldfutures.org/careers>) | Webmail (<http://webmail.archny.org/>) |

Clergy Webmail (<http://owa.archny.org/>) | Documents (<http://documents.adnyeducation.org/>) |

Staff Access (<http://buildboldfutures.org/staff-access>) |

Tech Support (<http://www.archny.org/departments/index.cfm?i=19288>) |

Admin (<http://buildboldfutures.org/bbf/wp-login.php>)

Office of the Superintendent of Schools, Archdiocese of New York | 1011 First Avenue, 18th Floor, New York, NY 10022

© Archdiocese of New York. All rights reserved.



REFERENCE REQUEST

Dear Mr. Charles Celano,

I have applied for a principal's position in the elementary schools of the Archdiocese of New York. Would you give your candid appraisal of my qualifications for this important leadership role? Your reply will be kept confidential. I am grateful for your cooperation. Kindly return the completed reference in the accompanying envelope to Michael Ramos, Associate Superintendent of Schools for Professional Recruitment, 1011 First Avenue, New York, New York 10022-4112

I do ☒ do not ☐ waive my right to see this reference.

SIGNED

Joanne Fratello

DATE

7/10/06

APPLICANT'S NAME

Joanne Fratello

DATE

1. In what capacity have you known the applicant? I supervised Mrs.

Fratello at Sacred Heart School when
she served as teacher and assistant
principal

2. I have known the applicant from 6/05 to Present

3. Please give evidence of this applicant's:

a. COMMITMENT TO CATHOLIC EDUCATION Mrs. Fratello

was a school leader in making our faith
alive and known to our population.

b. PERSONAL RESPONSIBILITY (punctuality, going "above and beyond the call of duty, etc.) Mrs. Fratello always put the children

and school first. She is a high quality
individual who extended herself to
everyone.

c. LEADERSHIP QUALITIES (ability to work with others to meet or exceed a goal)

Mrs. Fratello worked with all members
of the Sacred Heart School community to
lead the improvement effort. She exceeded
our expectations repeatedly.

Joanne Fratello
11 Elm Drive
Stony Point, NY 10980
(845) 947-3740
fzaccie@msn.com

St. Anthony School
36 West Nyack Road
Nanuet, NY 10954

March 23, 2007

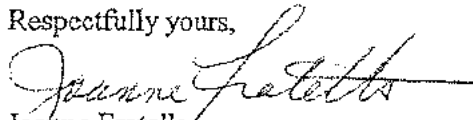
Dear Monsignor Reynolds:

It was with great pleasure speaking with you regarding the Principal position available in your school for the 2007-08 school year. I am currently a Principal of the Archdiocese of New York at St. Joseph School, Florida, New York. My goal is to utilize my administrative experiences and ~~strong Catholic faith~~ to foster a nurturing and educational environment for the children of St. Anthony School.

I have obtained a Professional Diploma in Educational Administration and a Master of Science Degree in Education from Long Island University. Presently, I hold a New York State Certificate in School District Administration and a New York State Certificate in School Administration Supervision. Additionally, I have New York State Teaching Certificates in Elementary Education PreK-6, Social Studies 7-12 and Distributive & Business Education 7-12.

I would welcome the opportunity to be considered for the position.

Respectfully yours,


Joanne Fratello

replied
4/4/07

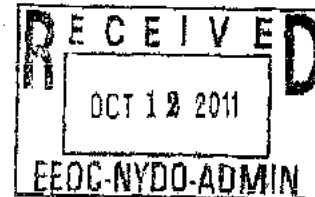
DEFTS.-000411

U.S. EQUAL OPPORTUNITY EMPLOYMENT COMMISSION

JOANNE FRATELLO,

Charging Party,

-against-

**EEOC Charge of
Discrimination**ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK,
Respondent.State of New York :
County of Rockland: ^{ss}

JOANNE FRATELLO, being duly sworn, deposes and states under penalty of perjury as follows:

1. The following is my complaint of discrimination against the ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK ("Archdiocese") with offices: Archbishop Timothy Dolan c/o Office of the Superintendent of Schools, Archdiocese of New York, 1011 First Avenue, 18th Floor, New York, New York 10022.¹

2. I reside, and have at all times relevant herein resided, at 11 Elm Drive, Stony Point, NY 10980.

3. I believe that I was discriminated against by the Archdiocese on the basis of my gender and in retaliation for complaining of gender discrimination and sexism.

4. I am a divorcee (through no fault of my own), a single mother, a practicing Catholic, and until recently, the very successful principal of St. Anthony's Shrine Church, in Nanuet, New York (in Rockland County).

5. Based upon gender discrimination and sexism by the Pastor of St. Anthony's Shrine Church, in Nanuet, New York., my contract was not renewed and my employment was terminated in June 2011.

6. The non-renewal of my contract, after four years of outstanding performance, appears

¹ Archdiocese's telephone numbers are: 212.371.1000 ext. 2888, fax: 212.758.3018. Its investigator and/or insurance adjuster in this matter is apparently: Mr. Joe DeLeo, Catholic Mutual Insurance, tel. 646-794-3019.

to be utterly unfair and the result of biased perceptions by St. Anthony's Pastor, Father Jerry.

7. In today's economic climate and era of school cutbacks, Father Jerry's unjustified action will undoubtedly destroy my career in education.

8. Thus, I request that the EEOC direct my reinstatement either at St. Anthony's or some other school in the Archdiocese.

Pastor's delusions about sex in the workplace

9. I believe that an EEOC inquiry will disclose that Father Jerry invented in his imagination the idea that I was having an "affair" with the school's maintenance director.

10. Father Jerry had and has no basis whatsoever for such a scandalous conclusion. If the facts as related to me are true, Father Jerry's conclusion that I was committing adultery is akin to the tribal beliefs by arch-religious members of the Taliban in Afghanistan that any woman found alone with a man outside the home must be having a sexual affair. I hope that 21st Century Catholicism is somewhat more progressive in its views. Father Jerry, however, is not.

11. I believe the EEOC will find that I am not alone in concluding that Father Jerry's views of male-female interaction in a 21st Century business or school environment is different than it was 100 years ago (or for that matter, during the Inquisition).

12. I believe the EEOC will find that Father Jerry realized just how ridiculous his conclusions were, and then invented out of whole cloth (and certainly not religious cloth) a new accusation, namely, that I used profane words in a telephone conversation with him, as well as some other false assertions regarding teacher matters. These were ridiculous, and lies.

13. This was after I complained to Father Jerry (and others) that the adultery accusation was unfounded and sexist. His subsequent adverse action against me constituted reprisal.

14. I believe the EEOC can corroborate that I am an excellent school administrator, with excellent documented job performance; that I am a devote Catholic (I remains un-remarried and abstinent, and thus a role model for the Church); and that I have committed no wrong either as an employee or as a Catholic.

15. On the other hand, I believe that Father Jerry has virtually no experience in the education field; that he has serious personal problems known to the Archdiocese, including:

- that he is a failed military chaplain (where he may have heard a few curse words before);

- that he is not respected by his clerical peers or pastoral mentors; and
- that he apparently has no compunction about defaming a competent, loyal, faithful and professional employee, destroying her career through false statements of fact and damning innuendo in the process.

16. If the EEOC and the Archdiocese will accept the evidence, I will offer to take a lie detector test regarding the above.

17. Furthermore, I request that the EEOC inquire of the male co-worker whose name has also been tarnished by Father Jerry's unfounded accusation of adultery (and yet who has not been fired or "disciplined" by the Archdiocese or Father Jerry).

18. Again, this is 21st Century New York, not 13th Century Afghanistan. Father Jerry's conclusions of adultery, to my knowledge, were drawn from conduct of my such as:

19. having a cup of coffee with a male colleague, in my office with the door open, and
20. having lunch with him in connection with a business activity of the school.

21. This should not invite any suspicion. Yet Father Jerry apparently had sex on his mind, and thus created in his mind the delusion of adultery where no reasonable person in the 21st Century American work environment would see anything except a ordinary interaction between two co-workers.

22. Father Jerry had no facts to justify any suspicion of wrongdoing on my part, yet because of my gender, he caused my termination.

23. After I presented these facts to the Archdiocese, through a letter to Archbishop Dolan—who I met personally hosted at the Shrine and school—the Archdiocese took absolutely no corrective action, and did nothing to investigate my claims or correct this injustice. The Archdiocese did not, for example, contact the former Pastor of the school, highly respected Monsignor Reynolds, whom I believe supports me 100%.

24. The bottom line in this case is that if I were a man, I would still be working at the school as its principal. In my view, my employment termination was manifestly discriminatory and retaliatory, due to my gender.

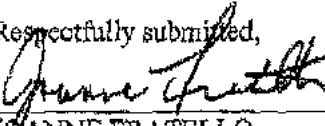
25. I hope the EEOC can convince the Archdiocese to "do the right and just thing," by restoring my employment, by reinstating my employment through retroactive renewal of my contract.

26. Otherwise, because the Archdiocese's termination and post-termination action and

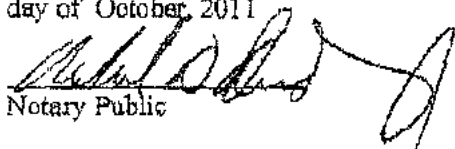
inaction regarding my employment are based upon impermissible discrimination and retaliation,
I will request a remedy at law.

WHEREFORE, I request that the EEOC determine that the Archdiocese discriminated
against me, and provide me will appropriate relief in accordance with law.

Respectfully submitted,


JOANNE FRATELLO

Sworn to before me this 10th
day of October, 2011


Notary Public

MICHAEL D. DIEDERICH, JR.
Notary Public, State of New York
Reg. No. 4236132
Elected in Rockland County
Commission expires June 13, 2014

4A Tuesday, August 28, 2007 The Journal News

R

Rockland

Strong faith motivates new St. Anthony's principal

Nanuet Catholic school head also has corporate experience

Randi Weiner
The Journal News

NANUET — Joanne Fratello sees two things clearly: the value of a Catholic education and the need to provide one for those parents who wish to give their children more than simply academics.

"We educate the children ... and help to prepare them for life as lifelong learners as well as practitioners of their faith," the new principal of St. Anthony's School said. "Families are looking for a strong Catholic faith-based education and we want to give that opportunity to them."

Fratello grew up in Rockland and attended secular schools, but with a strong connection to Catholicism and her church, she said. She received her bachelor's degree in economics from Ramapo College of New Jersey and her first job in the corporate sector was as a trainer, she said.

"I always liked working training people," the longtime Rockland resident said. Training adults, whether on computers or for underwriting programs, struck a chord with her and she thought she might enjoy teaching. She felt teaching children could have an advantage over teaching adults.

"I thought if you could start younger, you could make a difference," she said. "I was a soccer

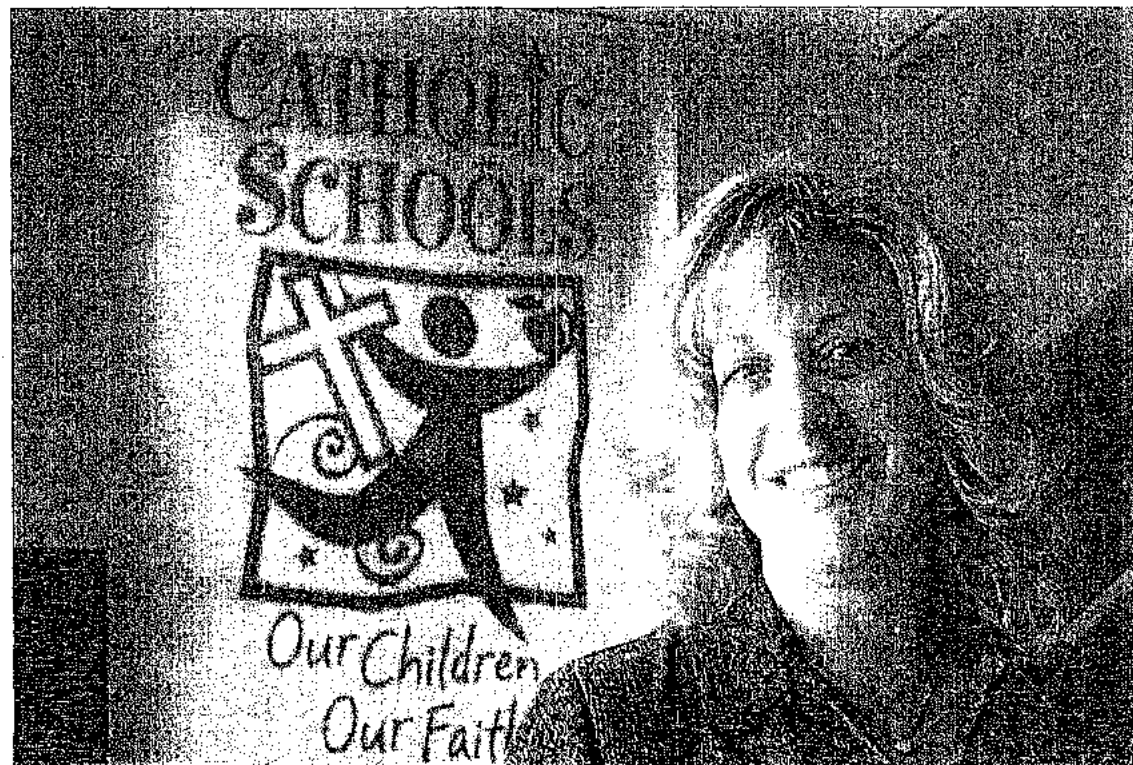
The Fratello file

Joanne Fratello
Age: 36
Residence: Stony Point
Education: Ramapo College of New Jersey, Bachelor of Science in Economics; Long Island University in Orangeburg, Master of Science in Education; Catholic Education Program through 12th grade and administrative certification
Experience: Trainer in financial sector about 1993-2003; elementary school teacher; assistant principal, Sacred Heart Elementary School, Suffern, 2003-06; principal, St. Joseph School, Florida, N.Y., 2006-07

coach. I always worked with children in one way or another, and with the training programs and working with children, I decided to go into teaching and I enjoyed it. I loved it. I just furthered my own education."

So after a decade in the corporate world, she returned to college to get a master's in education, and eventually her certification in administration.

She taught elementary grades at Sacred Heart School in Suffern for several years before being named an assistant principal. Last year, she was the principal of St. Joseph Elementary in Florida, N.Y., unsuccessfully struggling to keep the school afloat. It closed at the end of the school year, leaving



Joanne Fratello is the new principal at St. Anthony's School in Nanuet. Fratello said that the 240-student school had made several changes this summer, and that students could expect to have some new options when they start school next week.

Sally Gardner

her free to apply to St. Anthony's to replace Bridge Browne, who left to become principal of Christ the King School in Yonkers.

While she enjoyed being a teacher, being an administrator gave her more liberty to make

larger changes she wanted while still keeping a hand in the classroom, she said. Her corporate background gave her an understanding of the world outside the school building, an advantage that impressed the committee that

chose her from among seven candidates for the position, Monsignor William Reynolds said.

"We had a search committee and interviewed people and she was the one we picked," he said. "We liked her very much. She's local — she's from Stony Point — and the former principal left be-

cause she lived in Bronxville and she was going to be too far away to be too far away. We liked her very much. The business experience she had was a big plus."

mathematics in the

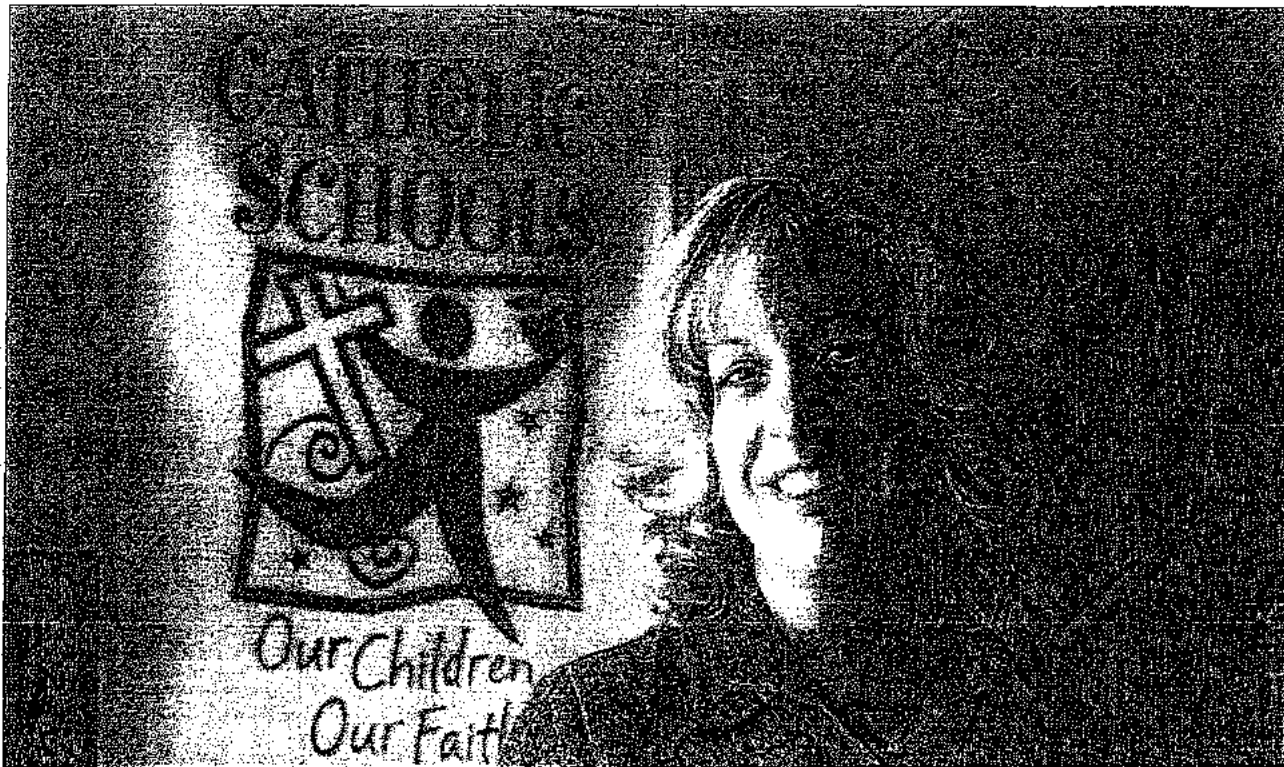
Reynolds said it just completed a phase that included staff by nine teachers and that this was the children would be instead of double, to classroom.

Fratello sees the future of the school as a place where children can learn and grow. She is excited to be part of the team that will be building the future of the school.

Rockland

LoHud.com

vates new St. Anthony's principal



Kathy Gardner/The Journal News

Joanne Fratello is the new principal at St. Anthony's School in Nanuet. Fratello said that the 240-student school had made several changes during the summer, and that students could expect to have some new options when they start school next week.

her free to apply to St. Anthony's to replace Bridge Browne, who left to become principal of Christ the King School in Yonkers.

While she enjoyed being a teacher, being an administrator gave her more liberty to make

larger changes she wanted while still keeping a hand in the classroom, she said. Her corporate background gave her an understanding of the world outside the school building, an advantage that impressed the committee that

chose her from among seven candidates for the position, Monsignor William Reynolds said.

"We had a search committee and interviewed people and she was the one we picked," he said. "We liked her very much. She's local — she's from Stony Point — and the (former) principal left because she lived in Bronxville and the traveling just got to be too much for her. The business experience ... certainly gives us a brand-new aspect."

Fratello said the 240-student school had made several changes during the summer, and students could expect to have some new options when they return next week. Among the improvements were expanding the Spanish language program to the fifth and sixth grades in addition to the existing seventh- and eighth-grade classes.

The school already offers a strong preschool program, a volunteer-led after-school program and the option to take ninth-grade

mathematics in the eighth grade.

Reynolds said the school has just completed a belt-tightening phase that included cutting the staff by nine teaching positions, and that this was the first year that the children would have single, instead of double, teachers in the classroom.

Fratello sees the positive in the situation, praising the support she's gotten from the parents, the veteran staff, the church and those children she's worked with during the summer. She would like to concentrate on strengthening the program and building enrollment.

"There are very good things we are doing," she said. "We are going to move forward with these things, giving a sound foundation for families who would like a Catholic education."

Reach Randi Weiner
at rweiner@lohud.com
or 845-578-2488.

DEFTS.-024229



Evaluation as Religious Leader **PASTOR'S EVALUATION OF PRINCIPAL**

Archdiocesan Principal Evaluation Process

FIRST YEAR

Principal Joanne Frutella Date 3/4/08
 School St. Anthony Phone 845-623-2138
 Address Norwalk, NY Zip 10954

This form identifies the areas of responsibility of the principal:

A) RELIGIOUS LEADER B) INSTRUCTIONAL LEADER C) COMMUNICATOR D) ADMINISTRATOR

Please evaluate your principal in the above areas. Use the following code to identify your performance:
 E-Excellent; G-Good; S-Satisfactory; NI-Needs Improvement.

E G S NI

As RELIGIOUS LEADER, the principal:

- | | | | | | |
|---|------|--------------------------------|--|--|--|
| 1. fosters a Christian atmosphere which enables staff and students to achieve their potential | 1. | <u>E</u> | | | |
| 2. reviews school philosophy and goals with the staff in accordance with current Church documents | 2. | <u>don't know</u> | | | |
| 3. gives priority to a comprehensive religious education program by | | | | | |
| a. implementing Archdiocesan guidelines | 3a. | <u>don't know</u> | | | |
| b. encouraging communal worship | b. | <u>E</u> | | | |
| c. supporting service-oriented activities | c. | <u>E</u> | | | |
| 4. selects staff members who are committed to a Christian atmosphere and support Catholic teachings as vacancies occur | 4. | <u>we haven't hired anyone</u> | | | |
| 5. ensures that religion classes are taught by knowledgeable and committed Catholics | 5. | <u>E</u> | | | |
| 6. encourages teachers to obtain Archdiocesan catechetical certification | 6. | <u>E</u> | | | |
| 7. provides for religious growth among staff members | 7. | <u>don't know</u> | | | |
| 8. ensures the implementation of the Catholic Values Integration Program in curriculum and all other aspects of school life | 8. | <u>don't know</u> | | | |
| 9. upholds and strengthens the Catholic identity of the school | 9. | <u>E</u> | | | |
| 10. encourages and supports a strong program of evangelization | 10. | <u>don't know</u> | | | |
| 11. fosters a spirit of high morale among the | | | | | |
| a. faculty | 11a. | <u>E</u> | | | |
| b. students | b. | <u>E</u> | | | |
| c. parents | c. | <u>E</u> | | | |
| 12. attempts to promote interaction between the parish and school | 12. | <u>E</u> | | | |

I.

(9/03)

DEFTS.-000001

COMMENTS:

E G S NI

As INSTRUCTIONAL LEADER, the principal:

- | | | | | | |
|---|-----|-------------|-------------------|-------------|-------------|
| 13. determines annually with staff the school's self-assessment goals and objectives | 13. | <u> </u> | <u>don't know</u> | <u> </u> | <u> </u> |
| 14. maintains an atmosphere which is conducive to learning and teaching | 14. | <u>E</u> | <u> </u> | <u> </u> | <u> </u> |
| 15. maintains an effective instructional program suited to the abilities and needs of the students in this school | 15. | <u>E</u> | <u> </u> | <u> </u> | <u> </u> |
| 16. provides suitable in-service opportunities for the professional growth of the staff | 16. | <u> </u> | <u>don't know</u> | <u> </u> | <u> </u> |
| 17. motivates teachers and students to do their best | 17. | <u>E</u> | <u> </u> | <u> </u> | <u> </u> |
| 18. encourages initiative and innovative teaching | 18. | <u> </u> | <u>don't know</u> | <u> </u> | <u> </u> |
| 19. recognizes individual differences of students and makes adequate provision for them | 19. | <u>E</u> | <u> </u> | <u> </u> | <u> </u> |

COMMENTS:

E G S NI

As COMMUNICATOR, the principal:

- | | | | | | |
|--|------|-------------|-------------------|--------------|-------------|
| 21. creates a positive school climate | 21. | <u>E</u> | <u> </u> | <u> </u> | <u> </u> |
| 22. respects the dignity of the individual person | 22. | <u>E</u> | <u> </u> | <u> </u> | <u> </u> |
| 23. is regularly available to | | | | | |
| a. clergy | 23a. | <u>E</u> | <u> </u> | <u> </u> | <u> </u> |
| b. faculty and staff | b. | <u>E</u> | <u> </u> | <u> </u> | <u> </u> |
| c. students | c. | <u>E</u> | <u> </u> | <u> </u> | <u> </u> |
| d. parents | d. | <u>E</u> | <u> </u> | <u> </u> | <u> </u> |
| 24. handles conflict situations in a professional manner | 24. | <u> </u> | <u>don't know</u> | <u>stony</u> | <u> </u> |
| 25. provides a variety of opportunities for faculty to meet as a Christian community | 25. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |

2.

26. involves the school in parish and community activities and communicates them in the parish bulletin	26.	<u>E</u>	_____	_____	_____
27. relates to and supports the					
a. pastor	27a.	<u>E</u>	_____	_____	_____
b. director/coordinator of religious education	b.	<u>E</u>	_____	_____	_____
c. parish organizations	c.	<u>E</u>	_____	_____	_____
28. informs faculty of programs of the Archdiocesan, school, parish, and community	28.	_____	_____	_____	_____
29. publicizes school programs and activities through a variety of means including the parish bulletin	29.	<u>E</u>	_____	_____	_____
30. deals with stress appropriately	30.	_____	<u>don't know</u>	_____	_____
31. uses confidential and/or official information appropriately	31.	<u>E</u>	_____	_____	_____
32. receives suggestions and directions openly	32.	<u>E</u>	_____	_____	_____
33. contributes school news regularly to the parish bulletin	33.	<u>E</u>	_____	_____	_____
34. maintains communication with the civic community	34.	_____	<u>don't know</u>	_____	_____

COMMENTS:

		E	G	S	NI
As ADMINISTRATOR, the principal:					
35. operates the school efficiently	35.	<u>E</u>	_____	_____	_____
36. informs pastor of Archdiocesan policies and guidelines	36.	<u>E</u>	_____	_____	_____
37. implements and follows Archdiocesan, government and school policies	37.	<u>E</u>	_____	_____	_____
38. participates in educational meetings and workshops	38.	<u>E</u>	_____	_____	_____
39. meets with the pastor to inform of and plan for school concerns	39.	<u>E</u>	_____	_____	_____
40. works with the pastor to maintain a safe and clean environment	40.	<u>E</u>	_____	_____	_____
41. participates in school's fiscal management by					
a. assisting in planning the annual budget and business plan	41a.	_____	<u>hasnt happened yet</u>	_____	_____
b. monitoring purchases and spending	b.	<u>E</u>	_____	_____	_____
c. monitoring tuition collection and other income	c.	<u>E</u>	_____	_____	_____
42. operates within budget parameters	42.	<u>E</u>	_____	_____	_____
43. cooperates with development and fund raising activities	43.	<u>E</u>	_____	_____	_____
44. meets regularly with the parish council, school board, home-school association or parent-planning group	44.	<u>E</u>	_____	_____	_____
45. collaborates with the officers of the above organizations in preparing the agenda for general meetings	45.	<u>E</u>	_____	_____	_____

46. participates in projects to assist in the financial viability of the school

46.

E

PRINCIPAL'S GREATEST STRENGTHS/ACHIEVEMENTS

Has provided hands-on-direction, school
is very stable

SUGGESTED AREAS FOR THE PRINCIPAL'S CONTINUED GROWTH/IMPROVEMENT

?

I RECOMMEND THAT THE PRINCIPAL:

a. ☒ receive a three-year approval for the following reasons:

I feel this is a very competent principal

b. ☐ receive a one-year approval for the following reasons:

c. ☐ not be approved for renewal for the following reasons:

Did you discuss the contents of this evaluation and your recommendation with your principal?

YES ☐

NO ☒

Pastor's Signature

W. W. Rye

Date

3/04/08

PLEASE USE THE ENCLOSED ENVELOPE AND MAIL DIRECTLY TO
THE DISTRICT SUPERINTENDENT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JOANNE FRATELLO,

Plaintiff,

-against-

ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK,
ST. ANTHONY'S SHRINE CHURCH AND ST.
ANTHONY'S SCHOOL,

Defendants.

-----X

Case No.: 12 civ. 7359
(CS)(CMS)

**DEFENDANTS' RULE 56.1
STATEMENT**

1. Evangelization of the teachings of Jesus Christ and inculcation of children into the Catholic Faith is a primary purpose of the Archdiocesan school system. *See, Declaration of Mary Jane Daley, sworn to on April 20, 2015, ("Daley Dec."), at ¶¶ 7, 12-13; see, also, id., at Ex. "A," at BS# 023765-023768.*

2. With regard to the "Catholic School Experience" within the Archdiocesan School system, the Archdiocese provides that "[o]ur Catholic faith is central to what we do, and we proudly teach it. Gospel ideals permeate the substance and structure of our lessons [and] [w]e share our faith through daily prayer and the regular celebration of Mass as a school community." *See, Declaration of Kenneth A. Novikoff, sworn to on April 21, 2015, ("Novikoff Dec.,") at Ex. "A."*

3. According to the Archdiocese, the "Mission" of Catholic Education within the Archdiocesan School System ". . . is to ensure our schools are Christ-centered, academically excellent, and welcoming communities that teach students to be life-long learners and leaders energized by Christ, the Church, and one another." *Id.*

4. With regard to this Mission and Aim the Archdiocese instructs, *inter alia*, it's Principals that "[s]tudents are provided with an explicit study of the Catholic faith and the New York State academic curriculum infused with Catholic belief and values. . . [and] [t]he very foundation and mission of the Catholic School System has been and continues to be for formation in the faith, for the lived experience of Gospel values and for the preservation of Catholic culture." *See, Daley Dec., at Ex. "A," at BS# 023765-66.*

5. The elementary schools in the Archdiocese "are faith filled environments that incorporate religious instruction, sacrament preparation in Mass, and blend Catholic values into subject curriculum." *Novikoff Dec. at Ex. "A."*

6. According to the Archdiocese, "[w]ithin our schools academic excellence is further enhanced by Catholic values which foster the growth of our students as truthful, generous, and joyful people capable of becoming leaders in the Church and our world." *Id.*

7. The Archdiocese identifies the Principal of a parochial school as a "leader of the school, a unique catholic educational institution." *See, Daley Dec., Ex. "A," at BS# 023924.*

8. The Archdiocese specifically identifies an elementary school Principal as occupying a "ministerial position." *Id., Ex. "C," at BS# 024208.*

9. Plaintiff, Joanne Fratello's, ("Plaintiff"), "Job Scope" provides that a Principal is "responsible for achieving the Catholic mission and purpose of the school... S/he is the animator of the community of faith with the school." *Id., Ex. "A," at BS# 023924.*

10. Plaintiff's "Job Scope" provides, *inter alia*, that a "Principal must of necessity be involved in the every aspect of the school operation [and that] [t]he principal oversees the areas of religious education, curricula instruction, formulation and communication of school policy ... [.]". *Id., at BS# 023924.*

11. Edward Cardinal Dolan, Archbishop of New York, in a letter contained within the Administrative Manual, states, *inter alia*, that “[a]s principal in the schools of the Archdiocese of New York, you are providing splendid leadership to your teachers and staff and excellent academic and *spiritual formation* to your students [. . .].” *Id.*, at BS# 023753(*emphasis added*).

12. The Associate Superintendent of Schools for Professional Recruitment, in a letter to the Principals contained within the Administration Manual, states, *inter alia*, that, “[the Catholic School is essential to the Church in fulfilling its teaching mission [and that] . . . [i]t is your responsibility as principal to establish a climate which is identifiably Catholic. . . [.]” *Id.*, at BS# 023923.

13. According to the Archdiocese, “[t]he principal is the Catholic leader and the administrative head of the school.” *Id.*, at BS# 23802.

14. The Archdiocese requires its Principals, *inter alia*, to “[be] committed to the mission of evangelization [and] involve the staff in formulating plans that enable the school to meet its religious goals.” *Id.*, at BS# 023803.

15. It is the Principal’s responsibility, *inter alia*, to “ensure[] implementation of Archdiocesan curriculum guidelines and the curriculum standards of New York State Education Department.” *Id.*, at BS# 023806.

16. “The primary goal of the program of instruction in the schools of the Archdiocese is to provide those learning experiences which most effectively inculcate Catholic attitudes and impart the knowledge and skills necessary for the spiritual, intellectual, emotional, cultural, and physical development of the student.” *Id.*, at BS# 023859.

17. It is a prerequisite that an Archdiocesan Principal applicant be and/or have achieved *inter alia*: (1) “[a] practicing Catholic . . . with a commitment to the teachings of the

Church and to the development of Christian spirit and a community of faith within a school,” and; (2) “[c]omplet[e] [] Levels I and II of the Catechist Certification Program.” *Id.*, at BS# 023808.

18. As a condition of employment, the Archdiocese and the School require the Principal to, *inter alia*, complete Level 1 and Level 2 Catechist Formation Program certification within three years of maintaining the role of Principal. *See, Daley Dec.*, at ¶ 12.

19. The Catechist Formation [Certification] Program provides theological understandings, spiritual/religious formation and catechetical methodology necessary for those who are appointed by their pastors and commissioned by their parishes to hand on the faith to adults, youth or children. *Id.*, at n. 4.

20. Training of the catechist is necessary to ensure that the faith is handed on in its integrity and in a manner that responds to the needs, learning styles, cultures and other special characteristics of those in their care. *Id.*

21. The Archdiocese requires that a lay candidate applying for the position of Principal present a letter indicating that he/she is a practicing Catholic.” *See, id.*, ¶ 4; *see, also, id.*, at Ex. “A,” at BS # 023810.

22. The Archdiocese expects that “[t]he entire school community – the principal, pastor . . . parents and students – should be involved in the development of the religious program.” *Id.*, at BS# 023859.

23. According to the Archdiocese, “[t]he school principal is responsible for clarifying [] the importance of religious instruction, the quality of the catechetical experience in the school, the value attached to religious instruction, and the amount of time spent on religious education.” *Id.*

24. As part of the “Principal Evaluation Process,” the Archdiocese provides, *inter alia*, that “it is the principal’s responsibility “to establish a climate which is identifiably Catholic and which nurtures the growth of teachers and students of life.” *Id.*, at BS# 023923.

25. The Principal is evaluated with regard to how he/she has acted as, *inter alia*, a “Religious Leader,” within the School. *Id.*, at BS# 023936; 023943;

26. The Principal is evaluated by faculty of the school and the Church’s Pastor and, notably, undertakes a self-evaluation. *Id.*, at 023936-023942; 023943-023946; 023947-023951.

27. The categories evaluated include, but are not limited to, whether the Principal:

- fosters a Christian atmosphere which enables . . . students to achieve their potential;
- reviews school philosophy and goals with the staff in accordance with current Church documents, and;
- Gives priority to a comprehensive religious educational program[.]

Id., at BS# 023936, 023943; 023947.

28. Specific to the self-evaluation, a Principal is required to answer five questions as part of her “self-reflect[ion] upon [her] role as a Catholic School Leader,” one of which is “[w]hat are my strengths in the area [] of spiritual leadership[.]” *Id.*, at BS# 023942.

29. The Archdiocese’s Catholic Values Integration Program, (“CVIP”), was in effect while Plaintiff was Principal at St. Anthony School (“St. Anthony’s” or the “School”). *See, Daley Dec.*, at ¶¶ 12, 14; *see also, id.*, at Ex. “B,” at BS# 24266-83.

30. The CVIP’s mission “is to inspire, infuse, and integrate Catholic values into the education system of the Archdiocese of New York.” *Id.*, at Ex. “B” at BS# 024268; 023806.

31. The aim of the CVIP is to help those who bear witness to the message of Christ by offering ideas that will engage the school community its strategies for TEACHING AS JESUS TAUGHT. *Id.*, at BS# 024270.

32. Explaining the importance of CVIP, the Archdiocese states that “[b]ecause the Catholic school is part of the Church’s ministry, the school should strive to be a strong Catholic Community united in the conviction that Jesus is Lord. An atmosphere enlivened by the Spirit of the Gospel is dependent upon mutual trust and respect among administration, faculty, students, and parents.” *Id.*

33. The CVIP identifies the Principal as a “Spiritual Leader” within the school explaining that:

[t]he Principal of the Catholic school in order to fulfill the mandates of message, service, and communication must bear the responsibility of integrating Gospel values into the vision, goals, policies and practices, life, and curriculum of the school. The leader must provide an environment that facilitates the spiritual, moral, and ethical development of the entire school community.

Id., at BS# 024281.

34. The Archdiocese further provides within the description of the Principal as a “Spiritual Leader,” that “[a]n essential role of the Catholic school principal is the ability to draw together colleagues to a collective vision and appreciation of the word and works of the Lord.” *Id.*

35. The Archdiocese expects the Principal, *inter alia*: (1) to promulgate the values of the Catholic faith to their colleagues, teachers, staff, students, and community; (2) to teach the traditions of the Catholic faith; (3) to minister as good stewards of Catholic education; (4) to

uphold human rights, dignity, respect for life and nature, and; (5) to understand and respond to the unique needs of the community they serve. *Id.*, at BS# 024282.

36. The CVIP identifies the Principal as a “Tradition Bearer” within the school, explaining that “[t]he lives and work of Catholic school principals are graced by God. Catholic school principals are entrusted with a mission that is a call to spread Jesus’ community. Through this mission they call others to build a faith community among all the constituents of the Catholic school family.” *Id.*

37. The Archdiocese further provides within the description of the Principal as a “Tradition Bearer,” that “[i]n the tradition of the founding religious teaching orders, it is the responsibility of the Catholic school principal, whether lay or religious, to maintain high academic standards enshrined in an atmosphere of Catholic faith.” *Id.*

38. The CVIP also identifies the Principal as the “Communicator” of the Catholic Faith within the school, and explains that “[a] Catholic school is a unique culture in which principal, teachers, and students share a common set of norms and values. The identity of the Catholic school should embody the three qualities embraced in ‘To Teach As Jesus Did.’” *Id.*, at BS# 024283.

39. The Archdiocese further provides that “[t]he prime communicator of the message, and an essential skill for the position of leader, is the willingness and ability of the principal to promote the values of the Catholic school.” *Id.*

40. Prior to her position as Principal of St. Joseph’s, Plaintiff was the Assistant Principal at Sacred Heart. When applying for the position of Principal at St. Joseph’s, Plaintiff submitted a letter of reference from Mr. Charles Celauro, who commented on her “commitment

to Catholic Education,” and noted that “Mrs. Fratello was a school leader . . . in making our faith alive and known to our population.” *See, Novikoff Dec., at Ex. “B.”*

41. While Plaintiff was Principal at St. Joseph’s, Ms. Joan Wall, a teacher, noted in her comments concerning Plaintiff as a “Religious Leader” that “Ms. Fratello leads morning and afternoon prayers.” *See, Novikoff Dec., at Ex. “C,” at BS# 24143.*

42. While Plaintiff was Principal at St. Joseph’s, Ms. Diane Morgiewicz, a teacher noted, in her comments concerning Plaintiff as a “Religious Leader,” that “it is nice to start the school day with our principal, faculty and student body in prayer and pledge.” *Id., at Ex. “D,” at BS# 24148.*

43. Ms. Morgiewicz, commenting on Plaintiff’s “Greatest Strength,” stated that it was in “[s]etting a religious atmosphere when we start our day and end our day as a St. Joseph School family.” *Id., at Ex. “D,” at BS# 24152.*

44. Plaintiff evaluated herself as an Excellent “Religious Leader” as Principal of St. Joseph’s. *See Novikoff Dec., at Ex. “E,” at BS# 024173.*

45. While “reflect[ing] upon [her] role as Catholic School Leader,” Plaintiff acknowledged that she was the “spiritual” leader within St. Joseph’s and noted that her goal was “to create a positive parent-school relationship. Additionally, I plan to create a school that can be recognized by its accomplishments and its Christianity, and good to others.” *See, id., at BS# 024178.*

46. In a letter to Monsignor Reynolds, the then Pastor at St. Anthony’s, as part of her application to become Principal at St. Anthony’s, Plaintiff advised that “[m]y goal is to utilize my administrative experience and strong Catholic faith to foster a nurturing and educational

environment for the children of St. Anthony School.” *See, Novikoff Dec., at Ex. “F,” at BS# 000411.*

47. In her counsel’s July 19, 2011 letter to then Archbishop Dolan complaining of her termination, Plaintiff stated that “she is a devout Catholic.” *See, Novikoff Dec., at Ex. “G”.*

48. In her EEOC Complaint, Plaintiff stated that “I am a devote Catholic (I remain un-remarried and abstinent, and thus a role model for the Church.” *Id., at Ex. “H”.*

49. During the application process for the Principal position at St. Anthony’s, Plaintiff was interviewed by the Archdiocese’s Principal Search Committee (“Committee”). *See, Declaration of Cathleen Cassel, sworn to on April 15, 2015, (“Cassel Dec.”), at ¶ 13.*

50. The Committee sought to hire principals with, *inter alia*, “strong Christian values” who are able to “foster[] an educational environment which teaches students how to live in accordance with the teaching of Jesus.” *Id., at ¶10.*

51. The Committee focuses on the applicant’s commitment to Jesus and the spreading of Christ’s teachings to the students. *Id., at ¶11.*

52. The Committee’s questions of Plaintiff included, but were not limited to: (1) what is your personal relationship with the church? ; (2) what is your relationship with the Pastor and the parents at the current school you work in?, and; (3) what would you do at the school to implement communal prayer? *Id., at ¶¶11, 13.*

53. Almost immediately after being hired, Plaintiff agreed to be interviewed by the “Journal News,” a newspaper servicing Rockland County, New York. *See, Novikoff Dec., at Ex. “I”.*

54. In this article, which was entitled “Strong Faith Motivates New St. Anthony Principal,” Plaintiff was quoted as saying:

- “[w]e educate the children ... and help to prepare them as life-long learners as well as practitioners of the faith”;
- “[f]amilies are looking for a strong Catholic faith-based education and we want to give that opportunity to them[.]” and;
- “[t]here are good things we are doing, ... we are going to move forward with these things, giving a sound foundation for families who would like a Catholic education.”

Id.

55. Plaintiff was pictured for the article in front of a banner saying “Catholic Schools – Our Children Our Faith” with religious symbols, including the Cross, displayed. *Id.*

56. Monsignor Reynolds perceived Plaintiff as being an excellent “Religious Leader” during her first year as Principal at St. Anthony. *See, Novikoff Dec., at Ex. “J.”*

57. Monsignor Reynolds rated Plaintiff as ‘Excellent’ with regard to many criteria associated with being a “Religious Leader.” *Id.*

58. Sister Helen Doychek, then the District Superintendent of Dutchess, Orange, Rockland, Sullivan and Ulster Counties and Plaintiff’s direct supervisor, also evaluated Plaintiff during her first year at St. Anthony’s and similarly viewed Plaintiff as an excellent Religious Leader of the School. *See, Novikoff Dec., at Ex. “K”.*

59. In her “Evaluator’s Appraisal of Principal,” Ms. Doychek “commend[ed] Plaintiff as a “Religious Leader,” identifying numerous accomplishments with regard to her being a Religious Leader, including: (1) renewing the Catholic Identity of St. Anthony School []; (2) setting a good example as a religious leader; (3) bringing a renewed sense of Christian Spirituality []; (4) creating an atmosphere rich with a sense of Catholic Community, (5) making religious values, attitudes and behavior the focus of life at the School, (6) providing opportunities for children to participate in service projects that will benefit others outside the

school community, and; (7) communicating a vision of a Catholic Community in which differences and variety are accepted, welcomes and cherished. *Id.*

60. Ms. Karen Ladolcetta, a Kindergarten teacher at St. Anthony's, *see, Declaration of Karen Ladolcetta, sworn to on April 15, 2015, ("Ladolcetta Dec."), at ¶1*, commented in her evaluation of Plaintiff as a "Religious Leader" that Plaintiff "shows by her actions, words and deeds what a loving and Christian person she is." *Id., at ¶26; see, also, id., at Ex. "A."*

61. Ms. Margaret Murphy, a teacher at St. Anthony's, commented in her evaluation of Plaintiff as a "Religious Leader" that Ms. Fratello has "brought a new sense of Christian spirituality. . . [.]” *See, Novikoff Dec., at Ex. "L," at BS# 000445.*

62. Ms. Murphy further commented concerning Plaintiff's "Greatest Strength" that [Plaintiff's] "greatest strengths are her understanding of and importance of catholic education [and] Ms. Fratello has been a blessing as her Christian leadership has changed the tone of our school in the past 7 months." *Id., at BS# 000449.*

63. Ms. Lois Dorsey, a teacher at St. Anthony's, commented that Ms. Fratello's "Greatest Strength" was that she "was a champion of the children and of a Christian environment." *See, Novikoff Dec., at Ex. "M," at BS# 000454.*

64. Ms. Carol McGuirk, a Second Grade teacher at St. Anthony's, *see, Declaration of Carol McGuirk, sworn to on April 15, 2015, ("McGuirk Dec."), at ¶1*, stated in her evaluation of Plaintiff as a "Religious Leader" that "Mrs. Fratello sets a good example as a religious leader." *See, McGuirk Dec., at ¶11; id, at Ex. "A."*

65. Ms. MaryAnn Driscoll, an English and Religion teacher at St. Anthony's, *see, Declaration of Mary Ann Driscoll, sworn to on April 15, 2015, ("Driscoll Dec."), at ¶1*, stated in

her evaluation of Plaintiff as a “Religious Leader” that “Joanne has renewed the Catholic identity of St. Anthony School. It is refreshing.” *See, Driscoll Dec., at ¶24; id., at Ex. “A.”*

66. Upon her hire as Principal at St. Anthony’s, Plaintiff implemented a new prayer system within the school, the purpose of which was for the students to become “more involved” in prayer. *See, Declaration of AnnMarie Weber, sworn to on April 15, 2015, (“Weber Dec.”, at ¶8.*

67. Every morning, at approximately 8:05 a.m., an eighth-grader would meet with Plaintiff, after which Plaintiff would introduce him/her over the loud speaker and the student would then recite Prayer. Plaintiff would then respond to the Prayer by stating “Praise to you Jesus Christ.” The student would then read another Prayer over the loud speaker, at which time Plaintiff would recite the “Our Father” prayer. *Id.*

68. At around 2:15 p.m., Plaintiff would often recite over the loud speaker an afternoon “reflection” containing a spiritual message to the entire school. *Id., at ¶9; see, also, Connelly Dec., at ¶15¹; Ladolcetta Dec., at ¶13; Driscoll Dec., at ¶16; Lewis Dec., at ¶8².*

69. On Fridays in October, Plaintiff would recite over the loud speaker a “Decade of the Rosary” in honor of the Feast of Our Lady the Rosary. In furtherance of this, Plaintiff would say over the loud speaker – “In the name of the Father, and the Son and of the Holy Spirit – Amen,” then proceed to recite the “Our Father” prayer, say ten Hail Mary’s, and then recite the “Glory Be” prayer. *See, Weber Dec., at ¶11.*

¹ The “Connelly Dec.” refers to the *Declaration of Sister Daniel Connelly, sworn to on April 15, 2015.*

² The “Lewis Dec.” refers to the *Declaration of Sister Lynn Ann Lewis, sworn to on April 15, 2015.*

70. At the beginning of Plaintiff's tenure as Principal of St. Anthony's, Plaintiff advised the faculty at a meeting that she would provide rosary beads to any student and/or faculty member who needed, for the purpose of facilitating prayer. *Id.*, at ¶10.

71. Plaintiff would recite the Prayer of the Rosary over the loudspeaker throughout October and May. *See, Lewis Dec.*, at ¶9.

72. On most school days in December during the Advent season, Plaintiff would read the story of the "Jesse Tree" to students over the loud speaker, and explain that the ornaments of the Jesse Tree tell the story of God in the Old Testament. *See, Connelly Dec.*, at ¶19; *Ladolcetta Dec.*, at ¶21; *Driscoll Dec.*, at ¶20; *Lewis Dec.*, at ¶13.

73. The Advent season begins on the fourth Sunday before Christmas Day and ends on Christmas Eve. The focus of the entire season is preparation to celebrate the birth of Jesus Christ and the anticipation of Christ the King. *See, Weber Dec.*, at ¶13; *Connelly Dec.*, at ¶19, n.2; *Ladolcetta Dec.*, at ¶21, n.3; *Driscoll Dec.*, at ¶20, n.2; *Lewis Dec.*, at ¶13, n.3.

74. In connection with the Jesse Tree lesson, Plaintiff would also meet with a student in her office, at which time Plaintiff would pick out an ornament to decorate the School's Jesse Tree, and then engage the student in discussion about the religious meaning of the ornament. *See, Weber Dec.*, at ¶ 14.

75. During the Advent Season, Plaintiff would additionally read the St. Nicholas Day Blessing of Candy Canes to the students and faculty over the loud speaker. *See, Connelly Dec.*, at ¶20-21.

76. During the Christmas season, Plaintiff would also lead the first and third grade students, along with their music teacher, to a St. Anthony's Senior Citizens' meeting in the Church to recite religiously themed Christmas carols to the elderly. *See, Weber Dec.*, at ¶20.

77. Plaintiff sat with a student in her office to read the children's book, *Little Owl and the Star: A Christmas Story*. See, *Novikoff Dec.*, at Ex. "N," at BS# 024509.

78. During Plaintiff's recitation of this nativity story to the student, she paused to ensure that the child comprehended the same. Plaintiff asked the student if she knew who sat in the manger that they had "just learned about," at which time the student, with Plaintiff's guidance, replied "Three Kings, the sheep [] and the camels, the angels and baby Jesus...[Mary] and God...[.]" *Id.*

79. Plaintiff required the display of religious symbols and figures within the classroom and the School building. See, *Weber Dec.*, at ¶26.

80. Plaintiff directed her administrative assistant to display an advent wreath on a table outside her office. *Id.*, at ¶27.

81. Plaintiff directed her teachers to display advent wreaths in their respective classrooms. *Weber Dec.*, at ¶28; *Connelly Dec.*, at ¶22; *Ladolcetta Dec.*, at ¶22; *Driscoll Dec.*, at ¶21; *Lewis Dec.*, at ¶14.

82. Plaintiff prominently displayed a Crucifix in her office. *Weber Dec.*, at ¶29; *Connelly Dec.*, at ¶23; *Ladolcetta Dec.*, at ¶23; *Driscoll Dec.*, at ¶22; *Lewis Dec.*, at ¶15.

83. Each year at the graduation ceremony for the Eighth grade students, Plaintiff would stand on the pulpit within the Sanctuary, and present a religiously themed graduation speech. *Weber Dec.*, at ¶12.

84. At the end of the speech, Plaintiff would lead the School, along with all of the students, parents and clergy in attendance, in Prayer. Plaintiff would then recite more prayer and further "bless" the students. *Id.*

85. Plaintiff attended, in her capacity as Principal, many school-related religious ceremonies and/or Masses attended by students and their parents, including but not limited to:

- The Second Grade students' First Holy Communion ceremony, (*see, Weber Dec., at ¶21*).
- Sacrament of First Reconciliation, (*see, McGuirk Dec., at ¶8*);
- Confirmation (*see, Weber Dec., at ¶22*);
- Catholic School Week Mass (*see, Weber Dec., at ¶23*);
- Church's Sunday Mass, (*see, Weber Dec., at ¶24; Connelly Dec., at ¶18; Ladolcetta Dec., at ¶16*), and;
- Sunday Mass in June in celebration of the Feast of St. Anthony (*see, Weber Dec., at ¶25*).

86. The Sacrament of First Reconciliation ceremony is very important within the Catholic Faith and is considered a major spiritual accomplishment for these young students. *See, McGuirk Dec., at ¶8.*

87. Plaintiff would join the faculty and students at the Schools' monthly "First Friday Mass." *See, Connelly Dec., at ¶17; Ladolcetta Dec., at ¶15; Driscoll Dec., at ¶18; Lewis Dec., at ¶12.*

88. The Catholic Church designates the second or third Sunday in September as "Catechetical Sunday" – a day on which to celebrate and pray for the Church's mission to teach the Gospel to all people. *See, Ladolcetta Dec., at ¶18.*

89. St. Anthony's Church celebrates this day by holding a Catechetical Sunday Mass and Plaintiff would be present at these masses, which were attended by students and their family. *Id.*

90. Plaintiff would work closely with the teachers on a regular and consistent basis to carry out the School's religious and educational missions. *See, gen., e.g., Connelly Dec.; Ladolcetta Dec.; Driscoll Dec.; Lewis Dec.; McGuirk Dec.*

91. The teachers were required each week to provide Plaintiff with a copy of the lesson plan book. *See, Connelly Dec., at ¶¶8-11; Ladolcetta Dec., at ¶¶7-9; Driscoll Dec., at ¶¶8-10.*

92. A large part of the religious curriculum for second graders is instruction about Mass, Biblical readings/responses, Communion and the body and blood of Christ, all in preparation of the students' First Holy Communion. *See, McGuirk Dec., at ¶9.*

93. Plaintiff mandated, *inter alia*, that the lesson plan books identify the objective of each particular lesson, the method by which it is taught and further indicate the Value and Saint ("Value/Saint") which would correspond with the respective lesson. The Value/Saint is a chart that Plaintiff handed out to the teachers at the beginning of each year, identifying a Catholic Saint and a corresponding Catholic value to incorporate into the curriculum. *See, Connelly Dec., at ¶¶8-9; Ladolcetta Dec., at ¶¶7-9; Driscoll Dec., at ¶¶8-9; McGuirk Dec., at ¶6.*

94. Teachers were required by Plaintiff to include religious teachings into the lesson plans reviewed by Plaintiff. *See, Connelly Dec., at ¶¶8-9; Ladolcetta Dec., at ¶8; Driscoll Dec., at ¶9; McGuirk Dec., at ¶¶8-9.*

95. Plaintiff would also review and sign off on the lesson plan book of lay teachers who had significant responsibility for teaching Religion to the younger elementary school children. *See, McGuirk Dec., at ¶8.*

96. Religion is infused into each class at the school. *See, e.g., Connelly Dec., at ¶9,*

97. Plaintiff would observe the teachers in their classrooms to evaluate, *inter alia*, a teacher's ability to integrate Catholic values into the subject matter. *See, Connelly Dec., at ¶7.*

98. For example, Sister Connelly, when teaching a science class, would "teach the children that the Earth was created by God, and is to be used as a place to live, enjoy and love." *Id., at ¶9.*

99. Plaintiff also instructed teachers who taught religion to include religiously important themes into their lessons. *See, Novikoff Dec., at Ex. "O".*

100. Plaintiff received an e-mail from an Archdiocesan administrator concerning joining "in prayer during the month of January for the Intention of Respect for Human Life." Plaintiff forwarded this e-mail to the faculty of St. Anthony's, included on which was the following handwritten note from her:

Teachers,

Please include ---- (age appropriate) into your Religion classes.

Thank you,

Joanne

Id.

101. The curriculum for religion classes would be reflected in lesson plan books submitted to Plaintiff for review. *See, Connelly, Dec., at ¶10.*

102. Plaintiff would also require teachers to attend monthly faculty meetings at the School to discuss upcoming events, secular and non-secular. *See, Connelly Dec., at ¶12; Ladolcetta Dec., at ¶10; Driscoll Dec., at ¶11.*

103. Each monthly meeting began with a Prayer with Plaintiff participating in delivering the Prayer. *Id.*

104. Plaintiff required teachers to attend a “Standard and Goals” meeting at the commencement of each School year; Plaintiff led these meeting and each meeting opened with the recitation of Prayer, in which Plaintiff participated. *See, Connelly Dec., at ¶13; Driscoll Dec., at ¶12.*

105. Plaintiff would also attend Principal Conferences where the Principals within Rockland County would discuss the special events taking place the following month at their respective schools. *See, Cassel Dec., at ¶¶14-16.*

106. By way of example, these Principal Conferences would include discussing the implementation and coordination of the annual Rose Mass, which was held in January of each year. The Rose Mass, also called the Respect for Life Mass, was a special mass for all Rockland County Catholic School eighth grade students. The Principals within Rockland County would rotate which school planned, implemented and hosted this annual event. Plaintiff held the Rose Mass one year at St. Anthony’s. *Id.*

107. The message of the Rose Mass was to teach the children that human life is a precious gift from God; that each person who receives this gift has responsibilities toward God, self and others; and that society, through its laws and social institutions, must protect and nurture human life at every stage of its existence. *Id.*

108. Plaintiff would also lead, direct and/or manage all of the school-related religious events that took place at the School. *See, Ladolcetta Dec., at ¶11; Driscoll Dec., at ¶13.*

109. Plaintiff’s approval was needed for a teacher to undertake a religiously themed initiative within the School. *Driscoll Dec., at ¶13..*

110. For example, the School’s Liturgy Committee was responsible for selecting the hymns to be recited, the decorations used and lay persons to recite Prayer during the

Thanksgiving Liturgy, which is a Mass held for the Thanksgiving Holiday, and May Crownings, which is a special Mass held in May in honor of Mary the Mother of Jesus and the Church. The Plaintiff had to approve the Liturgy Committee's selections. *See, Driscoll Dec. at ¶13.*

111. The Liturgy Mass was attended by students and their families. Plaintiff attended this Mass, and would speak with students and their families after Mass. *See Driscoll Dec., at ¶¶ 13 and 18.*

112. On another occasion, a teacher sought the School's sponsorship of the "Best Friends Animal Society" as part of the School's "Monthly Mission." This teacher presented this idea to Plaintiff and, after being questioned about the program, Plaintiff approved the School's support. *See, Ladolcetta Dec., at ¶11.*

113. The School's "monthly mission" is a program wherein the School selects a different charity or a cause to support each month. This program is intended to teach the students "Catholic values," *i.e.*, the importance of giving back and supporting the community. The Principal manages the "monthly mission." *See, Ladolcetta Dec., at ¶11, n.2.*

114. In honor of the Feast of St. Anthony, which is held in June, Plaintiff would plan a special ceremony at the School and would attend Sunday Mass attended by students and their parents. Thereafter, she would meet with the students, their families and faculty, bringing with her a statue of St. Anthony placed in prominence (which has religious symbolism). *See, Lewis Dec., at ¶10.*

115. On or about September 11 of each year, Plaintiff hosted a September 11 memorial prayer at the School. Plaintiff, faculty and the students would attend. At this Memorial Prayer, Plaintiff would stand in front of the gathering and recite a Prayer in remembrance of the victims

of the attack on that day. Plaintiff would further recite Bible verses, such as Matthew 5:1-2, 13-16, *id.*, and then recite the “Our Father” prayer. *See, Ladolcetta Dec., at ¶19.*

116. Throughout Plaintiff’s tenure as Principal, she would regularly send “memos” or e-mails directing that the teachers attend Mass at the Church for school related events, as well as other religious events. *See Connelly Dec., at ¶16; Ladolcetta Dec., at ¶14; Driscoll Dec., at ¶17; Lewis Dec., at ¶12.*

117. Memoranda and e-mails under Plaintiff’s name to St. Anthony’s teachers communicated her attendance at and/or her intent to attend school-related Masses with St. Anthony students, (both at St. Anthony’s and at other Churches), as well as with the parents. *See, Novikoff Dec., at Ex. “P.”*

118. Plaintiff drafted and oversaw the monthly publication and dissemination to the students’ parents of the St. Anthony’s Monthly Newsletter. *See, Weber Dec., at ¶16-17; see also, Weber Dec., at Exs. “C” – “O”.*

119. With a religious symbol on these Newsletters, these Newsletters would often recite Catholic doctrine and/or Prayer. *Id., at ¶18; see, gen., Weber Dec., at Exs. “C” – “O”.*

120. A substantial number of these Messages contained some variation of the following message from Plaintiff involvement and/or to the parents: “May God Continue to bless you and your families.” *See, Weber Dec., at ¶17; see also, Weber Dec., at e.g., Exs. “C,” “H,” “K,” “L,” “M,” and “O” at BS#; 000466; 000472; 000473; 000475; 003511; 004075;. 004390.*

121. These Messages also acknowledged Plaintiff’s organization and/or participation in school related masses in her capacity as Principal, either often thanking the families for joining her at a school related Mass, or inviting these families to join her at a school related mass. *Id., at*

e.g., Exs. "D," "F," "H," "I," "J," "K," "L," "N," and "O," at BS# 000472; 000469; 004238; 000473; 000475; 000321; see, also, Novikoff Dec. at., e.g., Ex. "P" at BS# 000240; 000247; 000332; 000313; 000387; 000374; 000395; 000397; 000334; 000336; and 000518.

122. Plaintiff also often communicated to the parents in her monthly Message her joy and/or enthusiasm in joining with the students in their "spiritual," *i.e.*, "religious" journey in finding Christ, reporting the progress of the student's spiritual development and thanking parents and faculty for their assistance in helping the students to achieve this seminal mission of the Archdiocese. *Weber Dec., at e.g., Exs. "D," "H," "L," "N," and "O" at BS#. 000469; 000472; 000473; 004238.*

123. Plaintiff used her Message as a vehicle to encourage the religious/spiritual learning and growth of the students outside of school and to remind the parents of upcoming events of religious significance and how they should relate to their child's spiritual development. *Id., at e.g., Exs. "I," "F," "L," "N."*

124. Plaintiff gave the following words of advice to her last graduating class, the Class of 2011:

. . . I was very confident that your spiritual, educational, and intellectual growth would have been achieved and you have proven that following Jesus's teaching along with the love and guidance from your parents, teachers and the community members that it was possible.

...

As you leave our school family, may the God of peace protect you, equip you, and work with you, through Jesus Christ, to whom be glory forever and ever. Amen.

God Bless you always,

Ms. Fratello

Novikoff Dec., at Ex. "Q," at BS# 024458.

Respectfully submitted,

RIVKIN RADLER LLP

By: _____/s/_____
Kenneth A. Novikoff (KAN 0350)
Barry I. Levy (BL 2190)
Jacqueline Siegel (JS 7572)
926 RXR Plaza
Uniondale, New York 11556-0926
(516) 357-3000
ken.novikoff@rivkin.com

Counsel for Defendants, Archdiocese of New York i/s/h/a/ Roman Catholic Archdiocese of New York, St. Anthony's Shrine Church, and St. Anthony's School

MICHAEL D. DIEDERICH, JR.

Attorney at Law

361 Route 210

Stony Point, NY 10980

(845) 942-0795

(845) 942-0796 (fax)

Mike@DiederichLaw.com

Via ECF & U.S. mail

May 8, 2015

The Honorable Cathy Seibel, USDJ
The Hon. Charles L. Brieant Jr.
Federal Building and United States Courthouse
300 Quarropas Street ·
White Plains, NY 10601-4150

Re: *Fratello v. Roman Catholic Archdiocese of New York*, 12 CIV 7359 (CS))—
Plaintiff's objection to Defendants' summary judgment papers

Dear Judge Seibel:

I hereby request permission to move to strike substantial portions of Defendants' summary judgment motion papers (which I received by FedEx on April 22, 2015¹). Attached is Defendants' Rule 56.1 Statement, with my specific objections stated below (and in the 56.1 Statement). The Defendants' papers are voluminous (and Plaintiff therefore requests the Court's direction as to furnishing copies). I will forward a CD containing Defendant's motion paper with the courtesy copy of this letter.

In this action, the Defendants claim that *Hosanna-Tabor* ministerial immunity provides a complete defense to Plaintiff's civil law claim of unlawful discrimination. Defendants claim essentially that Plaintiff, as a lay principal, is a minister of a church (the Roman Catholic Church). Specifically, Defendants' lawyers and non-clergy employees claim that Plaintiff is a Roman Catholic Church minister (at least in part, by performing pastoral or "ministerial" functions).

Rule 56 requires that a summary judgment motion be based upon admissible evidence. *See*, F.R.C.P. 56(c)(1)(B) and (2). The Court requires material facts asserted as undisputed be placed in a concise Rule 56.1 Statement. Accordingly, Defendants are obligated to present admissible evidence that the Roman Catholic Church deems Plaintiff Fratello to be a minister (or performing ministerial or pastoral duties), and to concisely set forth its material facts supporting

¹ Defendants needed a minor extension of time, to which I consented. The constitutional issues in this case are novel and complex. Therefore, I request that the Court allow Plaintiff three weeks from the Court's decision on this application to serve Plaintiff's opposition and cross-motion, and to grant Defendants whatever additional time they require.

such claim. They do not. Rather, Defendants' lawyers attempt to do so with evidence which is inadmissible, or immaterial.

For this reason, Plaintiff requests permission to move to strike all of Defendants' inadmissible evidence, and requests a court conference in this regard.

Plaintiff's overall objections

First, Defendants' papers repeatedly employ inadmissible hearsay. *See, e.g.*, Declarant Novikoff's Exhibits A, I, K, O (except for handwriting), and Declarant Daley's Exhibit A,² Exhibit B and Exhibit C.

Second, including both Defendants' declarations and the exhibits above, Defendants make assertions ostensibly from "the Archdiocese," yet without any evidentiary basis for such assertion. The late Cardinal Egan's letter referenced above is informative in this regard. His letter introduces the Administrative Manual (Daley's Exhibit A) by informing the Archdiocese school principals that the Manual is

"designed to assist you in the administrative tasks ... needed to carry out the vital work of Catholic education." (*emphasis added*)

Cardinal Egan wrote this when he was the religious head of the Archdiocese, as archbishop. He does not indicate in any manner that school principals are "ministers" or that they have "ministerial duties." He has not blessed or otherwise sanctioned the Manual as a religious document.

Third, regarding the foundational questions of whether Plaintiff has been given, and herself accepted, a religious role by the Roman Catholic Church, Defendants provide absolutely no admissible evidence—

A. Defendants provide no evidence that Plaintiff was bestowed with the title of minister, or given ministerial duties, by the Roman Catholic Church or any authorized representative of such church. Defendants provide no written Papal authorization or

² Exhibit A is the 374 page Archdiocese Administrative Manual. Except for certain admissions contained in Cardinal Egan's letter dated December 2006 (namely, that the Manual is for administration), Bates-stamp DEFTS023753 found at the first page of the Manual, Plaintiff objects to the Manual as self-serving hearsay.

decree; no canon law authorization; no written authorization or decree from the head of the Archdiocese of New York (the archbishop).

- B. Defendants repeatedly make assertions from “the Archdiocese,” yet without any non-hearsay statements from people with actual authority to speak for the Roman Catholic Church, including the Archdiocese, on religious matters. The Court can take judicial notice that the Roman Catholic Church is a hierarchical organization governed by its male clerical hierarchy (from the level of bishop up to the Pope), under its canon law, and yet there is no testimony from any authorized cleric of the Roman Catholic Church that lay parochial school principals in general, or Plaintiff Fratello in particular, have been given a pastoral or ministerial duties in the Roman Catholic Church.

Specific Rule 56.1 objections

Specific Local Rule 56.1 assertions of Defendant to which Plaintiff objects as unsupported by admissible evidence, or as immaterial on the *Hosanna-Tabor* ministerial immunity issue, are as follows. The vast majority of Defendants’ purported assertions of material fact involve activities that any “good Catholic” might be expected to perform in working for a Church-affiliated organization.

Plaintiff’s objection to Defendants’ 56.1 paragraph:

1. Ms. Daley is not a qualified witness, and certainly not an expert witness. She has no authority to make the factual assertion proffered, as she is not a minister, a cleric or a person with any religious credential. She is a merely a lay employee of the Archdiocese. Daley’s Exhibit A is inadmissible hearsay.
2. Novikoff’s Exhibit A is inadmissible hearsay.
3. *Id.*
4. *See 1, supra.*
5. These are conclusory statements, made by a person without knowledge and supported by an inadmissible hearsay document.
6. *Id.*

7. *Id.*, and see 1, *supra*.
8. Defendant's self-serving assertion, found in Deponent Daley's Exhibit C ("Summary of Compensation and Benefits"), is inadmissible hearsay.
9. Defendant's self-serving assertion, found in Deponent Daley's Exhibit A ("Administrative Manual"), is inadmissible hearsay, and lacks a foundation as expressing the views of the Roman Catholic Church (it appears to have been written by lay and non-clergy authors).
10. *Id.*
11. Objection, hearsay. Moreover, this vague secondhand statement from the Archdiocese's former Archbishop regarding who the Church's spiritual leaders does not in any way identify school principals as ministers or as having ministerial or pastoral duties. Plaintiff previously requested to depose the current archbishop, Cardinal Dolan, and was refused.
12. Objection, hearsay.
13. Objection, hearsay. Moreover, "according to the Archdiocese" says nothing as to whether the Archdiocese is acting in a religious capacity, or merely a church-related, charitable, community interest or commercial capacity.
14. Objection, hearsay.
15. Objection, hearsay.
16. Objection, hearsay.
17. Objection, hearsay. Being a good Roman Catholic is a legitimate "bona fide occupational qualification ("BFOQ") for teachers and administrators. This is quite different from being a minister of the church.
18. Agreed that this basic religious instruction is desired by the Archdiocese.
19. Objection, hearsay, and lack of foundation. Ms. Daley has no authority or religious credential to assert what she states. She is not a minister, and there is no demonstration whatsoever that she has any religious Church authority. She is a lay member of the Church.

20. *Id.*

21. *No dispute.*

22. Disputed—the pastor and Archdiocese develops the “religious” program, with input as they deem appropriate.

23. Objection, hearsay.

24. Objection, hearsay. Moreover, there is no foundation, or reason to believe, that the “Archdiocese” is acting in its capacity as a “church” or “religious,” as opposed to acting in some other capacity.

25. Objection, hearsay, and lack of foundation. There is no non-hearsay evidence that the Roman Catholic Church makes such an evaluation.

26.

27. Objection, hearsay and foundation (any good Catholic could be evaluated on the stated criteria).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* (and lack of any foundation as to who is speaking for the “Archdiocese”, and in what capacity).

33. *Id.*

34. Objection, hearsay, and lack of foundation.

35. *Id.* (and lack of any foundation as to who is speaking for the “Archdiocese”, and in what capacity).

36. Objection, hearsay, and lack of foundation.

37. *Id.* (and lack of any foundation as to who is speaking for the “Archdiocese”, and in what capacity).

38. Objection, hearsay, and lack of foundation.

39. *Id.* (and lack of any foundation as to who is speaking for the “Archdiocese”, and in what capacity).

40. [*no comment at this time*]

41.

42.

43.

44.

45.

46.

47. Plaintiff agrees that being a good Roman Catholic is a BFOQ for the jobs of teacher and principal.

48. *Id.*

49.

50. Objection, hearsay as to “the committee.”

51.

52.

53.

54. Objection, hearsay as to what a newspaper prints.

55. *Id.*

56. Objection, hearsay. Plaintiff objects to all performance reviews insofar as the reviews (created by unknown persons) are written so as to characterize a lay principal as a “religious leader.” For example, this language could have been crafted by the Archdiocese’s lawyers for the sole purpose of creating a misleading characterization that a lay person is a non-lay religious official. (Plaintiff does not dispute that she was universally regarded as an excellent parochial elementary school principal, and a good Catholic.)

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66-89 [*no comment*]

90. Objection, hearsay and lack of foundation as to the declarants' authority to attest to the "School's religious ... mission[s]."

91-95. [*no comment*]

96. Objection as to relevancy (and the definition, if any, of "religion").

97. Objection, hearsay, and purports to state another person's (Plaintiff's) intentions and thinking.

98. [*no comment*]

99. Objection, hearsay, and mischaracterization of the forwarding of another's communication.

100 *Id.*

101-109 [*no comments*]

110. Objection, Plaintiff disputes the factual assertion, which assertion regarding the purported task violates Church doctrine and canon law, by supplanting the role of the Pastor in conducting Mass.

111– 124 [*no comment here*]

In sum, the "evidence" submitted by Defendants that Plaintiff objects to above is inadmissible hearsay, immaterial to the ministerial immunity issue, and/or lacks a foundation that it is authorized by the Roman Catholic Church, as part of its religious governance and ministry (not merely secular, community or fund-raising/parish-support activities). Any church-affiliated organization—for example, a *Hobby Lobby* type business corporation—may seek managers who do all the things purportedly asked of Plaintiff, but in a factory setting, rather than an elementary school setting. A good Christian may be needed for this. But it does not transform a member of a church into a minister of the church. Whether a factory or a school, self-serving documents written by lay people proclaiming that a managerial employee is a minister does not make it so.

Plaintiff is entitled to first-hand evidence from authorized church religious leaders, not second-hand documents written by lay people without church authority.

Your Honor's consideration is much appreciated. Plaintiff request permission to serve her summary judgment papers no later than three weeks after Your Honor decides this application.

Respectfully submitted,

/S/

Michael D. Diederich, Jr.

attachment – Defendants' Rule 56.1 Statement

cc: Kenneth A. Novikoff, Esq.
Rivkin Radler LLP
via ECF & email Ken.Novikoff@rivkin.com

05/11/2015 #79 ORDER denying 78 Letter Motion for Conference: A conference and a motion to strike are not necessary. To the extent Plaintiff believes Defendant has relied on materials that are not properly considered on a motion for summary judgment, she should so state in her opposition to the motion, and if I agree, I will disregard those materials. (HEREBY ORDERED by Judge Cathy Seibel)(Text Only Order)(Seibel, Cathy) (Entered: 05/11/2015)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOANNE FRATELLO

Plaintiff,

NOTICE OF MOTION FOR
SUMMARY JUDGMENT
STRIKING DEFENDANTS'
HOSANNA-TABOR MINISTERIAL
IMMUNITY DEFENSE

-against-

12 Civ. 7359 (CS)(CMS)

ROMAN CATHOLIC ARCHDIOCESE
OF NEW YORK, *et al.*,

ECF CASE

Defendant.

PLEASE TAKE NOTICE that upon the accompanying Declarations, exhibits, Rule 56.1 Statement, and Plaintiff's Memorandum of Law, Plaintiff will move this Court, on a date and time set by this Court, for an order of summary judgment under FRCP Rule 56 striking Defendants' *Hosanna-Tabor* ministerial immunity defense, together with such other and further relief as the Court may direct.

Dated: Stony Point, New York
May 22, 2015

/S/
MICHAEL D. DIEDERICH, JR.
Attorney for Plaintiff MD 2097
361 Route 210
Stony Point, NY 10980
(845) 942-0795
Mike@DiederichLaw.com

TO: Kenneth A. Novikoff, Esq.
Rivkin Radler LLP

Attachment—Rule 56.1 Statement (Cross-Motion)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOANNE FRATELLO

Plaintiff,

DECLARATION OF
MICHAEL D. DIEDERICH, JR.

-against-

12 Civ. 7359 (CS)(CMS)

ROMAN CATHOLIC ARCHDIOCESE
OF NEW YORK, *et al.*,
Defendant.

ECF CASE

Michael D. Diederich, Jr., Esq., states and affirms under penalty of perjury as follows:

1. I am counsel to Plaintiff Joanne Fratello, and submit this declaration in opposition to Defendants' motion for summary judgment, and in support of Plaintiff's cross-motion for summary judgment striking Defendants' ministerial immunity defense.

2. Accompanying this Declaration are:

- a. Annexed hereto, the Declarations of Plaintiff Joanne Fratello and Sister Kate Kuenstler;
- b. Plaintiff's Notice of (Cross-) Motion, and annexed thereto, her Rule 56.1 Statement in support;
- c. Plaintiff's Response to Defendants' Rule 56.1 Statement, with Counter-Statement;
- d. Plaintiff's Memorandum of Law opposing Defendants' motion and supporting Plaintiff's cross-motion, and
- e. Plaintiff's Exhibits, which are true and accurate copies of exhibits relevant to this matter, as listed below.

3. Plaintiff's exhibits are as follows:

- i. Plaintiff's Exhibit 1, Amended Complaint (with complaint exhibit numbering the same as the numbering here)
- ii. Complaint Exhibit "2"—"Build Bold Futures with a Catholic Education" webpage;
- iii. Complaint Exhibit "3"—"TACS" webpage;
- iv. Complaint Exhibit "4"—N.Y.S. Catholic Conference "2012 Education Agenda;
- v. Complaint Exhibit "5"—omitted;
- vi. Complaint Exhibit "6"—"Common Core State Standards" (from Archdiocese of New York);
- vii. Complaint Exhibit "7"—"Build Bold Futures with a Catholic Education—Religion," webpage;
- viii. Complaint Exhibit "8"—"Build Bold Futures with a Catholic Education—Elementary Curriculum," webpage;
- ix. Complaint Exhibit "9"—"Build Bold Futures with a Catholic Education—Elementary School Districts at a Glance" webpage;
- x. Complaint Exhibit "10"—"Student Application" from Archdiocese of NY
- xi. Complaint Exhibit "11"—"St. Anthony's School Admissions Process," webpage
- xii. Complaint Exhibit "12"—Albertus Magnus High School, "President's Welcome," webpages;
- xiii. Complaint Exhibit "13"—"N.Y.S. Education Department—"Nonpublic Schools, Handbooks and Manuals, State Requirements and Programs (e.g., Equivalency of Instruction, non-discrimination), webpages;
- xiv. Complaint Exhibit "14"—"Contract of Employment for Lay Principals", July 3, 2007;
- xv. Complaint Exhibit "15"—"Summary of Compensation and Benefits" of Archdiocese;
- xvi. Complaint Exhibit "16"—Archdiocese Office of Superintendent of Schools letters Dr. Catherine Hickey letter to Ms. Fratello dated April 9, 2007 (Dr. Catherine Hickey), June 19, 2007 (same) and May 6, 2008 (Sr. Maria Pappas, Sup. of Schools).

- xvii. Plaintiff's Exhibit 17;¹ Archdiocese's Catholic Schools "Mission Statement", webpage.
- xviii. Plaintiff's Exhibit 18, Archdiocese's Catholic Schools – Welcome of "Superintendent", Dr. Timothy McNiff, Ed.D., webpage.
- xix. Plaintiff's Exhibit 19, "Archdiocese at a Glance", webpage (showing "Faith Diversity" as 23% non-Catholic).
- xx. Plaintiff's Exhibit 20, "Rockland Region—Catholic Elementary Schools, webpage.
- xxi. Plaintiff's Exhibit 21, "Elementary School Regions at a Glance", webpage.
- xxii. Plaintiff's Exhibit 22, Archdiocese's Catholic Schools "School Leader Qualifications, webpage.
- xxiii. Plaintiff's Exhibit 23, School Leader job summary and qualifications (web download).
- xxiv. Plaintiff's Exhibit 24, School Leader job application (web download).
- xxv. Plaintiff's Exhibit 25, Vatican's "Pontifical Council for the Laity", webpage.
- xxvi. Plaintiff's Exhibit 26, Vatican's "Instruction on Certain Questions Regarding the Collaboration of the Non-Ordained Faithful in the Sacred Ministry of Priest, web download.
- xxvii. Plaintiff's Exhibit 27 is the printout of St. Anthony's School's "about us" webpage, and accurately states its mission statement. The web page is: <http://www.stanthonyschoolnanuet.org/about-us/>.
- xxviii. Plaintiff's Exhibit 28 contains excerpts from the Archdiocese "Administrative Manual ("Manual") relating to the duties of Parish Pastor and School Principal, including provision for the mediation of disputes between Pastor and Principal (the full Manual is found at Defendants' Exhibit A to the Daley Declaration).
- xxix. Plaintiff's Exhibit 29 is the Archdiocese "Nondiscrimination Policy of Schools in the Archdiocese of New York" from the Manual (also found at Defendants' Exhibit A to Daley Declaration).
- xxx. Plaintiff's Exhibit 30 is the Archdiocese's information regarding "religious" and "lay" principals, from the Manual.
- xxxi. Plaintiff's Exhibit 31 is an article from the "Catholic Education Daily" entitled

¹ Consecutive numbering from the Amended Complaint exhibits.

<http://www.cardinalnewmansociety.org/CatholicEducationDaily/DetailsPage/tabid/102/ArticleID/4100/Cincinnati-Superintendent-Defends-Notion-of-Catholic-School-Teacher-as-%E2%80%98Minister%E2%80%99.aspx>, which is available online at

<http://www.cardinalnewmansociety.org/CatholicEducationDaily/DetailsPage/tabid/102/ArticleID/4100/Cincinnati-Superintendent-Defends-Notion-of-Catholic-School-Teacher-as-%E2%80%98Minister%E2%80%99.aspx>

- xxxii. Plaintiff's Exhibit 32 are two article reporting Pope Francis' talk about educators.
- xxxiii. Plaintiff's Exhibit 33 are portions of the Deposition Transcript of Ms. Daley; and
- xxxiv. Plaintiff's Exhibit 34 is the complete transcript of Ms. Daley's deposition testimony.

4. These materials will be filed on ECF, at the same time as Defendants' materials, under the Court's "bundling rule."

*Affirmed under penalty of perjury
this 21st day of May, 2015 at Stony Point, New York.*

_____/S/_____
MICHAEL D. DIEDERICH, JR.

List of Plaintiff's Exhibits

1. Plaintiff's Exhibit 1, Amended Complaint
2. Complaint Exhibit "2"—"Build Bold Futures with a Catholic Education" webpage;
3. Complaint Exhibit "3"—"TACS" webpage;
4. Complaint Exhibit "4"—N.Y.S. Catholic Conference "2012 Education Agenda;
5. Complaint Exhibit "5"—omitted
6. Complaint Exhibit "6"—"Common Core State Standards" (from Archdiocese of New York);
7. Complaint Exhibit "7"—"Build Bold Futures with a Catholic Education—Religion," webpage;
8. Complaint Exhibit "8"—"Build Bold Futures with a Catholic Education—Elementary Curriculum," webpage;
9. Complaint Exhibit "9"—"Build Bold Futures with a Catholic Education—Elementary School Districts at a Glance" webpage;
10. Complaint Exhibit "10"—"Student Application" from Archdiocese of NY
11. Complaint Exhibit "11"—"St. Anthony's School Admissions Process," webpage
12. Complaint Exhibit "12"—Albertus Magnus High School, "President's Welcome," webpages;
13. Complaint Exhibit "13"—"N.Y.S. Education Department—"Nonpublic Schools, Handbooks and Manuals, State Requirements and Programs (e.g., Equivalency of Instruction, non-discrimination), webpages;
14. Complaint Exhibit "14"—"Contract of Employment for Lay Principals", July 3, 2007;
15. Complaint Exhibit "15"—"Summary of Compensation and Benefits" of Archdiocese;
16. Complaint Exhibit "16"—Archdiocese Office of Superintendent of Schools letters Dr. Catherine Hickey letter to Ms. Fratello dated April 9, 2007 (Dr. Catherine Hickey), June 19, 2007 (same) and May 6, 2008 (Sr. Maria Pappas, Sup. of Schools).
17. Plaintiff's Exhibit 17;¹ Archdiocese's Catholic Schools "Mission Statement", webpage.
18. Plaintiff's Exhibit 18, Archdiocese's Catholic Schools – Welcome of "Superintendent", Dr. Timothy McNiff, Ed.D., webpage.
19. Plaintiff's Exhibit 19, "Archdiocese at a Glance", webpage (showing "Faith Diversity" as 23% non-Catholic).
20. Plaintiff's Exhibit 20, "Rockland Region—Catholic Elementary Schools, webpage.
21. Plaintiff's Exhibit 21, "Elementary School Regions at a Glance", webpage.
22. Plaintiff's Exhibit 22, Archdiocese's Catholic Schools "School Leader Qualifications, webpage.
23. Plaintiff's Exhibit 23, School Leader job summary and qualifications (web download).
24. Plaintiff's Exhibit 24, School Leader job application (web download).
25. Plaintiff's Exhibit 25, Vatican's "Pontifical Council for the Laity", webpage.
26. Plaintiff's Exhibit 26, Vatican's "Instruction on Certain Questions Regarding the Collaboration of the Non-Ordained Faithful in the Sacred Ministry of Priest, web download.
27. Plaintiff's Exhibit 27 is the printout of St. Anthony's School's "about us" webpage.
28. Plaintiff's Exhibit 28 contains excerpts from the Archdiocese "Administrative Manual ("Manual") relating to the duties of Parish Pastor and School Principal, including provision for the mediation of disputes between Pastor and Principal (the full Manual is found at Defendants' Exhibit A to the Daley Declaration).
29. Plaintiff's Exhibit 29 is the Archdiocese "Nondiscrimination Policy of Schools in the Archdiocese of New York" from the Manual (also found at Defendants' Exhibit A to Daley Declaration).
30. Plaintiff's Exhibit 30 is Archdiocese's information regarding "religious" and "lay" principals, from the Manual.
31. Plaintiff's Exhibit 31 is an article from the "Catholic Education Daily" entitled Cincinnati Superintendent Defends Notion of Catholic School Teacher as Minister
32. Plaintiff's Exhibit 32 are two article reporting Pope Francis' talk about educators
33. Plaintiff's Exhibits 33 & 34 -- Deposition Transcript of Ms. Daley

¹ Consecutively numbered after Amended Complaint's exhibits.



Build Bold Futures With a Catholic Education

SEARCH FOR A SCHOOL SEARCH WEBSITE

SEARCH

[About Us](#) [UPK/Pre-K](#) [Elementary](#) [Secondary](#) [Special Programs](#) [Support](#) [News](#) [Careers and Policy](#)

[Home](#) / [About Us](#) / [Mission Statement](#)

Mission Statement

Mission and Aim of Catholic Education in the Archdiocese of New York

The mission of the Catholic Schools of the Archdiocese of New York is to ensure our schools are Christ-centered, academically excellent, and welcoming communities that teach students to be life-long learners and leaders energized by fidelity to Christ, the Church, and one another.



About Us

Regionalization

Timothy Cardinal Dolan

Superintendent

Mission Statement

Archdiocese at a Glance

Elementary School Regions at a Glance

Catholic High Schools

Pathways to Excellence

Catholic School Experience

Inner-City Success

History of Schools

FAQ

Archdiocese of New York
(646) 794-2885

[Home](#) | [Site Map](#) | [Search](#) | [Contact](#) | [Webmail](#) | [Documents](#) | [Staff Access](#) | [Admin](#) | [Support](#)

[Print](#) [Email](#)



Build Bold Futures With a Catholic Education

SEARCH FOR A SCHOOL
 SEARCH WEBSITE

- [About Us](#)
[UPK/Pre-K](#)
[Elementary](#)
[Secondary](#)
[Special Programs](#)
[Support](#)
[News](#)
[Careers and Policy](#)

Home / About Us / Elementary School Regions at a Glance

Elementary School Regions at a Glance

Elementary School Regions at a Glance

As a key strategy in Pathways to Excellence, the strategic plan for Catholic schools in the Archdiocese of New York, all schools are now grouped into nine geographic regions.

Each Region is a separate, not-for-profit, educational corporation chartered by the New York State Department of Education. Each Catholic School Region Corporation will be governed by a two-tiered membership corporation with the Archbishop, Vicar General, and Chancellor at the top tier or Member level.

The next tier of the Catholic School Region Corporation will be the Board of Trustees. Given the importance of Catholic education to the community and to the Church, laity, along with clergy and religious, serve on the Board of Trustees in each Region. The Board is responsible for the day-to-day operations of the Catholic School Region Corporation. In addition to the Catholic School Region Corporation, some schools will remain parish-based under the supervision of the pastor.

A Regional Office, through the Office of the Superintendent and Office of Parish Finance, provides services to the schools within each Region. The Business Manager/Corporate Secretary works with the Regional Office to ensure the effective day-to-day business operations of the Region under general oversight of the Board.

Each region is supported by an experienced Regional Superintendent who collaborates with pastors, principals, teachers and parents in implementing the mission and goals of the Superintendent of Schools Office at the local level.

The District Superintendent sets the tone for the region and helps the principals and faculty fulfill the mission of Catholic education, which is to be Christ-centered, academically excellent and welcoming communities that teach our students to be life-long learners and leaders. They also provide an important link between the Superintendent's strategic initiatives and pastors and act as representatives of the Superintendent of Schools with local leaders.

Click on these links to learn more about the nine regions in the Archdiocese of New York and their dedicated leaders:

[Northeast/ East Bronx](#)

[Northwest/South Bronx](#)

[Manhattan](#)

[Rockland](#)

[Staten Island](#)

[Dutchess](#)

[Central Westchester](#)

[North Westchester/ Putnam](#)

[Ulster/Sullivan/Orange](#)



About Us

Regionalization

Timothy Cardinal Dolan

Superintendent

Mission Statement

Archdiocese at a Glance

Elementary School Regions at a Glance

Northeast/East Bronx

Northwest/South Bronx

Manhattan

Rockland

Staten Island

Dutchess

Central Westchester

North Westchester/Putnam

Ulster/Sullivan/Orange

Catholic High Schools

Pathways to Excellence

Catholic School Experience

Inner-City Success

History of Schools

FAQ

Archdiocese of New York
(646) 794-2885

[Home](#) |
 [Site Map](#) |
 [Search](#) |
 [Contact](#) |
 [Webmail](#) |
 [Documents](#) |
 [Staff Access](#) |
 [Admin](#) |
 [Support](#)

[Print](#)
[Email](#)

**Build Bold Futures With a Catholic Education**

SEARCH FOR A SCHOOL SEARCH WEBSITE

SEARCH

[About Us](#) [UPK/Pre-K](#) [Elementary](#) [Secondary](#) [Special Programs](#) [Support](#) [News](#) [Careers and Policy](#)[Home](#) / [Careers and Policy](#) / [School Leader Qualifications](#)**School Leader Qualifications****The Archdiocese of New York seeks qualified applicants for leadership positions in our schools**

We look for intelligent, results-oriented candidates with outstanding educational vision, leadership skills, organizational ability and interpersonal strengths to serve as principals for elementary (grades PreK-8) and secondary (grades 9-12) schools. These leaders must be committed Catholics who can inspire faculty and staff and engage parents and students in the promise of spiritual development and academic excellence.

Candidates must have the ability to create a high-expectations environment for teachers, students, and families. They must inspire a culture where faculty and staff members work collaboratively to ensure the holistic achievement of every student.

Candidates must also demonstrate strengths in organization, data- and mission-driven decision-making, interpersonal relationships and communication, effective supervision of instruction, assessment and professional development and financial planning.

Candidates must meet the following requirements:

- Practicing Catholic
- Minimum five years teaching experience or five years cumulative experience in teaching and/or administrative role
- Earned Master's degree in Education or Master's equivalent (or in progress) OR NYS School Building Leader certification (or equivalent)
- Preference is given to candidates with Level 1 and Level 2 Catechist certification or in progress (if prior position did not require Catechist certification, then both levels must be completed within three years of principalship).

Salary is commensurate with credentials and experience.

We are now accepting applications for the 2014-2015 school year.

Click the link below to download Stage 1 Documents and begin the application process.

[Stage 1 School Leader Preliminary Documents \(Start Here\)](#)

Following notification, qualified applicants will be invited to complete Stage 2 Supporting Documents.

[Stage 2 School Leader Supporting Documents](#)

Bridget S. Browne

Associate Superintendent for Leadership and Recruitment
Office of the Superintendent of Schools
Archdiocese of New York
1011 First Avenue, 18th Floor
New York, New York 10022

Tel: 646-794-2888

Fax: 212-758-3018

Email: bridget.browne@archny.org

[Careers and Policy](#)[Teach. Lead. Serve](#)[Teacher Application](#)[School Leader Qualifications](#)[Public Policy](#)

Archdiocese of New York
(646) 794-2885

[Home](#) | [Site Map](#) | [Search](#) | [Contact](#) | [Webmail](#) | [Documents](#) | [Staff Access](#) | [Admin](#) | [Support](#)[Print](#) [Email](#)

The Archdiocese of New York is one of the largest school systems including Catholic elementary and secondary, archdiocesan, parish and private schools covering the boroughs of the Bronx, Manhattan, Staten Island and reaching north into Westchester, Putnam, Dutchess, Orange, Rockland, Ulster and Sullivan. Talented administrators, pastors, and teachers attentively serve students, their families, and local communities. The Archdiocese of New York is seeking highly motivated, Christ-centered individuals to lead in our elementary and secondary schools.

JOB SUMMARY: The Archdiocese of New York seeks committed Catholics who can inspire and engage faculty, staff, parents and students in the pursuit of spiritual development and academic excellence. These dynamic administrators should demonstrate outstanding educational vision, professionalism, leadership skills, organizational ability and interpersonal strengths to serve as Principals for elementary (grades K-8) and secondary (grades 9-12) schools. Candidates must set high expectations and foster a culture of continuous improvement in which every member of the school community works collaboratively to ensure the holistic achievement of every student.

CANDIDATES MUST DEMONSTRATE PROFICIENCY IN THE FOLLOWING:

VISION, MISSION, AND GOALS

- Embody Christ-centered principles
- Encourage the spiritual growth, academic achievement, and social development of each and every student
- Exercise spiritual leadership to ensure a thriving Catholic school community including faculty and parents
- Embrace the diversity of the community

TEACHING AND LEARNING

- Develop, motivate and empower staff and cultivate excellent teaching
- Embrace lifelong learning for self, faculty and students
- Direct focus on student achievement
- Effectively use assessment data to set annual improvement goals
- Desire to grow beyond current achievements, aspire to excellence

MANAGING ORGANIZATIONAL SYSTEMS AND SAFETY

- Diligent work ethic and service-minded, with attention to detail
- Organize, schedule and manage priorities effectively
- Sustain, support and, where applicable, grow student enrollment, including recruitment and retention of students
- Understand and participate in school finances, including preparing budgets and making financial projections
- Establish a safe and secure learning environment
- Appropriately delegate and supervise leadership responsibilities

COLLABORATING WITH FAMILIES, MEMBERS OF THE FAITH COMMUNITY, AND COMMUNITY-AT-LARGE

- Think strategically and facilitate improvements in faculty and staff professional environment
- Engage internal and external constituents to secure resources for the school and students
- Recruit business and community leaders to provide support to the school
- Build alumni support for the school
- Willingness to promote Catholic education through marketing and other advancement activities
- Network with external community to promote their school

REQUIREMENTS:

- Practicing Catholic
- Minimum five years teaching experience OR five years cumulative experience in teaching and/or administrative role
- Earned Master's degree in Education or Masters Equivalent (or in progress) OR NYS SBL (or equivalent)
- Preference given to candidates with Level 1 and Level 2 Catechist certification or in progress (if prior position did not require
- Catechist certification, then both levels must be completed within three years of principalship)

QUALIFIED CANDIDATES SHOULD SUBMIT THE FOLLOWING (via email, preferred or US Mail):

- **Cover letter**, answering the following questions:
 1. What specifically makes you a good fit for serving as a Principal in a Catholic school?
 2. In reviewing the proficiency categories above, please select one bullet per category and describe how you have demonstrated those proficiencies in your professional experience.
 3. Describe your leadership style. Please provide specific examples of your leadership style in practice.
- **Résumé** (include all experiences, dates and education related to the position)

SALARY: Commensurate with education and experience

EMAIL or MAIL: Bridget S. Browne / Associate Superintendent for Leadership and Recruitment / Office of the Superintendent of Schools / Archdiocese of New York / 1011 First Avenue, 18th Floor, New York, New York 10022 /Bridget.Browne@archny.org

SCHOOL LEADER: PRINCIPAL



OFFICE OF THE SUPERINTENDENT OF SCHOOLS
ARCHDIOCESE OF NEW YORK

Dear Applicant,

Congratulations on your successful completion of Stage 1 of our comprehensive application process. Please complete all sections of this School Leader Application and return it along with completed Background Check form and letter of recommendation from your pastor. If applicable, please include copies of your state certification (teaching, administration, or related field) and/or copies of Catechist certification (Level I and Level II).

Check either or both school leader position you are applying for:

☐ Principal

☐ Assistant Principal

Print in ink or type all entries, except for your signature.

NAME (Last, First, MI) _____

ADDRESS (#/Street, City, State, Zip) _____

HOME PHONE _____ MOBILE PHONE _____

PRIMARY EMAIL _____ SECONDARY EMAIL _____

If applicable, Religious congregation _____

I. EDUCATION. *Begin with most recent education. (attach additional sheets, if necessary)*

College/University: _____ City/State: _____

Major: _____ Degree: _____

College/University: _____ City/State: _____

Major: _____ Degree: _____

College/University: _____ City/State: _____

Major: _____ Degree: _____

II. PROFESSIONAL CERTIFICATION *(attach additional sheets, if necessary)*

Certificate Title: _____ State: _____

Effective Date: _____ Expiration Date: _____ Subject/Levels: _____

Certificate Title: _____ State: _____

Effective Date: _____ Expiration Date: _____ Subject/Levels: _____

Certificate Title: _____ State: _____

Effective Date: _____ Expiration Date: _____ Subject/Levels: _____

III. CATECHIST CERTIFICATION

Arch/Diocese: _____ Level: _____ Date: _____

Arch/Diocese: _____ Level: _____ Date: _____

Are you a practicing Catholic? ☐ Yes ☐ No

If yes, please complete the following:

Name of Church/Parish: _____

Pastor: _____

Phone Number: _____

IV. PROFESSIONAL EMPLOYMENT EXPERIENCES. *Begin with most recent employment.*

Organization/School: _____ Name of Supervisor: _____

Position Held: _____ Dates Worked: _____ - _____

Reason for Leaving: _____

Organization/School: _____ Name of Supervisor: _____

Position Held: _____ Dates Worked: _____ - _____

Reason for Leaving: _____

Organization/School: _____ Name of Supervisor: _____

Position Held: _____ Dates Worked: _____ - _____

Reason for Leaving: _____

V. PROFESSIONAL REFERENCES. *List those who will complete recommendation forms on your behalf.*

Reference (current supervisor): _____ Position: _____

Address: _____ Phone: _____

Reference (colleague #1): _____ Position: _____

Address: _____ Phone: _____

Reference (colleague #2): _____ Position: _____

Address: _____ Phone: _____

VI. OTHER. *Please check yes or no; if you answer yes to questions below, please explain on a separate sheet of paper.*

☐ Yes ☐ No Have you ever been convicted of a crime? Please be advised that a conviction of a crime is not necessarily a bar to employment.

☐ Yes ☐ No Have you ever worked or applied for work in a school(s) in the Archdiocese of New York?

☐ Yes ☐ No Is any individual information relative to a change of name, or use of an assumed name or nickname necessary to enable us to check on your work records?

I will provide the Office of the Superintendent of Schools with official transcripts of all undergraduate and graduate courses and, if applicable, copies of any NYS (or other state) certificates presently held by me. I understand that in order to work as an administration in an Archdiocesan school, I, must be a practicing Roman Catholic and either be a United States citizen or submit proof that I have lawful status to work in the United States. I certify that the information contained in this application is true and correct to the best of my knowledge. I authorize the investigation of all matters contained in this application and agree that any misleading or false statements may result in my termination. I hereby authorize my present and past employers to furnish the Archdiocese of New York, Superintendent of Schools Office with information about my employment history. I understand that the references requested will be communicated on a confidential basis and that any information provided therein will not be shared with me. I further acknowledge that this application is not a contract of employment.

Signature: _____

Date: _____

Mail completed application and supporting documentation to:

Kathleen Curatolo, Associate Superintendent for Leadership and Recruitment / Office of the Superintendent of Schools / Archdiocese of New York / 1011 First Avenue, 18th Floor / New York, New York 10022

PI.00052



OFFICE OF THE SUPERINTENDENT OF SCHOOLS
ARCHDIOCESE OF NEW YORK

TRANSCRIPT REQUEST:
UNDERGRADUATE DEGREE

Please send this form to colleges and universities attended.

To: Registrar

Name of College/University

From:

Name of Student (Please Print)

Re: Transcript Request

Message: Please send an official transcript to:

Kathleen Curatolo

Associate Superintendent for Leadership and Recruitment
Office of the Superintendent of Schools
Archdiocese of New York
1011 First Avenue, 18th Floor
New York, New York 10022

STUDENT INFORMATION

Social Security or Student ID Number: _____

Name While Enrolled: _____

Current Address: _____

City: _____ State: _____ Zip: _____

Email Address: _____

Area Code and Phone Number: _____

If there is a fee, please bill me or notify me at the above address and phone number. It is important that the transcript be sent as soon as possible. Thank you.

Signature

Date



OFFICE OF THE SUPERINTENDENT OF SCHOOLS
ARCHDIOCESE OF NEW YORK

TRANSCRIPT REQUEST:

GRADUATE DEGREE

Please send this form to colleges and universities attended.

To: Registrar

Name of College/University

From: _____

Name of Student (Please Print)

Re: Transcript Request

Message: Please send an official transcript to:

Kathleen Curatolo

Associate Superintendent for Leadership and Recruitment

Office of the Superintendent of Schools

Archdiocese of New York

1011 First Avenue, 18th Floor

New York, New York 10022

STUDENT INFORMATION

Social Security or Student ID Number: _____

Name While Enrolled: _____

Current Address: _____

City: _____ State: _____ Zip: _____

Email Address: _____

Area Code and Phone Number: _____

If there is a fee, please bill me or notify me at the above address and phone number. It is important that the transcript be sent as soon as possible. Thank you.

Signature

Date



OFFICE OF THE SUPERINTENDENT OF SCHOOLS
 ARCHDIOCESE OF NEW YORK

This section to be filled in by applicant. (Please print or type.)

Name of Applicant _____ Position Sought _____

The Family Education Rights and Privacy Act of 1974 (P.L. 93-380) gives applicants' access to information in their application files. However, to ensure that references will be free to write a candid letter of recommendation, an applicant may waive the right to see letters of reference. If you wish to voluntarily waive this right, please sign and date below:

Signature _____ Date _____

To be completed by recommender and returned directly to Office of the Superintendent of Schools, Archdiocese of New York.

Name of Recommender _____ Contact Number _____

In what capacity have you known the applicant and for how long? _____

What is your estimate of the applicant's promise as a school leader and promise of professional success?
 Attach additional sheets, if necessary. _____

What are the applicant's greatest strengths and weaknesses? Attach additional sheets, if necessary. _____

Summary Evaluation: In comparison with a representative group of individuals in the same field and who have had approximately the same amount of experience and training, how do you rate the applicant's ability to:

Qualities:	Lower Quarter	Lower Half	Upper Half	Top 25%	Top 10%	Unable to Judge
Embody Christ-centered principles						
Encourage the spiritual growth, academic, achievement, and social development of each and every student						
Exercise spiritual leadership to ensure a thriving Catholic school community						
Embrace the diversity of the community						
Develop, motivate and empower staff and cultivate excellent teaching						
Embrace lifelong learning for self, faculty and students						
Direct focus on student achievement						
Desire to grow beyond current achievements, aspire to excellence						
Diligent work ethic and service-minded, with attention to detail						
Organize, schedule and manage priorities effectively						
Sustain, support and, where applicable, grow student enrollment, including recruitment and retention of students						
Understand and participate in school finances, including preparing budgets and making financial projections						
Establish a safe and secure learning environment						
Think strategically and facilitate improvements in faculty staff professional environment						
Engage internal and external constituents to secure resources for the school and students						
Recruit business and community leaders to provide support to the school						
Build alumni support for the school						
Willingness to promote Catholic education through marketing and other advancement activities						
Network with external community to promote their school						

Additional comments related to ratings: _____

Please check one:

- ☐ I recommend this candidate with enthusiasm, OR
- ☐ I recommend this candidate with reservations (please explain below), OR
- ☐ I do not recommend this candidate (please explain below)

Signature

Date

Please send completed reference form to:

Kathleen Curatolo / Associate Superintendent for Leadership and Recruitment
Office of the Superintendent of Schools, Archdiocese of New York
1011 First Avenue, 18th Floor / New York, New York 10022



OFFICE OF THE SUPERINTENDENT OF SCHOOLS
ARCHDIOCESE OF NEW YORK

REFERENCE REQUEST:
COLLEAGUE #1

This section to be filled in by applicant. (Please print or type.)

Name of Applicant _____ Position Sought _____

The Family Education Rights and Privacy Act of 1974 (P.L. 93-380) gives applicants' access to information in their application files. However, to ensure that references will be free to write a candid letter of recommendation, an applicant may waive the right to see letters of reference. If you wish to voluntarily waive this right, please sign and date below:

Signature _____ Date _____

To be completed by recommender and returned directly to Office of the Superintendent of Schools, Archdiocese of New York.

Name of Recommender _____ Contact Number _____

In what capacity have you known the applicant and for how long? _____

What is your estimate of the applicant's promise as a school leader and promise of professional success?

Attach additional sheets, if necessary. _____

What are the applicant's greatest strengths and weaknesses? Attach additional sheets, if necessary. _____

Summary Evaluation: In comparison with a representative group of individuals in the same field and who have had approximately the same amount of experience and training, how do you rate the applicant's ability:

Qualities	Lower Quarter	Lower Half	Upper Half	Top 25%	Top 10%	Unable to Judge
To take on the role as principal in a Catholic school						
To have enough courage to ask questions that need to be asked and to freely contribute their ideas?						
To maintain motivation, and dedication to get the job done, no matter what circumstance.						
To be conscientious and do their best						
To work well in groups and teams						
To take the lead, yet be cooperative						
To be resourceful						
To take ownership of problems						
To adapt and embrace change; be open to new ideas						
To prioritize tasks and work on many projects at once						
To show effective time management						
To handle stress that accompanies deadlines						
To do their best at work and come through in a pinch						
To handle criticism well						
To be open to learning and growing as a person and as a professional						
To demonstrate positive energy, optimistic and upbeat.						
To listen well listener and be verbally articulate						

Additional comments related to ratings: _____

Please check one:

- ☐ I recommend this candidate with enthusiasm, OR
- ☐ I recommend this candidate with reservations (please explain below), OR
- ☐ I do not recommend this candidate (please explain below)

Signature

Date


Please send completed reference form to:

Kathleen Curatolo/ Associate Superintendent for Leadership and Recruitment
Office of the Superintendent of Schools, Archdiocese of New York
1011 First Avenue, 18th Floor / New York, New York 10022

Pontifical Council for the Laity

IT EN ES FR a Dicastery of the Roman Curia at the service of the laity

[Home](#) [About us](#) [News](#) [Events](#) [Associations / Movements](#) [Youth](#) [Women](#) [Church and sport](#) [Search](#)




Proclaiming Christ in a digital age

XXVI Plenary Assembly of the Pontifical Council for the Laity - Rome 5 - 7 December 2013
[Read more](#)


Message from the President

The joy of evangelisation...




We see so many sad, vacant and downcast faces on our city streets nowadays. There are so many families affected by the scourge of unemployment and humiliating poverty. Many men and women live in anxiety and desperation and lose the courage to go on... [Read more](#)

Dear young people, Jesus wants to be your friend, and wants you to spread the joy of this friendship everywhere.

 Pope Francis 1 day ago

From Pope Francis

The Joy of the Gospel fills the hearts and lives of all who encounter Jesus




Download the full text of the Apostolic Exhortation

Evangelii Gaudium 102. Lay people are, put simply, the vast majority of the People of God. The minority – ordained ministers – are at their service. There has been a growing awareness of the identity and mission of the laity in the Church. We can count on many lay persons, although still not nearly enough, who have a deeply-rooted sense of community and great fidelity to the tasks of charity, catechesis and the celebration of the faith. At the... [Read more](#)


Highlights

Internet: a new frontier that is opening up at the beginning of this millennium




The choice of the theme "Proclaiming Christ in the digital age" for the 26th Plenary Assembly of the Pontifical Council for the Laity comes from the realisation that the world of digital communication has profoundly changed the landscape of the... [Read more](#)

Press Release - Proclaiming Christ in a digital age



The XXVI Plenary Assembly held by the Pontifical Council for the Laity will take place from 5 - 7 December 2013 at Villa Aurelia, Rome. The theme of the Plenary is: Proclaiming Christ in a digital age, a topic confirmed by the Holy Father... [Read more](#)

Msgr. Delgado in Assisi with the "Catholic Fraternity"



The Catholic Fraternity, an association of catholic charismatic and covenant communities recognised by the Pontifical Council for the Laity in 1990, gathered in Assisi in late October 2013, to elect its new office bearers. The elections of October... [Read more](#)

Publications

"LAIY TODAY" COLLECTION

"YOUTH" COLLECTION

DIRECTORY OF ASSOCIATIONS

THE PONTIFICAL COUNCIL FOR THE LAITY

DOCUMENTS

Other News

Athletes are not "merchandise" and sport cannot be measured solely by economic value

The Holy Father met in private audience Fila President, Joseph Blatter

Pope Francis received in audience the managers and athletes of the Italian and Argentinian national rugby teams


[Next »](#)

God entrusts the human being to the woman

THE SEMINAR CONTINUES ONLINE...


After the Study Seminar the debate among participants continues. Here are some contributions received by the Pontifical Council for the Laity that help deepen the discussions. "Woman can only hand herself by giving love to others" (MD, 30) ENG Karen Hurley My interventions at the Study Seminar ENG Sister Sara Butler Let's not say Gender when we mean Sex ENG Dale O'Leary How can we witness love? ENG Alejandra Correa Looking back and looking... [Read more](#)

Directory of associations: today we introduce "POPE JOHN XXIII COMMUNITY" ASSOCIATION




OFFICIAL NAME "Pope John XXIII Community" Association ALSO KNOWN AS Pope John XXIII Community ESTABLISHED 1968 HISTORY At the end of the 1950s, convinced of the importance of being present with the young people to... [Read more](#)


PHOTOS




Holy Mass at the Church of the Jesus, 3-1-2014



Holy Mass at the Church of the Jesus, 3-1-2014



Holy Mass at the Church of the Jesus, 3-1-2014



Holy Mass at the Church of the Jesus, 3-1-2014

© Copyright 2011-2013 Pontifical Council for the Laity | [Site Map](#) | [Links](#) | [Contact us](#)

INSTRUCTION
ON CERTAIN QUESTIONS REGARDING
THE COLLABORATION OF THE NON-ORDAINED
FAITHFUL IN THE SACRED MINISTRY OF PRIEST

PREMISS

The source of the call addressed to all members of the Mystical Body to participate actively in the mission and edification of the People of God, is to be found in the mystery of the Church. The People of God participate in this call through the dynamic of an organic communion in accord with their diverse ministries and charisms. The call has been forcefully repeated in the documents of the Magisterium, particularly since the Second Vatican Ecumenical Council⁽¹⁾ and thereafter. This is especially true of the last three General Ordinary Assemblies of the Synod of Bishops which reaffirmed the particular identities of the lay faithful and of sacred ministers and religious, in their proper dignity and diversity of functions. These Assemblies encouraged all the faithful to build up the Church by collaborating, in communion, for the salvation of the world.

The necessity and importance of apostolic action on the part of the lay faithful in present and future evangelization must be borne in mind. The Church cannot put aside this task because it is part of her very nature, as the 'People of God', and also because she has need of it in order to realize her own mission of evangelization.

This call for the active participation of all the faithful in the mission of the Church has not been unheard. The 1987 Synod of Bishops observed "The Holy Spirit continues to renew the youthfulness of the Church and has inspired new aspirations towards holiness and the participation of so many lay faithful. This is witnessed, among other ways, in the new manner of active collaboration among priests, religious and the lay faithful; by active participation in the Liturgy; in the proclamation of the Word of God and catechesis; in the multiplicity of services and tasks entrusted to the lay faithful and fulfilled by them; by the flourishing of groups, associations and spiritual movements as well as by lay commitment to the life of the Church and in the fuller and meaningful participation of women in the development of society".⁽²⁾ This was likewise verified in the preparation for the 1994 Synod of Bishops on Religious Life where it is stated: "Through all, there should be a sincere desire to instill an authentic rapport of communion and of collaboration between the Bishops, institutes of consecrated life, the secular clergy and the laity".⁽³⁾ In the subsequent Post-Synodal Exhortation the Supreme Pontiff confirmed the specific contribution of religious life in the mission and the building up of the Church.⁽⁴⁾

In effect, a collaboration of all the faithful exists in both orders of the Church's mission; whether it is in the spiritual order, bringing the message of Christ and his grace to men, or, in the temporal one, permeating and perfecting secular reality with the evangelical spirit.⁽⁵⁾ This is especially true in the primary areas of evangelization and sanctification — "It is in this sphere most of all that the lay apostolate and the pastoral ministry complete each other".⁽⁶⁾ In these areas, the lay faithful of both sexes, have innumerable opportunities to be actively involved. This is possible through bearing consistent witness in their personal, family and social lives by proclaiming and sharing the

gospel of Christ in every situation in which they find themselves, and by their involvement with the task of explaining, defending, and correctly applying Christian principals to the problems of today's world.(7) In particular, Pastors are exhorted to "...acknowledge and foster the ministries, the offices and roles of the lay faithful that find their foundation in the Sacraments of Baptism and Confirmation, indeed for a good many of them, in the Sacrament of Matrimony".(8)

The present reality is that there has been an astonishing growth of pastoral initiatives in this area. This is especially true after the notable impetus given by the Second Vatican Council and the Pontifical Magisterium in this regard.

The priority of the task of the New Evangelization, which involves all the People of God, requires that, today in particular, in addition to a "special activism" on the part of priests, there be also a full recovery of the awareness of the secular nature of the mission of the laity.(9)

This enterprise opens vast horizons, some of which have yet to be explored, for the lay faithful. The faithful can be active in this particular moment of history in areas of culture, in the arts and theatre, scientific research, labor, means of communication, politics, and the economy, etc. They are also called to a greater creativity in seeking out ever more effective means whereby these environments can find the fullness of their meaning in Christ.(10)

In this great field of complementary activity, whether considering the specifically spiritual and religious, or the *consecratio mundi*, there exists a more restricted area namely, the sacred ministry of the clergy. In this ministry the lay faithful, men or women and non-ordained members of Institutes of Consecrated Life and Societies of Apostolic Life, are called to assist. The Second Vatican Ecumenical Council refers particularly to this when it teaches: "The hierarchy entrusts the laity with certain charges more closely connected with the duties of pastors: in the teaching of Christian doctrine, for example, in certain liturgical actions in the care of souls".(11)

Since these tasks are most closely linked to the duties of pastors, (which office requires reception of the sacrament of Orders), it is necessary that all who are in any way involved in this collaboration, exercise particular care to safeguard the nature and mission of sacred ministry and the vocation and secular character of the lay faithful. It must be remembered that "collaboration with" does not, in fact, mean "substitution for".

It must be noted with great satisfaction that in many Particular Churches the collaboration of the non-ordained faithful in the pastoral ministry of the clergy has developed in a very positive fashion. It has borne an abundance of good fruits while, at the same time being mindful of the boundaries established by the nature of the sacraments and of the diversity of charisms and ecclesiastical functions. It has also brought about bounteous and tangible results in situations of a shortage or scarcity of sacred ministers.(12) In situations of emergency and chronic necessity in certain communities, some of the faithful, despite lacking the character of the sacrament of Orders, have acted appropriately and within their proper limits, in dealing with these realities. The necessary aspect of hierarchical relationship has been maintained while constantly seeking to remedy the situation of emergency.(13) Such faithful are called and deputed to assume specific duties which are as important as they are sensitive. Sustained by the grace of the Lord and by their sacred ministers journeying alongside them, they are well received by the communities which they serve. Sacred Pastors are extremely grateful for the generosity with which numerous religious and lay faithful present themselves for this specific service, carried out with a loyal "*sensus Ecclesiae*" and an edifying dedication. Particular thanks and encouragement should be extended to those who carry out these tasks in situations of persecution of the Christian community. This is also true for

mission territories, whether these be geographical or cultural, and for places where the Church is newly planted or where the presence of the priest is only sporadic.(14)

This is not the place to develop the theological and pastoral richness of the role of the lay faithful in the Church which has already been amply treated in the Apostolic Exhortation *Christifideles laici*.

The scope of this present document is simply to provide a clear, authoritative response to the many pressing requests which have come to our Dicasteries from Bishops, Priests and Laity seeking clarification in the light of specific cases of new forms of "pastoral activity" of the non-ordained on both parochial and diocesan levels.

Though being born in very difficult and emergency situations and even initiated by those who sought to be genuinely helpful in the pastoral moment, certain practices have often been developed which have had very serious negative consequences and have caused the correct understanding of true ecclesial communion to be damaged. These practices tend to predominate in certain areas of the world and even within these, a great deal of variation can be found.

These matters cause the grave pastoral responsibility of many to be recalled. This is especially true of Bishops (15) whose task it is to promote and ensure observance of the universal discipline of the Church founded on certain doctrinal principles already clearly enunciated by the Second Vatican Ecumenical Council(16) and by the Pontifical Magisterium(17) thereafter.

This document came into being as a result of deliberations within our Dicasteries as well as from a Symposium attended by representatives of the Episcopates most affected by the problem. Finally, there was an extensive consultation of many Presidents of Conferences of Bishops, of individual Prelates, as well as with experts from the various ecclesiastical disciplines and from different parts of the world. From all of the foregoing, a clear convergence emerged which is faithfully presented in this Instruction. However, the document does not claim to be exhaustive nor can it address every possible variation which might present itself. It is limited to consideration of the best known of these as there is great variety of particular circumstance possible which can give rise to these situations.

This text was drawn up based on the solid foundation of the ordinary and extraordinary magisterium of the Church and is entrusted for its faithful application, first of all to the Bishops most affected by the issues raised. It is also brought to the attention of the Prelates of those ecclesiastical jurisdictions where, even though the practices described are not found in those territories at this time, given their rapid diffusion, such situation could change quickly.

Before addressing the concrete situations which were presented to us, it is necessary to look briefly at the essential theological elements underlying the significance of Holy Orders in the organic make-up of the Church. This is so that the ecclesiastical discipline will be understood better in light of the truth and of ecclesial communion which are concerned with promoting the rights and obligations of all, and for which in the Church "the salvation of souls must always be the supreme law".(18)

THEOLOGICAL PRINCIPLES

1. The Common Priesthood of the Faithful and the Ministerial Priesthood

Jesus Christ, the Eternal High Priest, wished that his one and indivisible priesthood be transmitted to his Church. This Church is the people of the New Covenant who, "through Baptism and the anointing of the Holy Spirit are reborn and consecrated as a spiritual temple and a holy priesthood. By living the Christian life, they offer up spiritual sacrifices and proclaim the prodigious deeds of Him who called them from darkness into his own wonderful light (cf. *1 Pt* 2, 4-10)".(19) "There is but one chosen People of God: 'one Lord, one faith, one Baptism' (*Eph* 4, 5): there is a common dignity of members deriving from their rebirth in Christ, a common grace of filial adoption, a common vocation to perfection".(20) There exists "a true equality between all with regard to the dignity and to the activity which is common to all the faithful in the building up of the Body of Christ". By the will of Christ some are constituted "teachers, dispensers of the mysteries and pastors".(21) The common priesthood of the faithful and the ministerial or hierarchical priesthood "though they differ essentially and not only in degree... are none the less ordered one to another; (since) each in its own proper way shares in the one priesthood of Christ".(22) Between both there is an effective unity since the Holy Spirit makes the Church one in communion, in service and in the outpouring of the diverse hierarchical and charismatic gifts.(23)

Thus the essential difference between the common priesthood of the faithful and the ministerial priesthood is not found in the priesthood of Christ, which remains forever one and indivisible, nor in the sanctity to which all of the faithful are called: "Indeed the ministerial priesthood does not of itself signify a greater degree of holiness with regard to the common priesthood of the faithful; through it, Christ gives to priests, in the Spirit, a particular gift so that they can help the People of God to exercise faithfully and fully the common priesthood which it has received".(24) For the building up of the Church, the Body of Christ, there is a diversity of members and functions but only one Spirit who, for the good of the Church, distributes his various gifts with munificence proportionate to his riches and the needs of service, (cf. *1 Cor* 12, 1-11).(25)

This diversity exists at the *mode* of participation in the priesthood of Christ and is essential in the sense that "while the common priesthood of the faithful is exercised by the unfolding of baptismal grace, — a life of faith, hope and charity, a life according to the Spirit — the ministerial priesthood is at the service of the common priesthood... and directed at the unfolding of the baptismal grace of all Christians".(26) Consequently, the ministerial priesthood "differs in essence from the common priesthood of the faithful because it confers a sacred power for the service of the faithful"(27). For this reason the priest is exhorted "...to grow in awareness of the deep communion uniting him to the People of God" in order to "awaken and deepen co-responsibility in the one common mission of salvation, with a prompt and heartfelt esteem for all the charisms and tasks which the Spirit gives believers for the building up of the Church".(28)

The characteristics which differentiate the ministerial priesthood of Bishops and Priests from the common priesthood of the faithful and consequently delineate the extent to which other members of the faithful cooperate with this ministry, may be summarized in the following fashion:

a) the ministerial priesthood is rooted in the Apostolic Succession, and vested with "potestas sacra"(29) consisting of the faculty and the responsibility of acting in the person of Christ the Head and the Shepherd.(30)

b) it is a priesthood which renders its sacred ministers servants of Christ and of the Church by means of authoritative proclamation of the Word of God, the administration of the sacraments and the pastoral direction of the faithful.(31)

To base the foundations of the ordained ministry on Apostolic Succession, because this ministry continues the mission received by the Apostles from Christ, is an essential point of Catholic ecclesiological doctrine.(32)

The ordained ministry, therefore, is established on the foundation of the Apostles for the upbuilding of the Church: (33) "and is completely at the service of the Church".(34) "Intrinsically linked to the sacramental nature of ecclesial ministry is its character of service. Entirely dependent on Christ who gives mission and authority, ministers are truly 'servants of Christ' (*Rom* 1, 1) in the image of him who freely took for us 'the form of a slave' (*Phil* 2,7). Because the word and grace of which they are ministers are not their own, but are given to them by Christ for the sake of others, they must freely become the slaves of all".(35)

2. Unity and Diversity of Ministerial Functions

The functions of the ordained minister, taken as a whole, constitute a single indivisible unity in virtue of their singular foundation in Christ.(36) As with Christ,(37) salvific activity is one and unique. It is signified and realized by the minister through the functions of teaching, sanctifying and governing the faithful. This unity essentially defines the exercise of the sacred minister's functions which are always an exercise, in different ways, of the role of Christ as Head of the Church.

Therefore, since the exercise of the *munus docendi, sanctificandi et regendi* by the sacred minister constitute the essence of pastoral ministry, the diverse functions proper to ordained ministers form an indivisible unity and cannot be understood if separated, one from the other. Rather they must be viewed in terms of mutual correspondence and complementarity. Only in some of these functions, and to a limited degree, may the non-ordained faithful cooperate with their pastors should they be called to do so by lawful Authority and in accordance with the prescribed manner. "He (Jesus Christ) continually provides in his body, that is, in the Church, for gifts of ministries through which, by his power, we serve each other unto salvation...".(38) "*The exercise of such tasks does not make Pastors of the lay faithful*, in fact, a person is not a minister simply in performing a task, but through sacramental ordination. Only the Sacrament of Orders gives the ordained minister a particular participation in the office of Christ, the Shepherd and Head in his Eternal Priesthood. The task exercised in virtue of supply takes its legitimacy formally and immediately from the official deputation given by Pastors, as well as from its concrete exercise under the guidance of ecclesiastical authority".(39)

This doctrine needs to be reaffirmed especially in the light of certain practices which seek to compensate for numerical shortages of ordained ministers arising in some communities. In some instances, such have given rise to an idea of the common priesthood of the faithful which mistakes its nature and specific meaning. Amongst other things, it can encourage a reduction in vocations to the (ministerial) priesthood and obscure the specific purpose of seminaries as places of formation for the ordained ministry. These are closely related phenomena. Their interdependence calls for careful reflection so as to arrive at well considered conclusions in their regard.

3. The Indispensability of the Ordained Ministry

For a community of the faithful to be called a Church, and indeed to truly be a Church, it cannot be guided according to political criteria or those of human organisations. Every particular Church *owes* its guidance to Christ since it was He who fundamentally linked apostolic mission to the Church and hence no community has the power to grant that mission to itself⁽⁴⁰⁾ or to delegate it. In effect, a canonical or juridical determination made by hierarchal authority is necessary for the exercise of the *munus* of teaching and governing.⁽⁴¹⁾

The ministerial priesthood is therefore necessary for a community to exist as "Church": "The ordained priesthood ought not to be thought of as existing (...) posterior to the ecclesial community, as if the Church could be imagined as already established without this priesthood".⁽⁴²⁾ Indeed, were a community to lack a priest, it would be deprived of the exercise and sacramental action of Christ, the Head and Pastor, which are essential for the very life of every ecclesial community.

Thus the ordained priesthood is absolutely irreplaceable. As an immediate consequence of this there is the necessity for a continuing, zealous and well-organised pastoral promotion of vocations so as to provide the Church with those ministers which she needs and to ensure a proper seminary training for those preparing for the Sacrament of Holy Orders. Any other solution to problems deriving from a shortage of sacred ministers can only lead to precarious consequences.

"The duty of fostering vocations falls on the whole Christian community, and they should discharge it principally by living full Christian lives".⁽⁴³⁾ By following Christ more closely and in overcoming indifference, all the faithful have a responsibility to foster a positive response to priestly vocation. This is especially true for those nations where a strong sense of materialism is evident.

4. The Collaboration of the Non-ordained Faithful in Pastoral Ministry

Among the various aspects of the participation of the non-ordained faithful in the Church's mission considered by the conciliar documents, that of their direct collaboration with the ministry of the Church's pastors is considered.⁽⁴⁴⁾ Indeed, "when necessity and expediency in the Church require it, the Pastors, according to established norms from universal law, can entrust to the lay faithful certain offices and roles that are connected to their pastoral ministry but do not require the character of Orders".⁽⁴⁵⁾ In this way, it is not one merely of assistance but of mutual enrichment of the common Christian vocation. This collaboration was regulated by successive post-conciliar legislation and particularly by the *Codex Iuris Canonici*.

The Code, having referred to the rights and duties of all the faithful,⁽⁴⁶⁾ in the subsequent title devoted to the rights and duties of the lay faithful, treats not only of those which are theirs in virtue of their secular condition,⁽⁴⁷⁾ but also of those tasks and functions which are not exclusively theirs. Some of these latter refer to any member of the faithful, whether ordained or not,⁽⁴⁸⁾ while others are considered along the lines of collaboration with the sacred ministry of cleric.⁽⁴⁹⁾ With regard to these last mentioned areas or functions, the non-ordained faithful do not enjoy a right to such tasks and functions. Rather, they are "capable of being admitted by the sacred Pastors... to those functions which, in accordance with the provisions of law, they can discharge" ⁽⁵⁰⁾ or where "ministers are not available... they can supply certain of their functions... in accordance with the provisions of law".⁽⁵¹⁾

To ensure that such collaboration is harmoniously incorporated into pastoral ministry, and to avoid situations of abuse and disciplinary irregularity in pastoral practice, it is always necessary to have clarity in doctrinal principles. Therefore a consistent, faithful and serious application of the current canonical dispositions throughout the entire Church, while avoiding the abuse of multiplying "exceptional" cases over and above those so designated and regulated by normative discipline, is extremely necessary.

Where the existence of abuses or improper practices has been proved, Pastors will promptly employ those means judged necessary to prevent their dissemination and to ensure that the correct understanding of the Church's nature is not impaired. In particular, they will apply the established disciplinary norms to promote knowledge of and assiduous respect for that distinction and complementarity of functions which are vital for ecclesial communion. Where abusive practices have become widespread, it is absolutely necessary for those who exercise authority to intervene responsibly so as to promote communion which can only be done by adherence to the truth. Communion, truth, justice, peace and charity are all interdependent terms.(52)

In the light of the aforementioned principles, remedies, based on the normative discipline of the Church, and deemed opportune to correct abuses which have been brought to the attention of our Dicastries, are hereby set forth.

PRACTICAL PROVISIONS

Article 1

Need for an Appropriate Terminology

In his address to participants at the Symposium on "Collaboration of the Lay Faithful with the Priestly Ministry", the Holy Father emphasised the need to clarify and distinguish the various meanings which have accrued to the term "ministry" in theological and canonical language.(53)

§ 1. "For some time now, it has been customary to use the word *ministries* not only for the *officia* (*offices*) and non-ordained (*functions*) *munera* exercised by Pastors in virtue of the sacrament of Orders, but also for those exercised by the lay faithful in virtue of their baptismal priesthood. The terminological question becomes even more complex and delicate when all the faithful are recognized as having the possibility of supplying-by official deputation given by the Pastors-certain functions more proper to clerics, which, nevertheless, do not require the character of Orders. It must be admitted that the language becomes doubtful, confused, and hence not helpful for expressing the doctrine of the faith whenever the difference 'of essence and not merely of degree' between the baptismal priesthood and the ordained priesthood is in any way obscured".(54)

§ 2. "In some cases, the extension of the term "ministry" to the *munera* belonging to the lay faithful has been permitted by the fact that the latter, to their own degree, are a participation in the one priesthood of Christ. The *officia* temporarily entrusted to them, however, are exclusively the result of a deputation by the Church. Only with constant reference to the one source, the 'ministry of Christ' (...) may the term *ministry* be applied to a certain extent and without ambiguity to the lay

faithful: that is, without it being perceived and lived as an undue aspiration to the *ordained ministry* or as a progressive erosion of its specific nature.

In this original sense the term *ministry* (*servitium*) expresses only the work by which the Church's members continue the mission and ministry of Christ within her and the whole world. However, when the term is distinguished from and compared with the various *munera* and *officia*, then it should be clearly noted that *only* in virtue of sacred ordination does the work obtain that full, univocal meaning that tradition has attributed to it." (55)

§ 3. The non-ordained faithful may be generically designated "extraordinary ministers" when deputed by competent authority to discharge, solely by way of supply, those offices mentioned in Canon 230, § 3(56) and in Canons 943 and 1112. Naturally, the concrete term may be applied to those to whom functions are canonically entrusted e.g. catechists, acolytes, lectors etc.

Temporary deputation for liturgical purposes — mentioned in Canon 230, § 2 — does not confer any special or permanent title on the non-ordained faithful.(57)

It is unlawful for the non-ordained faithful to assume titles such as "pastor", "chaplain", "coordinator", "moderator" or other such similar titles which can confuse their role and that of the Pastor, who is always a Bishop or Priest.(58)

Article 2

The Ministry of the Word(59)

§ 1. The content of that ministry consists in "the pastoral preaching, catechetics and all forms of Christian instruction, among which the liturgical homily should hold pride of place".(60)

The exercise of its respective functions is properly that of the Bishop of each particular Church since he is the moderator of the entire ministry of the Word in his Diocese (61) and it is also properly that of his priests who are his collaborators.(62) In communion with the Bishop and his priests, this ministry also belongs to deacons.(63)

§ 2. The non-ordained faithful, according to their proper character, participate in the prophetic function of Christ, are constituted as his witnesses and afforded the "sensus fidei" and the grace of the Word. All are called to grow even more as "heralds of faith in things to be hoped for (cf. *Hebrews* 11, 1).(64) Today, much depends on their commitment and generous service to the Church, especially in the work of catechesis.

Therefore, the faithful, especially members of Institutes of Consecrated Life and Societies of Apostolic Life can be invited to collaborate, in lawful ways, in the exercise of the ministry of the Word.(65)

§ 3. To ensure the effectiveness of the collaboration mentioned in § 2 above, it is necessary to note some conditions relating to the operation of this same collaboration.

Canon 766 of the *Codex Iuris Canonici* establishes the conditions under which competent authority may admit the non-ordained faithful to preach *in ecclesia vel oratorio*. The use of the expression

admitti possunt makes clear that in no instance is this a right such as that which is specific and proper to the Bishop (66) or a faculty such as enjoyed by priests and deacons.(67)

The terms in which these conditions are expressed — "If in certain circumstances it is *necessary*..., ...if in particular cases it would be *useful*..." in canon 766, make clear the exceptional nature of such cases as well as the fact that such must always be done *iuxta Episcoporum conferentiae praescripta*. In this final clause, this Canon establishes the primary source for correct discernment with regard to *necessity* or *useful* in specific cases. The prescriptions of the Conference of Bishops in this matter, which must receive the "recognitio" of the Apostolic See, are obliged to lay down those opportune criteria which may assist the diocesan Bishop in making appropriate pastoral decisions, proper to the nature of the same episcopal office.

§ 4. In some areas, circumstances can arise in which a shortage of sacred ministers and permanent, objectively verifiable, situations of need or advantage exist that would recommend the admission of the non-ordained faithful to preaching.

Preaching in churches or oratories by the non-ordained faithful can be permitted only as a *supply* for sacred ministers or for those particular reasons foreseen by the universal law of the Church or by Conferences of Bishops. It cannot, however, be regarded as an ordinary occurrence nor as an authentic promotion of the laity.

§ 5. Above all in the preparation for the sacraments, catechists take care to instruct those being catechized on the role and figure of the priest as the sole dispenser of the mysteries for which they are preparing.

Article 3

The Homily

§ 1. The homily, being an eminent form of preaching, *qua per anni liturgici cursum ex textu sacro fidei mysteria et normae vitae christianae exponuntia*,(68) also forms part of the liturgy.

The homily, therefore, during the celebration of the Holy Eucharist, must be reserved to the sacred minister, Priest or Deacon(69) to the exclusion of the non-ordained faithful, even if these should have responsibilities as "pastoral assistants" or catechists in whatever type of community or group. This exclusion is not based on the preaching ability of sacred ministers nor their theological preparation, but on that function which is reserved to them in virtue of having received the Sacrament of Holy Orders. For the same reason the diocesan Bishop cannot validly dispense from the canonical norm(70) since this is not merely a disciplinary law but one which touches upon the closely connected functions of teaching and sanctifying.

For the same reason, the practice, on some occasions, of entrusting the preaching of the homily to seminarians or theology students who are not clerics(71) is not permitted. Indeed, the homily should not be regarded as a training for some future ministry.

All previous norms which may have admitted the non-ordained faithful to preaching the homily during the Holy Eucharist are to be considered abrogated by canon 767, § 1.(72)

§ 2. A form of instruction designed to promote a greater understanding of the liturgy, including personal testimonies, or the celebration of eucharistic liturgies on special occasions (e.g. day of the Seminary, day of the sick etc.) is lawful, if in harmony with liturgical norms, should such be considered objectively opportune as a means of explicating the regular homily preached by the celebrant priest. Nonetheless, these testimonies or explanations may not be such so as to assume a character which could be confused with the homily.

§ 3. As an expository aid and providing it does not delegate the duty of preaching to others, the celebrant minister may make prudent use of "dialogue" in the homily, in accord with the liturgical norms.(73)

§ 4. Homilies in non-eucharistic liturgies may be preached by the non-ordained faithful only when expressly permitted by law and when its prescriptions for doing so are observed.

§ 5. In no instance may the homily be entrusted to priests or deacons who have lost the clerical state or who have abandoned the sacred ministry.(74)

Article 4

The Parish Priest and the Parish

The non-ordained faithful, as happens in many worthy cases, may collaborate effectively in the pastoral ministry of clerics in parishes, health care centres, charitable and educational institutions, prisons, Military Ordinariates etc. Provisions regulating such extraordinary form of collaboration are provided by Canon 517, § 2.

§ 1. The right understanding and application of this canon, according to which "*si ob sacerdotum penuriam Episcopus dioecesanus aestimaverit participationem in exercitio curae pastoralis parociae concedendam esse diacono aliive personae sacerdotali character non insignate aut personarum communitati, sacerdotem constitat aliquem qui, potestatibus facultatibus parochi instructus curam pastorem moderetur*", requires that this exceptional provision be used only with strict adherence to conditions contained in it. These are:

a) ob sacerdotum penuriam and not for reasons of convenience or ambiguous "advancement of the laity", etc.;

b) this is participatio in exercitio curae pastoralis and not directing, coordinating, moderating or governing the Parish; these competencies, according to the canon, are the competencies of a priest alone.

Because these are exceptional cases, before employing them, other possibilities should be availed of, such as using of the services of retired priests still capable of such service, or entrusting several parishes to one priest or to a *coetus sacerdotum*.(75)

In any event, the preference which this canon gives to deacons cannot be overlooked.

The same canon, however, reaffirms that these forms of participation in the pastoral care of parishes cannot, in any way, replace the office of Parish Priest. The same canon decrees that "*Episcopus dioecesanus (...) sacerdotem constituat aliquem qui potestatibus et facultatibus parochi*

instructus, curam pastoralem moderetur." Indeed, the office of Parish Priest can be assigned validly only to a priest (cf. Canon 521, § 1) even in cases where there is a shortage of clergy.(76)

§ 2. In the same regard, it must be noted that the Parish Priest is the Pastor proper to the parish entrusted to him(77) and remains such until his pastoral office shall have ceased.(78)

The presentation of resignation at the age of 75 by a Parish Priest does not of itself (*ipso iure*) terminate his pastoral office. Such takes effect only when the diocesan Bishop, following prudent consideration of all the circumstances, shall have definitively accepted his resignation in accordance with Canon 538, § 3 and communicated such to him in writing.(79) In the light of those situations where scarcity of priests exists, the use of special prudence in this matter would be judicious.

In view of the right of every cleric to exercise the ministry proper to him, and in the absence of any grave health or disciplinary reasons, it should be noted that having reached the age of 75 does not constitute a binding reason for the diocesan Bishop to accept a Parish Priest's resignation. This also serves to avoid a functional concept of the Sacred Ministry.(80)

Article 5

The Structures of Collaboration in the Particular Church

These structures, so necessary to that ecclesial renewal called for by the Second Vatican Council have produced many positive results and have been codified in canonical legislation. They represent a form of active participation in the life and mission of the Church as communion.

§ 1. The norms of the Code with regard to the *Council of Priests (Presbyteral Council)* specifies those priests who can be its members.(81) Because the Council of Priests is founded on the common participation of the Bishop and his priests in the same priesthood and ministry, membership in it is reserved to priests alone.(82)

Deacons, non-ordained members of the faithful, even if collaborators with the Sacred Ministers, and those priests who have lost the clerical state or who have abandoned the Sacred Ministry do not have either an active or a passive voice in the Council of Priests.

§ 2. Diocesan and parochial *Pastoral Councils*(83) and *Parochial Finance Councils*,(84) of which non-ordained faithful are members, enjoy a consultative vote only and cannot in any way become deliberative structures. Only those faithful who possess the qualities prescribed by the canonical norms(85) may be elected to such responsibilities.

§ 3. It is for the Parish Priest to preside at parochial councils. They are to be considered invalid, and hence null and void, any deliberations entered into, (or decisions taken), by a parochial council which has not been presided over by the Parish Priest or which has assembled contrary to his wishes.(86)

§ 4. Diocesan councils may properly and validly express their consent to an act of the Bishop only in those cases in which the law expressly requires such consent.

§ 5. Given the local situation Ordinaries may avail themselves of special study groups or of groups of experts to examine particular questions. Such groups, however, cannot be constituted as structures parallel to diocesan presbyteral or pastoral councils nor indeed to those diocesan structures regulated by the universal law of the Church in Canons 536, § 1 and 537.(87) Neither may such a group deprive these structures of their lawful authority. Where structures of this kind have arisen in the past because of local custom or through special circumstances, those measures deemed necessary to conform such structures to the current universal law of the Church must be taken.

§ 6. The *Vicars forane*, sometimes called deans, archpriests, or by suchlike titles, and those called "assistant vicars", "assistant dean", etc., must always be priests.(88) The non-ordained faithful cannot be validly appointed to these offices.

Article 6

Liturgical Celebrations

§ 1. Liturgical actions must always clearly manifest the unity of the People of God as a structured communion.(89) Thus there exists a close link between the ordered exercise of liturgical action and the reflection in the liturgy of the Church's structured nature.

This happens when all participants, with faith and devotion, discharge those roles proper to them.

§ 2. To promote the proper identity (of various roles) in this area, those abuses which are contrary to the provisions of canon 907 are to be eradicated. In eucharistic celebrations deacons and non-ordained members of the faithful may not pronounce prayers — e.g. especially the eucharistic prayer, with its concluding doxology — or any other parts of the liturgy reserved to the celebrant priest. Neither may deacons or non-ordained members of the faithful use gestures or actions which are proper to the same priest celebrant. It is a grave abuse for any member of the non-ordained faithful to "quasi preside" at the Mass while leaving only that minimal participation to the priest which is necessary to secure validity.

In the same way, the use of sacred vestments which are reserved to priests or deacons (stoles, chasubles or dalmatics) at liturgical ceremonies by non-ordained members of the faithful is clearly unlawful.

Every effort must be made to avoid even the appearance of confusion which can spring from anomalous liturgical practices. As the sacred ministers are obliged to wear all of the prescribed liturgical vestments so too the non-ordained faithful may not assume that which is not proper to them.

To avoid any confusion between sacramental liturgical acts presided over by a priest or deacon, and other acts which the non-ordained faithful may lead, it is always necessary to use clearly distinct ceremonials, especially for the latter.

Article 7

Sunday Celebrations in the Absence of a Priest

§ 1. In some places in the absence of priests or deacons,(90) non-ordained members of the faithful lead Sunday celebrations. In many instances, much good derives for the local community from this useful and delicate service when it is discharged in accordance with the spirit and the specific norms issued by the competent ecclesiastical authority.(91) A special mandate of the Bishop is necessary for the non-ordained members of the faithful to lead such celebrations. This mandate should contain specific instructions with regard to the term of applicability, the place and conditions in which it is operative, as well as indicate the priest responsible for overseeing these celebrations.

§ 2. It must be clearly understood that such celebrations are temporary solutions and the text used at them must be approved by the competent ecclesiastical authority.(92) The practice of inserting into such celebrations elements proper to the Holy Mass is prohibited. So as to avoid causing error in the minds of the faithful,(93) the use of the eucharistic prayers, even in narrative form, at such celebrations is forbidden. For the same reasons, it should be emphasised for the benefit of those participating, that such celebrations cannot substitute for the eucharistic Sacrifice and that the obligation to attend mass on Sunday and Holy days y obligation is satisfied only by attendance at Holy Mass.(94) In cases where distance or physical conditions are not an obstacle, every effort should be made to encourage and assist the faithful to fulfil this precept.

Article 8*The Extraordinary Minister of Holy Communion*

The non-ordained faithful already collaborate with the sacred ministers in diverse pastoral situations since "This wonderful gift of the Eucharist, which is the greatest gift of all, demands that such an important mystery should be increasingly better known and its saving power more fully shared".(95)

Such liturgical service is a response to the objective needs of the faithful especially those of the sick and to those liturgical assemblies in which there are particularly large numbers of the faithful who wish to receive Holy Communion.

§ 1. The canonical discipline concerning *extraordinary ministers of Holy Communion* must be correctly applied so as to avoid generating confusion. The same discipline establishes that the ordinary minister of Holy Communion is the Bishop, the Priest and the the Deacon.(96) Extraordinary ministers of Holy Communion are those instituted as acolytes and the faithful so deputed in accordance with Canon 230, § 3.(97)

A non-ordained member of the faithful, in cases of true necessity, may be deputed by the diocesan bishop, using the appropriate form of blessing for these situation, to act as an extraordinary minister to distribute Holy Communion outside of liturgical celebrations *ad actum vel ad tempus* or for a more stable period. In exceptional cases or in un foreseen circumstances, the priest presiding at the liturgy may authorize such *ad actum*.(98)

§ 2. Extraordinary ministers may distribute Holy Communion at eucharistic celebrations only when there are no ordained ministers present or when those ordained ministers present at a liturgical celebration are truly unable to distribute Holy Communion.(99) They may also exercise this

function at eucharistic celebrations where there are particularly large numbers of the faithful and which would be excessively prolonged because of an insufficient number of ordained ministers to distribute Holy Communion. (100)

This function is *supplementary and extraordinary* (101) and must be exercised in accordance with the norm of law. It is thus useful for the diocesan bishop to issue particular norms concerning extraordinary ministers of Holy Communion which, in complete harmony with the universal law of the Church, should regulate the exercise of this function in his diocese. Such norms should provide, amongst other things, for matters such as the instruction in eucharistic doctrine of those chosen to be extraordinary ministers of Holy Communion, the meaning of the service they provide, the rubrics to be observed, the reverence to be shown for such an august Sacrament and instruction concerning the discipline on admission to Holy Communion.

To avoid creating confusion, certain practices are to be avoided and eliminated where such have emerged in particular Churches:

- extraordinary ministers receiving Holy Communion apart from the other faithful as though concelebrants;
- association with the renewal of promises made by priests at the Chrism Mass on Holy Thursday, as well as other categories of faithful who renew religious vows or receive a mandate as extraordinary ministers of Holy Communion;
- the habitual use of extraordinary ministers of Holy Communion at Mass thus arbitrarily extending the concept of "a great number of the faithful".

Article 9

The Apostolate to the Sick

§ 1. In this area, the non-ordained faithful can often provide valuable collaboration. (102) Innumerable works of charity to the sick are constantly provided by the non-ordained faithful either individually or through community apostolates. These constitute an important Christian presence to sick and suffering of the greatest importance. The non-ordained faithful particularly assist the sick by being with them in difficult moments, encouraging them to receive the Sacraments of Penance and the Anointing of the Sick, by helping them to have the disposition to make a good individual confession as well as to prepare them to receive the Anointing of the Sick. In using sacramentals, the non-ordained faithful should ensure that these are in no way regarded as sacraments whose administration is proper and exclusive to the Bishop and to the priest. Since they are not priests, in no instance may the non-ordained perform anointings either with the Oil of the Sick or any other oil.

§ 2. With regard to the administration of this sacrament, ecclesiastical legislation reiterates the theologically certain doctrine and the age old usage of the Church (103) which regards the priest as its only valid minister. (104) This norm is completely coherent with the theological mystery signified and realized by means of priestly service.

It must also be affirmed that the reservation of the ministry of Anointing to the priest is related to the connection of this sacrament to the forgiveness of sin and the worthy reception of the Holy

Eucharist. No other person may act as ordinary or extraordinary minister of the sacrament since such constitutes simulation of the sacrament. (105)

Article 10

Assistance at Marriages

§ 1. The possibility of delegating the non-ordained faithful to assist at marriages may prove necessary in special circumstances where there is a grave shortage of sacred ministers.

This possibility, however, is subject to the verification of three conditions. The diocesan Bishop, may concede this delegation only in cases where there are no priests or deacons available and after he shall have obtained for his own diocese a favourable votum from the Conference of Bishops and the necessary permission of the Holy See. (106)

§ 2. In such cases, the canonical norms concerning the validity of delegation, (107) the suitability, capacity and attitude of the non-ordained faithful must be observed. (108)

§ 3. With the exception of an extraordinary case due to the absolute absence of both Priests and Deacons who can assist at marriages provided for in Canon 1112 of the Code of Canon Law, no ordained minister may authorize the non-ordained faithful for such assistance. Neither may an ordained minister authorize the non-ordained faithful to ask or receive matrimonial consent according to the norm of Canon 1108 § 2.

Article 11

The Minister of Baptism

Particularly praiseworthy is the faith with which many Christians, in painful circumstances of persecution, or in missionary territories or in special cases of necessity, have afforded and continue to afford the Sacrament of Baptism to new generations of Christians in the absence of ordained ministers.

Apart from cases of necessity, canonical norms permit the non ordained faithful to be designated as extraordinary ministers of Baptism (109) should there be no ordinary minister or in cases where he is impeded. (110) Care should be taken however to avoid too extensive an interpretation of this provision and such a faculty should not be conceded in an habitual form.

Thus, for example, that absence or the impediment of a sacred minister which renders licit the deputation of the lay faithful to act as an extraordinary minister of Baptism, cannot be defined in terms of the ordinary minister's excessive workload, or his non-residence in the territory of the parish, nor his non-availability on the day on which the parents wish the Baptism to take place. Such reasons are insufficient for the delegation of the non ordained faithful to act as extraordinary ministers of Baptism.

Article 12*Leading the Celebration at Funerals*

In the present circumstances of growing dechristianization and of abandonment of religious practice, death and the time of obsequies can be one of the most opportune pastoral moments in which the ordained minister can meet with the non-practising members of the faithful.

It is thus desirable that Priests and Deacons, even at some sacrifice to themselves, should preside personally at funeral rites in accordance with local custom, so as to pray for the dead and be close to their families, thus availing of an opportunity for appropriate evangelization.

The non-ordained faithful may lead the ecclesiastical obsequies provided that there is a true absence of sacred ministers and that they adhere to the prescribed liturgical norms. (111) Those so deputed should be well prepared both doctrinally and liturgically.

Article 13*Necessary Selection and Adequate Formation*

Should it become necessary to provide for "supplementary" assistance in any of the cases mentioned above, the competent Authority is bound to select lay faithful of sound doctrine and exemplary moral life. Catholics who do not live worthy lives or who do not enjoy good reputations or whose family situations do not conform to the teaching of the Church may not be admitted to the exercise of such functions. In addition, those chosen should possess that level of formation necessary for the discharge of the responsibilities entrusted to them.

In accordance with the norms of particular law, they should perfect their knowledge particularly by attending, in so far as possible, those formation courses organized for them by the competent ecclesiastical Authority in the particular Churches, (112) (in environments other than that of the Seminary, as this is reserved solely for those preparing for the priest hood). (113) Great care must be exercised so that these courses conform absolutely to the teaching of the ecclesiastical magisterium and they must be imbued with a true spirituality.

CONCLUSION

The Holy See entrusts this present document to the pastoral zeal of diocesan Bishops in the various particular Churches and to other Ordinaries in the hope that its application may produce abundant fruit for the growth, in communion, of sacred ministers and the non-ordained faithful.

The Holy Father reminds us that, "the particular gift of each of the Church's members must be wisely and carefully acknowledged, safeguarded, promoted, discerned and co-ordinated, without confusing roles functions or theological and canonical status". (114)

While on the one hand the numerical shortage of priests may be particularly felt in certain areas, on the other, it must be remembered that in other areas there is currently a flowering of vocations which augurs well for the future. Solutions addressing the shortage of ordained ministers cannot be other than transitory and must be linked to a series of pastoral programmes which give priority to the promotion of vocations to the Sacrament of Holy Orders. (115)

In this respect the Holy Father notes that in "some local situations, generous, intelligent solutions have been sought. The legislation of the *Code of Canon Law* has itself provided new possibilities, which however, must be correctly applied, so as not to fall into the ambiguity of considering as ordinary and normal, solutions that were meant for extraordinary situations in which priests were lacking or in short supply". (116)

The object of this document is to outline specific directives to ensure the effective collaboration of the non-ordained faithful in such circumstances while safeguarding the integrity of the pastoral ministry of priests. "It should also be understood that these clarifications and distinctions do not stem from a concern to defend clerical privileges but from the need to be obedient to the will of Christ, and to respect the constitutive form which he indelibly impressed on his Church". (117)

The correct application of these same directives, in the context of a living hierarchial *communion*, is advantageous to the lay faithful who are called to develop the rich potentiality of their specific identity and the "ever greater willingness to live it so as to fulfill one's proper mission". (118)

The impassioned appeal which the Apostle to the nations addresses to Timothy: "I charge thee in the sight of God and Jesus Christ, (...) to preach the Word, be urgent in season and out of season; reprove, entreat, rebuke (...) Be watchful in all things, fulfill thy ministry" (2 *Tim* 4, 1-5) which applies in a special way to the sacred pastors who are called by office, "to foster the discipline which is common to the whole Church (...) pressing for the observance of all ecclesiastical laws". (119)

This grave duty constitutes a necessary means by which the richness present in every state of ecclesial life can be correctly conformed to the promptings of the Spirit and by which *communion* becomes an effective reality in the daily journeying of the entire Community.

May the Blessed Virgin Mary, Mother of the Church, to whose intercession this document is commended, assist all in understanding its purpose, and bring to fruitful completion those efforts, made in apostolic concern, to apply it faithfully.

All particular laws, customs and faculties conceded by the Holy See *ad experimentum* or other ecclesiastical authorities which are contrary to the foregoing norms are hereby revoked.

The Supreme Pontiff, in Audience of the 13th of August 1997 approved in forma specifica this present Instruction and ordered its promulgation.

Vatican City 15 August 1997, the Solemnity of the Assumption of the Blessed Virgin Mary.

Congregation for the Clergy

Darío Castrillón Hoyos
Pro-Prefect

Crescenzo Sepe
Secretary

Pontifical Council for the Laity

James Francis Stafford
President

Stanislaw Rylko
Secretary

Congregation for the Doctrine of the Faith

Joseph Card. Ratzinger
Prefect

Tarcisio Bertone SDB
Secretary

Congregation for Divine Worship and the Discipline of the Sacraments

Jorge Arturo Medina Estévez
Pro-Prefect

Geraldo Majella Agnelo
Secretary

Congregation for Bishops

Bernardin Card. Gantin
Prefect

Jorge María Mejía
Secretary

Congregation for the Evangelization of Peoples

Jozef Card. Tomko
Prefect

Giuseppe Uhac
Secretary

Congregation for Institutes of Consecrated Life and Societies of Apostolic Life

Eduardo Card. Martínez Somalo
Prefect

Piergiorgio Silvano Nesti CP
Secretary

Pontifical Council for the Interpretation of Legislative Texts

Julián Herranz
President

Bruno Bertagna
Secretary

CONTENTS

Premiss

Teological principles

1. The Common Priesthood of the Faithful and the Ministerial Priesthood
2. Unity and Diversity of Ministerial Functions
3. The Indispensability of the Ordained Ministry
4. The Collaboration of the Non-ordained Faithful in Pastoral

Ministry

Practical Provisions

Conclusion

(1) Cf. Second Vatican Council, Dogmatic Constitution on the Church, *Lumen gentium*, n. 33; Decree *Apostolicam actuositatem*, n. 24.

(2) John Paul II, Post-Synodal Apostolic Exhortation *Christifideles laici* (30 December 1988), n. 2: AAS 81 (1989), p. 396.

(3) Synod of Bishops, IX General Ordinary Assembly, *Instrumentum laboris*, n. 73.

(4) Cf. John Paul II, Post-Synodal Apostolic Exhortation *Vita consecrata* (25 March 1996), n. 47: AAS 88 (1996), p. 420.

(5) 9Cf. Second Vatican Council, Decree *Apostolicam actuositatem*, n. 5.

(6) *Ibid.*, n. 6.

(7) Cf. *ibid.*

(8) John Paul II, Post-Synodal Apostolic Exhortation *Christifideles laici* (30 December 1988), n. 23: AAS 81 (1989) p. 429.

(9) Cf. Second Vatican Council, Dogmatic Constitution *Lumen gentium*, n. 31; John Paul II, Post-Synodal Apostolic Exhortation *Christifideles laici*, n. 15, *l.c.*, pp. 413-416.

(10) Cf. Second Vatican Council, Pastoral Constitution *Gaudium et spes*, n. 43.

(11) Second Vatican Council, Decree *Apostolicam actuositatem*, n. 24.

- (12) 5Cf. John Paul II, Discourse at the Symposium on "The Participation of the Lay Faithful in the Priestly Ministry" (22 April 1994), n. 2, *L'Osservatore Romano*, English Edition, 11 May 1994.
- (13) Cf. *C.I.C.*, canons 230, § 3; 517, § 2; 861, § 2; 910, § 2; 943; 1112; John Paul II, Post-Synodal Apostolic Exhortation *Christifideles laici* (30 December 1988), n. 23 and note 72, *AAS* 81 (1989), p. 430.
- (14) Cf. John Paul II, Encyclical Letter *Redemptoris Missio* (7 December 1990), n. 37: *AAS* 83 (1991), pp. 282-286.
- (15) Cf. *C.I.C.*, can. 392.
- (16) Cf. Especially Second Vatican Council, Dogmatic Constitution *Lumen gentium*, Constitution *Sacrosanctum Concilium*, Decree *Presbyterorum ordinis* and Decree *Apostolicam actuositatem*.
- (17) Cf. Especially Apostolic Exhortations *Christifideles laici* and *Pastores dabo vobis*.
- (18) Cf. can. 1752.
- (19) Cf. Second Vatican Council, Dogmatic Constitution *Lumen gentium*, n. 10.
- (20) *Ibid.*, n. 32.
- (21) *Ibid.*
- (22) *Ibid.*, n. 10.
- (23) Cf. *ibid.*, n. 4.
- (24) 5 John Paul II, Post-Synodal Apostolic Exhortation *Pastores dabo vobis* (25 March 1992), n. 17: *AAS* 84 (1992), p. 684.
- (25) Cf. Second Vatican Council, Dogmatic Constitution *Lumen gentium*, n. 7.
- (26) *Catechism of the Catholic Church*, n. 1547.
- (27) *Ibid.*, n. 1592.
- (28) John Paul II, Post-Synodal Apostolic Exhortation *Pastores dabo vobis* (25 March 1992), n. 74: *AAS* 84 (1992), p. 788.
- (29) Cf. Second Vatican Council, Dogmatic Constitution *Lumen gentium*, nn. 10, 18, 27, 28; the Decree *Presbyterorum Ordinis* nn. 2, 6; *Catechism of the Catholic Church*, nn. 1538, 1576.
- (30) Cf. John Paul II, Post-Synodal Apostolic Exhortation *Pastores dabo vobis* (25 March 1992), n. 15; *AAS* 84 (1992), p. 680; *Catechism of the Catholic Church*, n. 875.
- (31) Cf. John Paul II, Post-Synodal Apostolic Exhortation *Pastores dabo vobis*, n. 16: *l.c.*, pp. 681-684; *Catechism of the Catholic Church*, n. 1592.
- (32) Cf. John Paul II, Post-Synodal Apostolic Exhortation *Pastores dabo vobis*, nn. 14-16: *l.c.*, pp. 678-684; Congregation for the Doctrine of the Faith, Letter *Sacerdotum ministeriale* (6 August 1983), III, 2-3: *AAS* 75 (1983), pp. 1004-1005.
- (33) Cf. *Eph* 2, 20; *Rev* 21, 14.
- (34) John Paul II, Post-Synodal Apostolic Exhortation *Pastores dabo vobis* (25 March 1992), n. 16; *AAS* 84 (1992), p. 681.

- (35) *Catechism of the Catholic Church*, n. 876.
- (36) Cf. *ibid.*, n. 1581.
- (37) Cf. John Paul II, Letter *Novo incipiente* (8 April 1979), n. 3; AAS 71 (1979), p. 397.
- (38) Second Vatican Council, Dogmatic Constitution *Lumen gentium*, n. 7.
- (39) John Paul II, Post-Synodal Apostolic Exhortation *Christifideles laici* (30 December 1988), n. 23: AAS 81 (1989), p. 430.
- (40) Cf. Congregation for the Doctrine of the Faith, Letter *Sacerdotium Ministeriale*, n. III, 2: *l.c.*, p. 1004.
- (41) Cf. Second Vatican Council, Dogmatic Constitution *Lumen gentium*, Nota explicativa praevia, n. 2.
- (42) John Paul II, Post-Synodal Apostolic Exhortation *Pastores dabo vobis*, n. 16: *l.c.*, p. 682.
- (43) Second Vatican Council, Decree *Optatam totius*, n. 2.
- (44) Cf. Second Vatican Council, Decree *Apostolicam actuositatem*, n. 24.
- (45) John Paul II, Post-Synodal Apostolic Exhortation *Christifideles laici* (30 December 1988), n. 23: AAS 81 (1989), p. 429.
- (46) Cf. *C.I.C.*, cann. 208-223.
- (47) Cf. *ibid.*, can. 225, § 2; 226; 227; 231, § 2.
- (48) Cf. *ibid.*, can. 225, § 1; 228, § 2; 229; 231, § 1.
- (49) Cf. *ibid.*, can. 230, §§ 2-3, for that which pertains to the liturgy; canon 228, § 1 in relation to other areas of sacred ministry; the last paragraph applies to other areas outside the ministry of clerics.
- (50) *Ibid.*, can. 228, § 1.
- (51) *Ibid.*, can. 230, § 3; cf. 517, § 2; 776; 861, § 2; 910, § 2; 943; 1112.
- (52) Cf. Sacred Congregation for Divine Worship and the Discipline of the Sacraments, premiss of the Instruction *Inaestimabile donum* (3 April 1980), AAS 72 (1980), pp. 331-333.
- (53) Cf. John Paul II, Discourse at the Symposium on the "The Participation of the Lay Faithful in the Priestly Ministry" (22 april 1994), n. 3, *L'Osservatore Romano*, English Language Edition, 11 May 1994.
- (54) *Ibid.*
- (55) Cf. John Paul II, Discourse at the Symposium on the "The Participation of the Lay Faithful in the Priestly Ministry" (22 april 1994), n. 3, *L'Osservatore Romano*, English Language Edition, 11 May 1994.
- (56) Cf. Pontifical Commission for the Authentic Interpretation of the Code of Canon Law, *Response* (1 June 1988): AAS 80 (1988), p. 1373.
- (57) Cf. Pontifical Council for the Interpretation of Legislative Texts, *Response* (11 July 1992): AAS 86 (1994), pp. 541-542. Any ceremony associated with the deputation of the non-ordained as collaborators in the ministry of clerics, must not have any semblance to the ceremony of sacred ordination, nor may such ceremony have a form analogous to that of the conferral of lector or acolyte.

(58) Such examples should include all those linguistic expressions: which in languages of the various countries, are similar or equal and indicate a directive role of leadership or such vicarious activity.

(59) For the different forms of preaching, cf. *C.I.C.*, can. 761; *Missale Romanum*, Ordo lectionum Missae, *Praenotanda*: ed. Typica altera, 1981.

(60) Second Vatican Council, Dogmatic Constitution *Dei Verbum*, n. 24.

(61) Cf. *C.I.C.*, can. 756, § 2.

(62) Cf. *ibid.*, can. 757.

(63) Cf. *ibidem*.

(64) Second Vatican Council, Dogmatic Constitution *Lumen gentium*, n. 35.

(65) Cf. *C.I.C.*, cann. 758-759; 785, § 1.

(66) Cf. Second Vatican Council, Dogmatic Constitution *Lumen gentium*, n. 25; *C.I.C.*, can. 763.

(67) Cf. *C.I.C.*, can. 764.

(68) Second Vatican Council, Constitution *Sacrosanctum Concilium*, n. 52; cf. *C.I.C.*, can. 767, § 1.

(69) Cf. John Paul II, Apostolic Exhortation *Catechesi tradendae* (16 Oct. 1979), n. 48: AAS 71 (1979), pp. 1277-1340; Pontifical Commission for Interpreting the decrees of the Second Vatican Council, *Response* (11 Jan. 1971); AAS 63 (1971), p. 329; Sacred Congregation for Divine Worship, Instruction *Actio pastoralis* (15 May 1969) n. 6d: AAS 61 (1969), p. 809; *Institutio Generalis Missalis Romani* (26 March, 1970), nn. 41, 42, 165; the Instruction *Liturgicae instaurationes* (15 Sept. 1970), n. 2a; AAS 62 (1970), p. 696; Sacred Congregation for the Sacraments and Divine Worship, Instruction *Inaestimabile donum* (3 April 1980), n. 3: AAS 72 (1980), p. 331.

(70) Pontifical Council for the Authentic Interpretation of the Code of Canon Law, *Response* (20 June 1987): AAS 79 (1987), p. 1249.

(71) Cf. *C.I.C.*, can. 266, § 1.

(72) Cf. *ibid.*, can. 6, § 1, 2o.

(73) Cf. Sacred Congregation for Divine Worship, Directory for Masses with children *Pueros Baptizatos* (1 Nov. 1973), n. 48: AAS 66 (1974), p. 44.

(74) For information on priests who have obtained a dispensation from celibacy, cf. the Sacred Congregation for the Doctrine of the Faith, *Normae de dispensatione a sacerdotali coelibatu ad instantiam partis* (14 October 1980), "Normae substantialis" art. 5.

(75) Cf. *C.I.C.*, can. 517, § 1.

(76) The non-ordained faithful or a group of them entrusted with a collaboration in the exercise of pastoral care can not be given the title of "community leader" or any other expression indicating the same idea.

(77) Cf. *C.I.C.*, can. 519.

(78) Cf. *ibid.*, can. 538, §§ 1-2.

(79) Cf. *ibid.*, can. 186.

- (80) Cf. Congregation for the Clergy, Directory for the Life and Ministry of Priests *Tota Ecclesia* (31 January 1994), n. 44.
- (81) Cf. *C.I.C.*, cann. 497-498.
- (82) Cf. Second Vatican Council, Decree *Presbyterorum ordinis*, n. 7.
- (83) Cf. *C.I.C.*, can. 514, 536.
- (84) Cf. *ibid.*, can. 537.
- (85) Cf. *ibid.*, can. 512, §§ 1 and 3; *Catechism of the Catholic Church*, n. 1650.
- (86) Cf. *C.I.C.*, can. 536.
- (87) Cf. *ibid.*, can. 135, § 2.
- (88) Cf. *ibid.*, can. 553, § 1.
- (89) Cf. Second Vatican Council, Constitution *Sacrosanctum Concilium*, nn. 26-28; *C.I.C.*, can. 837.
- (90) Cf. *ibid.*, can. 1248, § 2.
- (91) Cf. *ibid.*, can. 1248, § 2: Sacred Congregation for Rites, Instruction *Inter oecumenici* (26 Sept. 1964), n. 37, AAS 66 (1964), p. 885; Sacred Congregation for Divine Worship, Directorium de celebrationibus dominicalibus absente presbytero, *Christi Ecclesia* (10 June 1988), *Notitiae* 263 (1988).
- (92) Cf. John Paul II, *Address ad quosdam Americae Septemtrionalis episcopos sacra limina visitantes* (5 June 1993), AAS 86 (1994), p. 340.
- (93) Sacred Congregation for Divine Worship, Directorium de celebrationibus dominicalibus absente presbytero, *Christi Ecclesia* (10 June 1988), n. 35: *l.c.*; cf. also *C.I.C.*, can. 1378, § 2; n. 1 and § 3; can. 1384.
- (94) Cf. *C.I.C.*, can. 1248.
- (95) Sacred Congregation for the Discipline of the Sacraments, Premiss of the Instruction *Immensae caritatis* (29 January 1973), AAS 65 (1973), p. 264.
- (96) Cf. *C.I.C.*, can. 910, § 1; cf. John Paul II, Letter *Dominicae coenae* (24 February 1980), n. 11; AAS 72 (1980), p. 142.
- (97) Cf. *C.I.C.*, can. 910, § 2.
- (98) Cf. Sacred Congregation for the Discipline of the Sacraments, Instruction *Immensae caritatis* (29 January 1973), AAS 65 (1973), p. 264, n. 1; *Missale Romanum*, Appendix: Ritus ad deputandum ministrum S. Communionis ad actum distribuendae; *Pontificale Romanum*, De institutione lectorum et acolythorum.
- (99) Pontifical Commission for the Authentic Interpretation of The Code of Canon Law, *Response* (1 June 1998), AAS 80 (1988), p. 1373.
- (100) Cf. Sacred Congregation for the Discipline of the Sacraments, Instruction *Immensae caritatis* (29 January 1973), n. 1; AAS 65 (1973), p. 264; Sacred Congregation for the Sacraments and Divine Worship, Instruction *Inestimabile donum* (3 April 1980), n. 10: AAS 72 (1980), p. 336.
- (101) Can. 230, § 2 and § 3 *C.I.C.*, affirms that the liturgical services can be assigned to non-ordained faithful only "ex temporanea deputatione" or for supply.

(102) Cf. *Rituale Romanum - Ordo Unctionis infirmorum*, praenotanda, n. 17: Editio Typica 1972.

(103) Cf. *James* 5, 14-15; St. Thomas Aquinas, in IV Sent. d. 4, q. 1; Ecumenical Council of Florence, bull *Exsultate Deo* (DS 1325); Ecumenical Council of Trent, *Doctrina de sacramento extremae unctionis*, chapter 3 (DS 1697, 1700) and can. 4 *de extrema unctione* (DS 1719); *Catechism of the Catholic Church*, n. 1516.

(104) Cf. *C.I.C.*, can. 1003, § 1.

(105) Cf. *ibid.*, cann. 1379 and 392, § 2.

(106) Cf. *ibid.*, can. 1112.

(107) Cf. *ibid.*, can. 1111, § 2.

(108) Cf. *ibid.*, can. 1112, § 2.

(109) Cf. *ibid.*, can. 861, § 2; *Ordo baptismi parvulorum*, praenotanda generalia, nn. 16-17.

(110) Cf. *ibid.*, can. 230.

(111) Cf. *Ordo Exsequiarum*, praenotanda, n. 19.

(112) Cf. *C.I.C.*, can. 231, § 1.

(113) By this is meant "Seminary" situations where laity and those preparing for the priest hood receive the same education and formation together, as though both were destined for the same ministry. Such "Seminaries" have sometimes been called "integrated" or "mixed".

(114) John Paul II, Discourse at the Symposium on "The Participation of the Lay Faithful in the Priestly Ministry" (11 May 1994), n. 3, *l.c.*

(115) Cf. *ibid.*, n. 6.

(116) *Ibid.*, n. 2.

(117) *Ibid.*, n. 5.

(118) John Paul II, Post-Synodal Apostolic Exhortation *Christifideles laici* (30 December 1988), n. 58: *l.c.*, p. 507.

(119) *C.I.C.*, can. 392.

Thursday, May 21, 2015

THE CARDINAL
NEWMAN SOCIETY

About

Contact

Join

Donate



search

HOME PAGE

CATHOLIC EDUCATION DAILY

COLLEGE PLANNING GUIDES

HIGHER ED CENTER

K-12 ED PROGRAMS

[Catholic Education Daily](#) > [Details Page](#)[Back](#)

Catholic Education Daily

Cincinnati Superintendent Defends Notion of
Catholic School Teacher as 'Minister'

March 27, 2015, at 11:50 AM | By Kimberly Scharfenberger |

Archbishop Salvatore Cordileone's references to the "ministry" of Catholic education may be controversial in San Francisco, but in other dioceses like the Archdiocese of Cincinnati, the same language is already embraced in Catholic schools.



by Paul Goody, FreeDigitalPhotos.net

Teachers in Catholic schools serve an essential function in evangelizing their students and should understand their role as "ministers," says Jim Rigg, superintendent of Catholic schools in the Archdiocese of Cincinnati. The Cardinal Newman Society spoke to him this week about the irreplaceable role that teachers play in spiritually forming their students and the Archdiocese's strategies in faithful faculty formation.

"To be a Catholic school teacher is to be a minister," Rigg insisted. "The most important

Departments

[Catholic Identity Concerns](#)[Faith in Education](#)[From the Bishops & Vatican](#)[Religious Freedom](#)[All News](#)[Contributors](#) [Contact](#)

Appx. 279**Latest Featured**

[Pope Francis Weighs In On Role of Teachers, Coaches as Witnesses](#)

5/21/2015

[Notre Dame Loses Round in Court, Maybe Due to Compliance with HHS Mandate](#)

5/21/2015

[Pope Francis: Parents Should Assert Proper Role as Educators, Not Yield to 'Experts'](#)

5/21/2015

[Archdiocese Explains Removal of Seton Hall Campus Minister, Seeks 'Accountability'](#)

5/20/2015


More News Categories
Subscribe
Join Us

Join thousands of Catholic families and individuals

job our teachers have is to evangelize their students. If our teachers are not enabling our students to draw closer to Christ, we are failing in our mission as Catholic educators.”

Rigg has worked in Cincinnati since 2010 as director of educational services and superintendent of schools. Last year, the Archdiocese [announced](#) that more explicit language would be included in its teacher contracts, in order to fully convey Church teaching on important issues and to ensure that faculty are well-informed of their responsibilities.

Speaking to the Newman Society, Rigg delved into the duty of Catholic schools to evangelize to the youth, particularly as they form the future of the Catholic Church. “We need to vigorously convey the truth and life of Jesus Christ,” Rigg said. “We must ensure that our youth are well formed in their faith, and are equipped to boldly evangelize in a world that desperately needs them.”

As more dioceses consider adopting the terms “minister” or “ministry” to apply to the duties of Catholic school teachers, Rigg offered compelling reasons to do so. “Our teachers are the hands, feet, and heart of Jesus to the children that they serve,” he said, adding that Catholic schools “are carrying on the very teaching ministry of Christ, passed on to us through the centuries by the disciples, saints, and countless Catholic teachers who have dedicated their lives to the vocation of Catholic education.”

He stressed that Catholic identity “must be part of the very ethos of the school” and should permeate “every lesson, every relationship, and every communication.”

To aid this effort, the Archdiocese of Cincinnati provides “interview questions designed to measure whether a teacher understands our unique ministry” and offers “diocesan-level trainings for new teachers on the basics of the Catholic faith, with an emphasis on how the teacher can evangelize his/her students.” Starting this fall, the Archdiocese will also provide a new program to impart “what it means to be a ‘teacher-minister,’ and how this ministry directly connects to the ministry of Christ.”

All of these efforts are directly tied to the future of the Church, Rigg indicated. “Our future will be built by our young, who will one day be charged with leading our Church,” he said, noting that evangelizing the youth “can only be achieved by working in concert with engaged parents and vibrant parishes.”

Though evangelization to the young can be achieved through various forms of schooling and community, Catholic schools in particular “have a tremendous track record of success” with graduates being “more likely to pray daily, attend church regularly, and give back to their church through service and financial donations,” remarked Rigg.

To this effect, Archbishop Cordileone has been acting courageously in the Archdiocese of San Francisco, ensuring that teachers in diocesan Catholic schools are fully aware of Church teaching on modern issues through [revised faculty handbooks](#) that provide explication and clarity. His efforts have stirred some controversy in the Archdiocese, but they have also been [lauded](#) by numerous teachers and Catholic [communities](#) as necessary efforts to protect the Catholic identity of his schools.

Appx. 280

standing with The Cardinal Newman Society for faithful Catholic education. Members receive news roundups by email, about weekly.

Start your **no-cost membership** now!

Donate

Our work is possible only through the generosity of countless supporters who share our mission. We have promoted and defended faithful Catholic education for 20 years! Please support our successful work by **making a donation** today.

Stay Connected

Keep up with the latest developments by joining our social media networks:

[Facebook](#)

[Twitter](#)

[Google Plus](#)

[Linkedin](#)

**Connect on
Facebook**

Denise Donohue, deputy director of K-12 programs for The Cardinal Newman Society, said that bishops have the prerogative of ensuring “the authentic and personal integrity of the individuals sharing the Gospel message” in Catholic schools. As such, “all teachers in Catholic schools have the duty and responsibility of sharing the Good News and evangelizing the hearts of their students.”

She continued:

Stepping into a Catholic school, one should get the impression that they are in a unique and different environment. It's not only the environment, but the community and culture of a Catholic school that is unique, in part because of the personal witness of those individuals working within the school.

Bearing this in mind, more dioceses affirming their faculty's responsibility of evangelizing students will lead to more faithful Catholic schools—something that is “essential for the future of the Church,” Rigg concluded.

Catholic Education Daily is an online publication of The Cardinal Newman Society. [Click here](#) for email updates and free online membership with The Cardinal Newman Society.

Google +

 [Printable Version](#)

The Cardinal Newman Society is promoting and defending faithful Catholic education. We would be grateful for **your contribution**.

Have an idea for a story? Please be sure to **send us news tips!**

When reprinting/reposting, please include the author's name, a link to our website, and the following text: "Originally published by Catholic Education Daily, an online publication of The Cardinal Newman Society."

Categories: [Cardinal Newman Society All Posts](#), [Academics](#), [Faculty](#), [High School](#), [High Schools Formation and Faith](#), [K - 12](#), [Hiring](#), [K-8](#), [Strong Catholic Identity](#), [The Cardinal Newman Society's Catholic Education News Wire](#), [More News](#)

Founded in 1993, the mission of The Cardinal Newman Society is to promote and defend faithful Catholic education. The Society is a 501(c)(3) tax-exempt, nonprofit organization supported by individuals, businesses and foundations.

Thursday, May 21, 2015

THE CARDINAL
NEWMAN SOCIETY

About

Contact

Join

Donate



search

HOME PAGE

CATHOLIC EDUCATION DAILY

COLLEGE PLANNING GUIDES

HIGHER ED CENTER

K-12 ED PROGRAMS

[Catholic Education Daily](#) > [Details Page](#)[Back](#)

Catholic Education Daily

Pope Francis: Parents Should Assert Proper
Role as Educators, Not Yield to 'Experts'May 21, 2015, at 3:24 PM | By [Justin Petrisek](#) |

Pope Francis yesterday made a forceful plea for parents to reassert their role as primary educators of their children, an argument that has great significance for Catholic schools and homeschooling families and puts education in the spotlight as the Church prepares for the [World Meeting of Families](#) in September in Philadelphia and the [Synod on the Family](#) in October in Rome.



by Alfredo Borja, en.wikipedia commons

Pope Francis began by expressing his joy at seeing so many families gathered with their children, according to Zenit's [translation](#) of the address. He noted that the "essential characteristic of the family" is its "natural vocation to educate the children so that they grow in responsibility for themselves and for others." Speaking directly to parents, he encouraged them not to shrink away from this unique and God-given role in education.

Departments

[Catholic Identity Concerns](#)[Faith in Education](#)[From the Bishops & Vatican](#)[Religious Freedom](#)[All News](#)[Contributors](#) [Contact](#)

entrust them to the “experts,” even for the most delicate and personal aspects of their life, putting themselves in the corner, and thus parents today run the risk of excluding themselves from the life of their children. And this is very grave!

Parents should not be left alone in this battle, Pope Francis said. “Christian communities are called to offer support to the educational mission of families.”

Dr. Jamie Arthur, who manages The Cardinal Newman Society’s Catholic Education Honor Roll, said that the Holy Father’s words are especially relevant today. “Parents in today’s world need assistance in combating the negative impact of secularism on youth,” Arthur said. She noted that “the success of Catholic education is centered on a partnership that serves the needs of the family and supports parents in the growth and development of their children.”

Guernsey elaborated:

The solution is for families to take their primary, intimate and formative role and work with the schools in mutual support of that effort. Effective and faithful Catholic schools understand this partnership. Catholic educators also understand their students are not just commodities or cogs in a machine dedicated to producing only college and career ready workers. Catholic educators understand that their students are unique and unrepeatable gifts from God with eternal destinies who are loved by their parents, and much more so by God. Our educational focus, like that of the parents and in service to them, is one of integral formation of the students in mind, body and spirit and to assisting them to become saints.

Additionally, when teachers, administrators and parents come together and share the same moral foundation grounded in the teachings of the Church, Catholic education becomes a joyful thing to witness, Arthur said. “How comforting it is for parents to know the constituencies (parents, faculty, staff, administrators, religious) that make up a Catholic school are integrated into a community who share, respect and live the same values they espouse, all centered on the teachings of the Catholic Church.”

Yet there are still those who oppose a faithful Catholic education. “‘Critical’ intellectuals of all kinds have silenced parents in a thousand ways, to defend the young generations from harm – real or imagined – of family education,” the Holy Father continued.

The Cardinal Newman Society has consistently expressed a similar concern over the years, encouraging parents to exhibit caution, care and discretion when it comes to significant changes in Catholic education, including [Common Core State Standards](#), [religious freedom issues](#) and [hiring practices](#)—and encouraging dioceses to listen to the needs and concerns of families.

Pope Francis concluded with a prayer:

I hope that the Lord will give Christian families the faith, the freedom and the courage necessary for their mission. If family education rediscovers the pride of its leadership, many things will change for the better, for hesitant parents and for

standing with The Cardinal Newman Society for faithful Catholic education. Members receive news roundups by email, about weekly.

Start your **no-cost membership** now!

Donate

Our work is possible only through the generosity of countless supporters who share our mission. We have promoted and defended faithful Catholic education for 20 years! Please support our successful work by **making a donation** today.

Stay Connected

Keep up with the latest developments by joining our social media networks:

[Facebook](#)

[Twitter](#)

[Google Plus](#)

[Linkedin](#)

**Connect on
Facebook**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOANNE FRATELLO

Plaintiff,

DECLARATION OF SISTER
KATE KUENSTLER, PHJC, JCD

-against-

12 Civ. 7359 (CS)(CMS)

ROMAN CATHOLIC ARCHDIOCESE
OF NEW YORK, *et al.*,

ECF CASE

Defendants.

Sister Kate Kuenstler, PHJC, JCD, affirms under penalty of perjury as follows:

1. I am submitting this declaration in support of Plaintiff Joanne Fratello.
2. I reside at 11 Makin Street, Pawtucket, RI 02861, and currently am affiliated with the Canon Law Ministries, a Private Practice, at the same address.
3. Plaintiff's attorney, Michael D. Diederich, Jr., originally asked me to provide expert testimony as to the Roman Catholic Church, and its canon law. I am a canon lawyer, and have been for 22 years. My educational and theological qualifications and experience with the Roman Catholic Church are as follows: B.A. Theology, Aquinas College, Grand Rapids, MI; J.C.L. Canon Law, Pontifical University of St. Thomas Aquinas, Rome, Italy; J.C.D. Canon Law, Pontifical University of St. Thomas Aquinas, Rome, Italy.
4. However, for the purposes of this submission, I do not believe that I need to present evidence as an expert. ☐ Rather, I will describe the material below merely as a knowledgeable practicing Roman Catholic.

Roman Catholic Church governance

5. First, let me explain what all informed Roman Catholics know, namely, that the Roman Catholic Church is governed by its male clergy, and specifically, by its bishops.

6. Generally speaking, bishops are responsible for specified territories called dioceses, or in the case of territory including a large number of Catholics, such as in a large metropolitan area, an archdiocese (headed by a bishop titled “archbishop”).

7. In their religious duties, such as preaching the Word of God, bishops can be assisted by subordinate ordained ministers (priests and deacons).

8. The laity, often colloquially referred to as “the flock”, have no powers in actual Roman Catholic Church governance. It is the bishop who has the power of governance within his territory, as a representative of Christ. The bishop (and his subordinate priests) are, metaphorically, the “shepherds” who lead (govern) the flock. Roman Catholic bishops use a shepherd's crook as one of their insignia. The Pope, who also holds the title “bishop of Rome”, is the leader among bishops.

9. Canon law, available to all Roman Catholics (and the Court) via the internet, clearly distinguishes between the Roman Catholic Church’s ministry and the laity. The Court can take judicial notice of this. The Canon Law is available online at http://www.vatican.va/archive/ENG1104/_INDEX.HTM .

10. The Pope, cardinals, and bishops are known collectively as the Catholic Hierarchy. They are responsible for the supervision, management, and spiritual care of all members the Catholic Church. Ordained ministers can assist in spiritual (ministerial) matters, such as preaching the Word of God and the teachings of Jesus Christ.

11. Canon law provides at Canon 129§1:

“Those who have received sacred orders are qualified, according to the norm of the prescripts of the law, for the power of governance, which exists in the Church by divine institution and is also called the power of jurisdiction.”□

See, http://www.vatican.va/archive/ENG1104/_PF.HTM, at 129§1 (*emphasis added*).

12. “Those who have received “sacred orders” are “ordained ministers.”□

13. The laity is composed of Roman Catholics who are not ordained ministers. Religiously-speaking, they are totally subservient to ordained ministers. Moreover, generally speaking the laity is prohibited from engaging in the spiritual functions of, the Roman Catholic Church’s ministry. For example, a female lay person (even if a member of a religious order, such as a nun), cannot give a sermon or supervise Mass.

14. The “supreme authority” within the Roman Catholic Church is the Pope and the bishops. *See*, Canon 330 (“Just as by the Lord’s decision Saint Peter and the other Apostles constitute one college, so in a like manner the Roman Pontiff, the successor of Peter, and the bishops, the successors of the Apostles, are united among themselves.”). Canon 330 is available online at http://www.vatican.va/archive/ENG1104/_P15.HTM

“Catholic Education”

15. The Roman Catholic Church encourages education, including both the secular (for Catholics to become educated members of civil society) and the spiritual.

16. A parochial school principal would be responsible for the administrative aspects of a school, but not the religious, as that is the responsibility of the parish priest or bishop. It is required that an ordained minister direct the school.

17. Specifically, Canon 803§1 provides that:

“A Catholic school is understood as one which a competent ecclesiastical authority or a public ecclesiastical juridic person directs or which ecclesiastical authority recognizes as such through a written document.”□

18. Canon 805 provides that:

“For his own diocese, the local ordinary [bishop] has the right to appoint or approve teachers of religion and even to remove them or demand that they be removed if a reason of religion or morals requires it.”□

19. “Teachers of religion” are specialized teachers. These are not teachers of

secular subjects, even if also Catholic, nor school administrators. “Teachers of religion” have a thorough advanced education in the Roman Catholic religion and church doctrine. It is expected these “teachers of religion” acquire at least a masters degree in theology or similar discipline. It is exponentially more than the basic “catechist” introductory familiarization with the religion.

20. As Canon 805 states, a “teacher of religion” is appointed by, and can be removed by, the bishop. A regular lay teacher or lay administrator of a parochial school, in contrast, is hired by the school and given an employment contract, and separated as any secular employee might be “separated” as an employee, not as a person with a religious status.

21. I am informed that Ms. Fratello was hired as a lay teacher, and subsequently as a lay principal, under a contract of lay employment. As such, she would possess absolutely no religious status under Roman Catholic Church canon law or religious doctrine.

22. Canon 220 protects the right of the Christian faithful, both clergy and laity to challenge adverse action through appeal to higher Church authority. A person aggrieved in a religious way would have such a right as found in canon law. Plaintiff Fratello, as a lay employee, would have such ecclesiastical right if she were adversely treated for religious reasons. This right is equal for those who have a ministerial role, such as ordained clergy, and also for the laity (including a lay principal of a parochial school). I am advised that Plaintiff Fratello sought redress from Cardinal Dolan, and that his response was to refer the matter to his lawyers and insurance company (who contacted Plaintiff through her counsel about the employment discrimination matter). One can conclude, therefore, that Cardinal Dolan viewed Plaintiff Fratello’s situation as involving an employment matter, not a religious matter. Put another way, Cardinal Dolan did not regard Ms. Fratello as being removed from a ministerial role, because this would have been a religious matter as to which under canon law Plaintiff

Fratello would be entitled to an ecclesiastical appeal. Instead, he viewed it as a civil matter, covered by insurance.

Responsibility for religious education

23. Parents are the persons primarily responsible for the religious education of their children. Next is the bishop, who, along with his subordinate parish priest, is responsible for ensuring the children get sound instruction in the Roman Catholic faith. As mentioned above, the bishop is to direct the specialized “teachers of religion” in the schools. A “director of religion” is sometime assigned as well.

24. These religion teachers are not ordinarily lay teachers, or school administrators.

25. Religion, of course, is taught in a parochial school. In some circumstances a designated “teacher of religion” is the specialized instructor of Roman Catholic doctrine and its beliefs in all grade levels of a school. This teaching is reserved for ordained ministers and the specialized “teachers of religion” referenced above. Such a designation was never given to Ms. Fratello.

26. A lay school principal would not ordinarily qualify, because the theological training, and training in Roman Catholic Church doctrine, is far more extensive than what an education administrator would ordinarily possess or be required to obtain before being hired.

Catholic college analogy

27. Roman Catholic-affiliated institutions of higher learning “colleges, medical schools, law schools” are akin to parochial schools. Governance is ordinarily by a lay board of trustees. Professors are academicians, not ministers, and the mission of the institution is higher education while promoting Catholic values. The college’s pastor ordinarily provides the

religious guidance. The head of the Mathematics or Biology Department, while providing instruction to perhaps thousands of students, perhaps adding religious conviction and Roman Catholic values to his or her job, is certainly no minister.□

Plaintiff Fratello's religious freedom

28. In my view, Plaintiff Fratello would be well within her religious rights to protest lay officials of the Archdiocese characterizing her as a minister or person with ministerial duties.□

29. Such a characterization could be viewed by Ms. Fratello as implying (and misguidedly implying to young elementary school students who are learning about the Catholic faith) that she is a Catholic minister of sorts. The clear teaching of the Roman Catholic Church makes sure we, the laity, do not hold ourselves out as spiritual ministers (especially ordained ministers, who have received sacred orders). To suggest otherwise is almost blasphemous within the Roman Catholic Church. If Ms. Fratello (or others) were asked to inform the young students that Ms. Fratello was a “minister,” or person with “ministerial” duties, Ms. Fratello might appropriately object, as a matter of her (correct) understanding of the Roman Catholic Church, where only men can govern (administer) the Church, and only men can be ordained ministers.

30. The school had the right to hire a practicing Catholic, and a morally upstanding Catholic. I am informed that Plaintiff has always been a moral and practicing Catholic. However, the school, and the Archdiocese, had no right to characterize Plaintiff as something which she is not, a minister. I am informed that no ordained minister has made such a characterization, and that only lay employees and non-Catholic lawyers have done so.

31. I understand why no priest or bishop has characterized Plaintiff as having ministerial duties. It is because they would be asserting this in violation of Roman Catholic

Church doctrine, if not canon law itself.

32. Plaintiff Fratello should not be deprived of her civil law protection, by being deemed a minister or person with ministerial duties, when no authorized official of the Roman Catholic Church has made such assertion.

33. Moreover, even the suggestion to the student body that the female principal is a minister would present an incorrect image of Roman Catholic Church doctrine. Male ministers lead this Church, not female administrators (sexist though that may sound to non-Catholics). It is our religion.

34. Nor is Plaintiff Fratello part of the governance of the Roman Catholic Church. No authorized church official has claimed that she is part of church governance (I am told). This Court should not assume that a lay school principal has any role in church governance, where this has not been established in any way, and where in my view as an educated Catholic, it cannot be the case.

Conclusion

35. In sum, I hope this declaration clarifies that a lay principal is in no way a Roman Catholic minister, nor a person who possesses formal ministerial duties as a Roman Catholic. On the contrary, it is likely that a good practicing Catholic—someone like Plaintiff Fratello—would find it objectionable as a matter of her own religious beliefs to be wrongfully characterized as a minister.

*Affirmed under penalty of perjury
this 22nd day of May 2015, at Dernbach, Germany.*

/S/
Sister Kate Kuentler, PHJC, JCD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOANNE FRATELLO

Plaintiff,

-against-

ROMAN CATHOLIC ARCHDIOCESE
OF NEW YORK, *et al.*,

Defendant.

DECLARATION OF
PLAINTIFF JOANNE FRATELLO

12 Civ. 7359 (CS)(CMS)

ECF CASE

Joanne Fratello states under penalty of perjury as follows:

1. I am the Plaintiff herein and submit this declaration in support of my motion to strike Defendants' *Hosanna-Tabor* ministerial immunity defense.

Materials incorporated herein by reference

2. Rather than "copy and paste" everything containing in the Rule 56.1 Statements referencing matters within my knowledge and belief, please allow me to incorporate all matters herein.

3. Specifically, I have read my objections and responses to Defendants' Rule 56.1 Statement, and I have read my own Rule 56.1 Statement in support of my cross-motion for summary judgment. I hereby attest to the truth and accuracy of my statements of facts therein, and incorporated my factual statements here by reference.

4. Let me also state that I am electing not to dispute various incorrect or false statements contained in Defendants' Rule 56.1 Statement, regarding assertions such as my leading prayers at school or my attendance at various Masses. For the purpose of these motions only, I am not challenging such assertions, as these are things that the Parish Pastor could likely require of a lay principal (e.g., leading morning and afternoon prayer; reading religious stories to

children; and attending all Mass services). In my view, because being deemed a minister should not hinge on such things, for if it could, a priest could simply instruct any lay employee to undertake tasks of a religious nature and require a certain number of hours of “religious” duties. Loss of civil law protection, via “ministerial immunity,” should not result from employer ploys of this sort.

5. I have also read Plaintiff’s Rule 56.1 Statement in support of my cross-motion to strike Defendants’ ministerial immunity defense. I incorporate herein all responses that reference this declaration.

6. I hereby also incorporate the factual statements set forth in my Amended Complaint, accompanying these papers as Plaintiff’s Exhibit 1.

Professional background

7. Let me describe my educational and professional background (which is not in any way religious).

8. I am Roman Catholic due to my upbringing. I attended the public schools, and the only religious training I received was in and before the 7th grade, with Catholic “CCD” instruction one afternoon per week.

9. I graduated from a secular college, and had a career in business before deciding that it would be rewarding to enter the field of education. I obtained requisite teaching and administrator certificates for public or private school teaching and administration. I eventually found a job as a lay teacher with the Archdiocese’s parochial schools (private schools under N.Y.S. law), and was eventually promoted into administrator positions, and specifically, the position of lay principal.

10. I excelled in the role of principal. My evaluations are all “outstanding,” and I loved my job. The only problem I had was when the new Pastor arrived with his sexist views.

Essential facts

11. I would like to briefly describe for the Court what I view as the essential material facts of this case. First and foremost, I am an educator. I went into the field of education to teach children in primary or secondary school. I was hired on the strength of my credentials in education.

12. I was brought up Roman Catholic and have been and remain a practicing Roman Catholic, yet my religious education is from my own years in grammar school, before my Confirmation at around age 13, and I have had no formal religious education since then.

13. I am a good Catholic. I was an excellent school teacher and currently am an excellent private school administrator (as a principal). Yet the idea that I was a religious minister at St. Anthony’s School is simply absurd, and insulting to true ministers of the faith—Roman Catholic deacons, priests and bishops.

14. Regarding my employment at St. Anthony’s School, let me begin by pointing out that, as I recall, my job application for the “lay principal” position gave no indication that I would be serving in any type of religious capacity. The Archdiocese’s current application does not reveal a religious role, as my accompanying exhibits show. When I was promoted in principal, my belief is that some principles employed by the Archdiocese were not Roman Catholic.

15. As a “lay” employee, I had absolutely no special religious knowledge or experience. The only requirement for being hired as a lay principal (“school leader”) is that the applicant be a practicing Catholic.

16. No person of religious authority in the Roman Catholic Church ever expressed to me the view that, as school principal, I was a “minister” of the Roman Catholic Church or had ministerial or pastoral functions.

17. I was never asked to be a minister; no one held me out to be a minister; and I never possessed any credentials qualifying me to be a minister.

18. I was, and always have been, simply a lay member of the Church.

19. I am of the personal religious view that it would perhaps be sacrilegious for me to hold myself out as a minister. Worse yet, to hold a woman out as a “religious leader” would give the young students at the elementary the incorrect perception that I am akin to an ordained minister--someone authorized under Roman Catholic doctrine to preach the word of God. Both as a female, and as a member of the laity, I am not permitted by my Roman Catholic faith to do the things reserved for ordained ministers.

20. My understanding of my religion is that the Roman Catholic Church teaches that the ministerial office--the office of shepherding the Church—is held by bishops, with the Pope at their head. It is the bishops that govern the Roman Catholic Church.

21. The Church’s “bylaws,” namely, its canon law, is available on the internet via the Vatican. It clearly shows how the church is governed, and the distinction between the laity and the ministry.

Roman Catholic Parochial Schools

22. As Pope Francis recently explained, education is important to Catholics and parents must take the lead. An article in the Catholic Education Daily quotes a church official on education, and the quote includes distinguishing between “parents, faculty, staff, administrators,

[and] religious.” See, Exhibit 32 (article “Pope Francis: Parents Should Assert Proper Role as Education...”, at page 3 of 4):

23. The “Catholic Schools” is an excellent school system, which includes various private schools (some parish, some Archdiocese, and some independent) supervised by the Archdiocese’s Superintendent of Schools, a lay person and well-credentialed administrator. The school system is designed to provide an excellent primary and secondary school education, in a Christian atmosphere applying values that Roman Catholics hold dear. For reason of academic excellence and values, the Catholic Schools are very attractive to the parents of non-Catholics as well, and approximately 23 % of the Archdiocese student body is non-Catholic (according to the Archdiocese website).

24. As my exhibits corroborate, the Catholic Schools do not seek to proselytize or evangelize non-Catholics, and the Archdiocese has an express non-discrimination policy, including discrimination based upon creed (other than hiring and selection purposes).

Not a “Fundamentalist Religious Indoctrination”

25. The Catholic Schools are not like the “religious school” one might envision for fundamentalist religious sects, where religious indoctrination (and perhaps radicalization) is the goal. The goal of parochial schools is education, intellectual, spiritual and moral growth, and for the Catholic students, religious education given by qualified teachers of religion (not me, as I did not teach religion¹).

¹ The religious instruction is essentially the “CDC” instruction that public school children receive when they come to the parochial school for after-hours religious instruction (which religious instruction program is run by the Parish Priest and the Nuns, not the School principal).

26. In discussing this matter with others (such as my attorney), I realize that it is important for teachers and administrators of schools such as St. Anthony's School to be permitted civil law protection.

27. A religious organization can favor its own, certainly. In a Roman Catholic school, being Roman Catholic may be a "bona fide occupational qualification." Being a poorly educated Catholic or vocally anti-Catholic may be grounds for termination.

28. However, having a specific BFOQ is much different than granting the religious organization immunity for wrongdoing against the employee. Granting a church ministerial immunity means the employees lose their civil law protection. Employees lose their civil law remedy for illegality (e.g., the sexism that resulted in non-renewal of my contract), and even more importantly, the religious organization then becomes all-powerful over its workers. A worker will be unable to report illegality without fear (or the certainty) of losing his or her job without redress. And the worker (teacher or principal) will lose the ability to act in the best interest of the child, as a parent would do, if primary loyalty must be to the church, not the child.

What applies to the Roman Catholic Church applies to the Taliban too

29. The fear that organized religion will engage in no significant wrongdoing may feel sound when dealing with a local Roman Catholic parish. But the legal rules that this Court formulates will also apply when the church, and its school for children, are fundamentalist Christian, or Hassidic, or Muslim, or even a radical or hostile religion group (e.g., Taliban, the preachers and the families, not the fighters).

Educators must protect the “best interests of the child”

30. Educators have both a moral and a legal responsibility to protect the “best interests of the child.” They act “*in loco parentis*,” in the stead of the child’s parents while the child is at school.

31. In this role, teachers and administrators act as a guardian, for the child’s best interest.

32. This is a different role from that of a spiritual figure. Because approximately 23% of the Catholic Schools student body is non-Catholic, it is especially important that our “*in loco parentis*” role be exercised as the parents would want. For example, I would not force a hungry student who is Jewish to eat pork, even though I might encourage a Christian child to do so.

33. Just as lay teachers, I supervised the children (*in loco parentis*) as if I were their parent, and I provided less religious guidance than any lay parent should give to his or her child (or that I would give to my own child).

34. This is discussed further in my Rule 56.1 statement, to which I respectfully direct the Court (as indicated above, it is incorporated herein).

Church “governance”

35. I was not a member of the local parish, namely, the St. Anthony’s Church.

36. I was and am a member of a different, unaffiliated parish.

37. I was involved in no way in the governance of the Roman Catholic Church or the local parish, St. Anthony’s Church.

38. This is discussed more in my Rule 56.1 statement, to which I respectfully direct the Court.

No “religious” basis for job non-renewal

39. I was not terminated as a result of being excommunicated from the Roman Catholic Church, or found to be immoral, or found to have violated Roman Catholic Church rules, or otherwise found to have been a “bad” or “non-practicing” Catholic.

40. No religious authority removed Plaintiff from any religion position.

41. Rather, my employment contract as a lay principal was simply not renewed.

42. My contract was not renewed because the new Pastor at St. Anthony’s Church was a sexist, and discriminatorily caused my contract not to be renewed because of his sexism. This had nothing whatsoever to do with any religious matter. There was no religious basis for the non-renewal of my contract.

Tax issues and IRC 401(c)(3) exempt status

43. I believe that the § 501(c)(3) exempt purpose given to the IRS by St. Anthony’s School is “educational.”

44. It is my understanding that as a non-profit entity, financial profit cannot inure to the entity’s members. If I were a “minister” of St. Anthony’s School (and thus, a member of the entity), I would profit by being paid a salary under my employment contract.

45. Thus, by regarding me as a member/minister of the local parish and St. Anthony’s School, the parish and school may be placing their 501(c)(3) status at risk.

Definition of “minister”

46. My contract of employment did not describe me as a “minister” or specify “ministerial duties.”

47. I was not: “a person whose job involves leading church services, performing religious ceremonies (such as marriages), and providing spiritual or religious guidance to other people.”²

48. My position as school principal was not a job that was “ministerial.” Specifically, it was not a job: “of, relating to, or characteristic of a minister or the ministry.”³

49. The dictionary antonym for “ministerial” includes “lay, nonclerical, secular, temporal.”⁴

50. These antonyms for ministerial describe my job as lay principal at elementary school where I worked.

51. In contrast to my lay duties, the “ministerial” duties were performed by the parish priest, an ordained minister. He was responsible for the spiritual mission.

Sister Kate’s Declaration

52. As to Roman Catholic canon law, I have been blessed by receiving an offer of help from a Roman Catholic canon law expert, Kate Kuentler, PHJC, JCD (“Sister Kate”), regarding why I cannot legitimately be regarded as having been a “minister” of the Roman Catholic Church, or as performing “ministerial” duties for the Church, or as being part of Church governance. Sister Kate’s declaration accompanies these legal papers.

Conclusion

53. In sum, I believe there can be no genuine dispute as to the material fact that while employed by Defendants as an elementary school lay principal, I was not a “minister” of the Church.

² See online definition of “minister” at: <http://www.merriam-webster.com/dictionary/minister>.

³ See online definition of “ministerial” at: <http://www.merriam-webster.com/dictionary/ministerial>.

⁴ *Id.* See online definition of “ministerial” at: <http://www.merriam-webster.com/dictionary/ministerial>.

54. I had no reason to suspect that St. Anthony's School or the Archdiocese would assert that I lost the protection of federal and state civil law by accepting a job in my chosen profession—education and educational administration.

Wherefore, I request that Defendant's ministerial immunity defense be stricken by the Court's grant of summary judgment in my favor on this issue.

*Affirmed under penalty of perjury
this 22nd day of May, 2015, at Stony Point, New York.*


JOANNE FRATELLO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOANNE FRATELLO

Plaintiff,

**PLAINTIFF'S RESPONSE &
COUNTERSTATEMENT TO
DEFENDANTS' RULE 56.1
STATEMENT**

-against-

12 Civ. 7359 (CS)(CMS)

ROMAN CATHOLIC ARCHDIOCESE
OF NEW YORK, *et al.*,

ECF CASE

Defendants.

Plaintiff Joanne Fratello, by her attorney Michael D. Diederich, Jr., hereby responds to Defendants' Rule 56.1 statement as to *Hosanna-Tabor* ministerial immunity as follows:

I. PLAINTIFF'S OBJECTION

Constitutional and evidentiary objections to Defendants' Rule 56.1 Statement generally:
Defendants' Rule 56.1 statement is replete with statements of religious belief asserted as "fact" (e.g., ¶ 32: "... school should ... strive to be ... united in the conviction that Jesus is Lord"). Thus, Defendants state belief, not fact. Plaintiff should not be required by this Court to express views of religious belief other than what was required for the job position of "lay principal," namely, that she is a "practicing Catholic" with good morals—as these are bona fide occupational qualifications (BFOQ) for the job.

Plaintiff would not object to the admissibility of non-hearsay evidence (which Plaintiff believes does not exist) showing that she was appointed and commissioned by Cardinal Dolan (the Archdiocese's bishop) as a minister of the Roman Catholic Church, or of other material, non-hearsay, authenticated evidence showing that the Roman Catholic Church deemed or deems Plaintiff, as a lay principal, to be a Roman Catholic minister, or someone with pastoral duties, or someone who, as a minister, is part of the governance of the Roman Catholic Church.

Respectfully, the Roman Catholic Church likely is the most "established" religious organization on Earth, with well-established religious organization, structure, rules, canon law and

hierarchical governance. Plaintiff objects to Defendants' use of lay witnesses, speaking without authority or competence on the religious matter at issue in this case, and using inadmissible hearsay, to attempt to establish (largely by inference) that Plaintiff was a Roman Catholic Church "minister."

From the absence of testimony from knowledgeable and authorized church officials (e.g., Cardinal Dolan), that Plaintiff was a minister of the Roman Catholic Church at St. Anthony's School, or that she performed pastoral/ministerial duties, the Court can draw an adverse inference against Defendants (under "missing witness" rule of evidence). The Court should reject each of Defendants' below purported statements of material fact which are a) not factual statements, b) hearsay, c) not material and relevant to the issue of ministerial immunity d) proffered without an adequate evidentiary foundation by persons with knowledge as to the religious and spiritual governance of the Church, including in relation to the Defendants herein; and e) proffered by persons without actual competence and authority to speak for the Roman Catholic Church or its Archdiocese of New York.

II. DEFENDANTS' RULE 56.1 STATEMENTS, WITH PLAINTIFF'S RESPONSE

1. Evangelization of the teachings of Jesus Christ and inculcation of children into the Catholic Faith is a primary purpose of the Archdiocesan school system. *See, Declaration of Mary Jane Daley, sworn to on April 20, 2015, ("Daley Dec."), at ¶¶ 7, 12-13; see, also, id., at Ex. "A," at BS# 023765-023768.*

- Standing Objections, and specific objection as to Ms. Daley: Ms. Daley is not a qualified witness, and certainly not an expert witness. She and the other lay witnesses proffered by Defendants have no authority to speak for the Roman Catholic Church in making the assertions proffered. She is not a minister (ordained or otherwise), a cleric or a person with any substantial religious or theological credentials. She and Defendants' other lay witnesses are merely lay employee of the Archdiocese's private schools. Defendants have provided no evidence that the Roman Catholic Church, as a religious entity, includes a system of private schools (labeled by Defendants the "Archdiocesan school system"). Moreover, the views of "the Archdiocese" are hearsay, or without

any actual or authorized speaker.

Ms. Daley's Exhibit A and Exhibit B are inadmissible hearsay.

Ms. Daley is incompetent to make the assertions proffered; she makes her assertions based upon inadmissible hearsay; and the documents referenced are inadmissible hearsay. It is not an admissible (or provable) statement of fact that "a Catholic school is ... a venue where spirituality of a student is nourished, encouraged, and deepened," and the courts should not be in the business of evaluating such belief-based conclusions.

- Factual dispute: A statement of "purpose" regarding "the teachings of Jesus Christ" and "inculcation of children into the Catholic Faith" are not factual statements, nor are her other statements of belief.

The Roman Catholic Church does not include, as a religious entity, private (essentially commercial) school servicing the general public.

The Defendant St. Anthony's School has a policy prohibiting discrimination on the basis of religion (creed), and thus it cannot have a primary focus of evangelization or proselytizing religion. *See*, Fratello Declaration at ¶ 3.

2. With regard to the "Catholic School Experience" within the Archdiocesan School system, the Archdiocese provides that "[o]ur Catholic faith is central to what we do, and we proudly teach it. Gospel ideals permeate the substance and structure of our lessons [and] [w]e share our faith through daily prayer and the regular celebration of Mass as a school community." *See*, Declaration of Kenneth A. Novikoff, sworn to on April 21, 2015, ("Novikoff Dec.") at Ex. "A."

- Standing objection, and specific objection as to Mr. Novikoff: Novikoff's Exhibit A is inadmissible hearsay. Mr. Novikoff has no personal knowledge as to the matters he purports to attest to. Mr. Novikoff, a non-Catholic lawyer, has provided no foundation that he is authorized to speak on behalf of the Roman Catholic Church, or the religious purposes of the Roman Catholic Church, if any, vis a vis a private elementary school run by a parish and supervised by lay officials of the Archdiocese's school system.

3. According to the Archdiocese, the “Mission” of Catholic Education within the Archdiocesan School System “. . . is to ensure our schools are Christ-centered, academically excellent, and welcoming communities that teach students to be life-long learners and leaders energized by Christ, the Church, and one another.” *Id.*

- *Plaintiff repeats her prior objection.* The views of “the Archdiocese” are inadmissible hearsay or without any actual or authorized speaker.

Plaintiff does not dispute that she, the parents, and St. Anthony’s Parish, and presumably the Archdiocese, desired that the private elementary school where she worked be “Christ-centered, academically excellent, and welcoming communities that teach students to be life-long learners and leaders energized by Christ, the Church, and one another.”

4. With regard to this Mission and Aim the Archdiocese instructs, *inter alia*, it’s Principals that “[s]tudents are provided with an explicit study of the Catholic faith and the New York State academic curriculum infused with Catholic belief and values. . . [and] [t]he very foundation and mission of the Catholic School System has been and continues to be for formation in the faith, for the lived experience of Gospel values and for the preservation of Catholic culture.” *See, Daley Dec., at Ex. “A,” at BS# 023765-66.*

- *General objections.* *See 1, supra.*
- Specific objections: “... it’s Principal that...” is incomprehensible. There is no foundation established that “the Catholic School System” is an activity that is part of the Roman Catholic Church, or whether it is, instead, merely an affiliated, auxiliary or collateral activity undertaken principally by non-religious (lay) members of the Roman Catholic Church and its local Archdiocese.

The documents are inadmissible hearsay.

5. The elementary schools in the Archdiocese “are faith filled environments that

incorporate religious instruction, sacrament preparation in Mass, and blend Catholic values into subject curriculum.” *Novikoff Dec. at Ex. “A.”*

- These are conclusory, belief-based statements, made by a person without knowledge and supported by an inadmissible hearsay documents.
- Plaintiff had no role with the sacraments at any Catholic Mass, as that is for ordained ministers: *See, Fratello Decl. at ¶3.*

6. According to the Archdiocese, “[w]ithin our schools academic excellence is further enhanced by Catholic values which foster the growth of our students as truthful, generous, and joyful people capable of becoming leaders in the Church and our world.” *Id.*

- Objection: “According to the Archdiocese “ is hearsay.

7. The Archdiocese identifies the Principal of a parochial school as a “leader of the school, a unique catholic educational institution.” *See, Daley Dec., Ex. “A,” at BS# 023924.*

- Objection: “the Archdiocese identifies” is hearsay and without foundation.

8. The Archdiocese specifically identifies an elementary school Principal as occupying a “ministerial position.” *Id., Ex. “C,” at BS# 024208.*

- Objection: “the Archdiocese specifically identifies” is hearsay, as is what is meant by “ministerial position” according to the Roman Catholic Church.
- Plaintiff disputes the assertion. She did not see the term, or comprehend its meaning (which could be in the sense of “administering” something, or other recognized dictionary meanings). *See, Fratello Decl. at ¶ 3.*

9. Plaintiff, Joanne Fratello’s, (“Plaintiff”), “Job Scope” provides that a Principal is “responsible for achieving the Catholic mission and purpose of the school... S/he is the animator of the community of faith with the school.” *Id., Ex. “A,” at BS# 023924.*

- Objection: Hearsay; lack of foundation; lack of authentication or evidence as to “the [Roman?] Catholic mission, the “purpose of the school”, an “animator,” and the definition of “community of faith.”

10. Plaintiff’s “Job Scope” provides, *inter alia*, that a “Principal must of necessity be involved in the every aspect of the school operation [and that] [t]he principal oversees the areas of religious education, curricula instruction, formulation and communication of school policy ... [.]” *Id.*, at BS# 023924.

- No objection, except to extent that overseeing “religious education” implies the teaching or preaching of the Roman Catholic faith.

11. Edward Cardinal Dolan, Archbishop of New York, in a letter contained within the Administrative Manual, states, *inter alia*, that “[a]s principal in the schools of the Archdiocese of New York, you are providing splendid leadership to your teachers and staff and excellent academic and *spiritual formation* to your students [].” *Id.*, at BS# 023753(*emphasis added*).

- No objection, except to extent that “providing ... spiritual formation” implies the teaching or preaching of the Roman Catholic faith, or a religious activity on the part of Plaintiff.
- Plaintiff did not engage in pastoral or evangelical activities. *See, Fratello Decl.* at ¶ 3.

12. The Associate Superintendent of Schools for Professional Recruitment, in a letter to the Principals contained within the Administration Manual, states, *inter alia*, that, “[the Catholic School is essential to the Church in fulfilling its teaching mission [and that] . . . [i]t is your responsibility as principal to establish a climate which is identifiably Catholic. . . [.]” *Id.*, at BS# 023923.

- Objection: Hearsay; lack of foundation; lack of authority to speak for the Roman Catholic Church; incomprehensible; lack of evidence as to and the

definition of “the teaching mission,” how it is fulfilled, and the meaning of an “identifiably Catholic climate.”

13. According to the Archdiocese, “[t]he principal is the Catholic leader and the administrative head of the school.” *Id.*, at BS# 23802.

- Plaintiff does not dispute that she is Catholic, and that she was the school’s administrative head and educational leader.

14. The Archdiocese requires its Principals, *inter alia*, to “[be] committed to the mission of evangelization [and] involve the staff in formulating plans that enable the school to meet its religious goals.” *Id.*, at BS# 023803.

- Objection: Hearsay; lack of foundation; lack of authority to speak for the Roman Catholic Church and the Archdiocese; incomprehensible; lack of evidence as to and definition of “evangelization” or the school’s “religious goals” (especially considering that the school was not restricted to Roman Catholics, or even Christians).
- Plaintiff did not engage in pastoral or evangelical activities. *See, Fratello Decl.* at ¶ 3.

15. It is the Principal’s responsibility, *inter alia*, to “ensure[] implementation of Archdiocesan curriculum guidelines and the curriculum standards of New York State Education Department.” *Id.*, at BS# 023806.

- No dispute as to academic matters. Plaintiff did not engage in pastoral or evangelical activities. *See, Fratello Decl.* at ¶ 3.

16. “The primary goal of the program of instruction in the schools of the Archdiocese is to provide those learning experiences which most effectively inculcate Catholic attitudes and impart the knowledge and skills necessary for the spiritual, intellectual, emotional, cultural, and physical development of the student.” *Id.*, at BS# 023859.

- Objection: Hearsay. Plaintiff does not dispute that an important goal of Archdiocese schools is to impart “knowledge and skills necessary for the spiritual, intellectual, emotional, cultural, and physical development of the student.”

However, the Archdiocese and school policy is not to discriminate on the basis of religion or creed, and thus the “primary goal” cannot be to “most effectively inculcate Catholic attitudes,” at least as to non-Catholic children.

See, Fratello Decl. at ¶ 3.

17. It is a prerequisite that an Archdiocesan Principal applicant be and/or have achieved *inter alia*: (1) “[a] practicing Catholic . . . with a commitment to the teachings of the Church and to the development of Christian spirit and a community of faith within a school,” and; (2) “[c]omplet[e] [] Levels I and II of the Catechist Certification Program.” *Id.*, at BS# 023808.

- Not disputed that being a “practicing Catholic” was stated as a job requirement, and that it is a bona fide occupational qualification for a Catholic-oriented private school.
- Disputed: Completion of Catechist certification was not a prerequisite, but could be obtained after becoming employed. *See*, Fratello Decl. at ¶ 3.

18. As a condition of employment, the Archdiocese and the School require the Principal to, *inter alia*, complete Level 1 and Level 2 Catechist Formation Program certification within three years of maintaining the role of Principal. *See*, Daley Dec., at ¶ 12.

- Disputed: This was a stated aspirational requirement, but not strictly enforced. *See*, Fratello Decl. at ¶ 3.

19. The Catechist Formation [Certification] Program provides theological understandings, spiritual/religious formation and catechetical methodology necessary for those who are appointed by their pastors and commissioned by their parishes to hand on the faith to

adults, youth or children. *Id.*, at n. 4.

- Disputed: This program provides only rudimentary religious training, for any lay Catholic. People who take such training are not “appointed by their pastors and commissioned by their parishes to hand on the faith to adults, youth or children.” Bishops may use priests to preach and teach the Word of God, but priests are not permitted to delegate religious authority. The catechist instruction was online, and completed through self-certification. *See*, Fratello Decl. at ¶ 3; Exhibit 34 (Daley Tr. at pp. 29, 74 and 78).

20. Training of the catechist is necessary to ensure that the faith is handed on in its integrity and in a manner that responds to the needs, learning styles, cultures and other special characteristics of those in their care. *Id.*

- Disputed: Bishops may use priests to preach and teach the Word of God, but priests are not permitted to delegate religious authority. Ordained Roman Catholic ministers “minister to the flock,” but lay members of the church do not. *See*, Fratello Decl. at ¶ 3.

21. The Archdiocese requires that a lay candidate applying for the position of Principal present a letter indicating that he/she is a practicing Catholic. ” *See*, *id.*, ¶ 4; *see, also*, *id.*, at Ex. “A,” at BS # 023810.

- Standing objection (e.g., what the Archdiocese requires or thinks).

22. The Archdiocese expects that “[t]he entire school community – the principal, pastor . . . parents and students – should be involved in the development of the religious program.” *Id.*, at BS# 023859.

- Standing objection (e.g., what the “Archdiocese expects”).

23. According to the Archdiocese, “[t]he school principal is responsible for clarifying [] the importance of religious instruction, the quality of the catechetical experience in the school, the value attached to religious instruction, and the amount of time spent on religious education.”

- Standing objection (e.g., what the “Archdiocese” communicates); hearsay.

24. As part of the “Principal Evaluation Process,” the Archdiocese provides, *inter alia*, that “it is the principal’s responsibility “to establish a climate which is identifiably Catholic and which nurtures the growth of teachers and students of life.” *Id.*, at BS# 023923.

- Standing objection (e.g., what the “Archdiocese” communicates); hearsay.

25. The Principal is evaluated with regard to how he/she has acted as, *inter alia*, a “Religious Leader,” within the School. *Id.*, at BS# 023936; 023943;

- Standing objection (e.g., what the “Archdiocese” does, how it communicates); hearsay objection
- Objection as incomprehensible, vague and ambiguous (who evaluated her, “how he/she has acted”, “Religious Leader”, and “within the School”).

26. The Principal is evaluated by faculty of the school and the Church’s Pastor and, notably, undertakes a self-evaluation. *Id.*, at 023936-023942; 023943-023946; 023947-023951.

- *Objection: Id.* Plaintiff does not dispute that the above individuals fill out evaluation forms.

27. The categories evaluated include, but are not limited to, whether the Principal:

** fosters a Christian atmosphere which enables . . . students to achieve their potential;

** reviews school philosophy and goals with the staff in accordance with current Church documents, and;

** Gives priority to a comprehensive religious educational program[.]

Id., at BS# 023936, 023943; 023947.

- *Objection: Id.*

28. Specific to the self-evaluation, a Principal is required to answer five questions as part of her “self-reflect[ion] upon [her] role as a Catholic School Leader,” one of which is “[w]hat are my strengths in the area [] of spiritual leadership[.]” *Id.*, at BS# 023942.

- *Objection: Id. Specific objection: Plaintiff's job description or job application did not require, or inform her, that she would be evaluated in this manner, or upon such criteria. The criteria "spiritual leadership is not defined, and the persons evaluating such are not qualified to do so (nor is there any indication that the Roman Catholic Church authorizes such evaluation).*

29. The Archdiocese's Catholic Values Integration Program, ("CVIP"), was in effect while Plaintiff was Principal at St. Anthony School ("St. Anthony's" or the "School"). *See, Daley Dec., at ¶¶ 12, 14; see also, id., at Ex. "B," at BS# 24266-83.*

- Standing objection (e.g., what the "Archdiocese" communicates).
- Specific objection: the CVIP document is inadmissible hearsay, unauthenticated, and unrelated to how the Roman Catholic Church chooses ministers or persons engaged in pastoral or ministerial duties on its behalf.

30. The CVIP's mission "is to inspire, infuse, and integrate Catholic values into the education system of the Archdiocese of New York." *Id., at Ex. "B" at BS# 024268; 023806.*

- Standing objection (e.g., what the "Archdiocese" communicates).
- Specific objection: the CVIP document is inadmissible hearsay, unauthenticated, and unrelated to how the Roman Catholic Church chooses ministers or persons engaged in pastoral or ministerial duties on its behalf.

31. The aim of the CVIP is to help those who bear witness to the message of Christ by offering ideas that will engage the school community its strategies for TEACHING AS JESUS TAUGHT. *Id., at BS# 024270.*

- *Objection: Id. Additional objection: incomprehensible, vague, and not a statement of fact ("aim ... to help those who bear witness to the message of Christ"; hearsay as to what Jesus taught except as it relates to Roman Catholic Church doctrine).*

32. Explaining the importance of CVIP, the Archdiocese states that “[b]ecause the Catholic school is part of the Church’s ministry, the school should strive to be a strong Catholic Community united in the conviction that Jesus is Lord. An atmosphere enlivened by the Spirit of the Gospel is dependent upon mutual trust and respect among administration, faculty, students, and parents.” *Id.*

- Standing objection (e.g., what the “Archdiocese” communicates).
- Specific objection: the CVIP document is inadmissible hearsay, unauthenticated, and unrelated to how the Roman Catholic Church chooses ministers or persons engaged in pastoral or ministerial duties on its behalf.

33. The CVIP identifies the Principal as a “Spiritual Leader” within the school explaining that:

[t]he Principal of the Catholic school in order to fulfill the mandates of message, service, and communication must bear the responsibility of integrating Gospel values into the vision, goals, policies and practices, life, and curriculum of the school. The leader must provide an environment that facilitates the spiritual, moral, and ethical development of the entire school community.

Id., at BS# 024281.

- Objection: *Id.*
- Additional specific objection: the CVIP document is also inadmissible hearsay with regard to who (e.g., the Archdiocese or Roman Catholic Church) is imposing the stated responsibilities upon the Principal. This is not a statement of fact.

34. The Archdiocese further provides within the description of the Principal as a “Spiritual Leader,” that “[a]n essential role of the Catholic school principal is the ability to draw together colleagues to a collective vision and appreciation of the word and works of the Lord.”

Id.

- Objection: *Id.* Additionally, hearsay as to the “word and works of the Lord.”

35. The Archdiocese expects the Principal, *inter alia*: (1) to promulgate the values of the Catholic faith to their colleagues, teachers, staff, students, and community; (2) to teach the traditions of the Catholic faith; (3) to minister as good stewards of Catholic education; (4) to uphold human rights, dignity, respect for life and nature, and; (5) to understand and respond to the unique needs of the community they serve. *Id.*, at BS# 024282.

- Objection: *Id.*
- Plaintiff has no knowledge as to what the “Archdiocese expects” or what the Roman Catholic Church expects as to lay principals in parochial schools, other than to be good Catholics and sound educational administrators. Plaintiff was never informed that she was to “minister” to anyone. *See*, Fratello Decl. at ¶ 3.

36. The CVIP identifies the Principal as a “Tradition Bearer” within the school, explaining that “[t]he lives and work of Catholic school principals are graced by God. Catholic school principals are entrusted with a mission that is a call to spread Jesus’ community. Through this mission they call others to build a faith community among all the constituents of the Catholic school family.” *Id.*

- Objection: *Id.* Additionally, the assertions that the “lives and work of Catholic school principals are graced by God” (and the inference that Plaintiff’s life and work as an elementary school principal was “graced by God”); that principals are “entrusted with a mission that is a call to spread Jesus’ community”; and that “through this mission they call others” are hearsay, are not facts, are others’ lay beliefs, and are without evidentiary foundation.
- Plaintiff hopes that her work at St. Anthony’s School was “graced by God” (as she also hope her legal claims here are graced by God, and that she will

prevail), yet she has no factual knowledge in this regard. Plaintiff was never informed that she “was entrusted with a mission” or “a call.” *See*, Fratello Decl. at ¶ 3.

37. The Archdiocese further provides within the description of the Principal as a “Tradition Bearer,” that “[i]n the tradition of the founding religious teaching orders, it is the responsibility of the Catholic school principal, whether lay or religious, to maintain high academic standards enshrined in an atmosphere of Catholic faith.” *Id.*

- Objection as to what the “Archdiocese provides”. Plaintiff does not dispute that she had a responsibility to maintain high academic standards enshrined in an atmosphere of Catholic faith.”

38. The CVIP also identifies the Principal as the “Communicator” of the Catholic Faith within the school, and explains that “[a] Catholic school is a unique culture in which principal, teachers, and students share a common set of norms and values. The identity of the Catholic school should embody the three qualities embraced in ‘To Teach As Jesus Did.’” *Id.*, at BS# 024283.

- Objection as to what the hearsay document identifies. This is hearsay upon hearsay, and without evidentiary foundation (the document’s authors may be exclusively lay people without knowledge of the Roman Catholic Church doctrine and religious belief, especially as to ministerial or pastor duties and roles.
- Plaintiff disputes that she was “the ‘communicator’ of the Catholic Faith within the school,” as the communicator of faith was the parish priest. *See*, Fratello Decl. at ¶ 3.

39. The Archdiocese further provides that “[t]he prime communicator of the message, and an essential skill for the position of leader, is the willingness and ability of the principal to promote the values of the Catholic school.” *Id.*

- Objection as to what the “Archdiocese provides.” Additionally, this statement of fact is incomprehensible. Plaintiff does not dispute that she had a responsibility to promote Catholic values, which she did.

40. Prior to her position as Principal of St. Joseph’s, Plaintiff was the Assistant Principal at Sacred Heart. When applying for the position of Principal at St. Joseph’s, Plaintiff submitted a letter of reference from Mr. Charles Celauro, who commented on her “commitment to Catholic Education,” and noted that “Mrs. Fratello was a school leader . . . in making our faith alive and known to our population.” *See, Novikoff Dec., at Ex. “B.”*

Standing Objection: As to this and other similar statements, Plaintiff has a standing objection on the grounds of inadmissible hearsay, lack of evidentiary foundation (e.g., qualification of the writer), and prior job is not material or relevant to present case involving St. Anthony’s School.

- Specific objection: hearsay, and prior job is not material or relevant to present case involving St. Anthony’s School.

41. While Plaintiff was Principal at St. Joseph’s, Ms. Joan Wall, a teacher, noted in her comments concerning Plaintiff as a “Religious Leader” that “Ms. Fratello leads morning and afternoon prayers.” *See, Novikoff Dec., at Ex. “C,” at BS# 24143.*

- Objection, hearsay, and prior job is not material or relevant to present case involving St. Anthony’s School.
- Plaintiff disputes that she led “morning and afternoon prayers.” *See, Fratello Decl. at ¶ 3* (but does not dispute Defendants’ allegation for the purposes of this motion only).

42. While Plaintiff was Principal at St. Joseph’s, Ms. Diane Morgiewicz, a teacher noted, in her comments concerning Plaintiff as a “Religious Leader,” that “it is nice to start the school day with our principal, faculty and student body in prayer and pledge.” *Id., at Ex. “D,” at BS# 24148.*

- Objection, hearsay, ambiguous, and prior job is not material or relevant to present case involving St. Anthony's School.
- Plaintiff disputes that she led "morning and afternoon prayers." *See*, Fratello Decl. at ¶ 3 (but does not dispute Defendants' allegation for the purposes of this motion only).

43. Ms. Morgiewicz, commenting on Plaintiff's "Greatest Strength," stated that it was in "[s]etting a religious atmosphere when we start our day and end our day as a St. Joseph School family." *Id.*, at Ex. "D," at BS# 24152.

- Objection, hearsay, ambiguous, lack of evidentiary foundation (e.g., qualification of the writer), and prior job is not material or relevant to present case involving St. Anthony's School.
- Plaintiff's greatest strength was not "setting a religious atmosphere," other than by demonstrating and living Christian and Catholic values (as any good Catholic). *See*, Fratello Decl. at ¶ 3.

44. Plaintiff evaluated herself as an Excellent "Religious Leader" as Principal of St. Joseph's. *See Novikoff Dec.*, at Ex. "E," at BS# 024173.

- Objection, hearsay, ambiguous, lack of evidentiary foundation (e.g., qualification of the writer), and prior job is not material or relevant to present case involving St. Anthony's School, and the definition of "Religious Leader" is unclear.
- Plaintiff was "religious" (as a practicing Catholic), and was a "leader," as principal of the school. She demonstrated excellent values in both regards. *See*, Fratello Decl. at ¶ 3.

45. While "reflect[ing] upon [her] role as Catholic School Leader," Plaintiff acknowledged that she was the "spiritual" leader within St. Joseph's and noted that her goal was "to create a positive parent-school relationship. Additionally, I plan to create a school that can be

recognized by its accomplishments and its Christianity, and good to others.” *See, id., at BS# 024178*.

- Objection, hearsay, ambiguous, lack of evidentiary foundation (e.g., qualification of the writer), and prior job is not material or relevant to present case involving St. Anthony’s School, and the definition of “Religious Leader” and “spiritual” is unclear.
- Plaintiff was asked various questions, as a lay person, and responded as a lay person. In the sense of having school spirit, she was certainly a spiritual leader, and as to the “religious,” she was a practicing Catholic who demonstrated excellent Catholic values. This form appears designed as a trap for the unwary, if its design is to trick a lay employee into characterizing himself or herself as a spiritual figure. *Fratello Decl.* ¶ 3.

46. In a letter to Monsignor Reynolds, the then Pastor at St. Anthony’s, as part of her application to become Principal at St. Anthony’s, Plaintiff advised that “[m]y goal is to utilize my administrative experience and strong Catholic faith to foster a nurturing and educational environment for the children of St. Anthony School.” *See, Novikoff Dec., at Ex. “F,” at BS# 000411*.

- No objection or dispute.

47. In her counsel’s July 19, 2011 letter to then Archbishop Dolan complaining of her termination, Plaintiff stated that “she is a devout Catholic.” *See, Novikoff Dec., at Ex. “G”*.

- No objection or dispute.

48. In her EEOC Complaint, Plaintiff stated that “I am a devote Catholic (I remain un-remarried and abstinent, and thus a role model for the Church.” *Id., at Ex. “H”*.

- No objection or dispute.

49. During the application process for the Principal position at St. Anthony’s, Plaintiff was interviewed by the Archdiocese’s Principal Search Committee (“Committee”). *See,*

Declaration of Cathleen Cassel, sworn to on April 15, 2015, (“Cassel Dec.”), at ¶ 13.

- Objection: Hearsay; lack of foundation; lack of authentication or evidence as to whether the “Archdiocese’s Principal Search Committee” is a religious body, or a lay body, and whether it has any role in appointing “ministers” or assigning ministerial duties by the Roman Catholic Church or Archdiocese.

50. The Committee sought to hire principals with, *inter alia*, “strong Christian values” who are able to “foster[] an educational environment which teaches students how to live in accordance with the teaching of Jesus.” *Id.*, at ¶10.

- Objection: Hearsay; lack of foundation; lack of authentication or evidence as to whether the “Archdiocese’s Principal Search Committee” is a religious body, or a lay body, and whether it has any role in appointing “ministers” or assigning ministerial duties by the Roman Catholic Church or Archdiocese.

51. The Committee focuses on the applicant’s commitment to Jesus and the spreading of Christ’s teachings to the students. *Id.*, at ¶11.

- Objection: *Id.* Plaintiff cannot know the Committee’s thinking or “focus.”

52. The Committee’s questions of Plaintiff included, but were not limited to: (1) what is your personal relationship with the church? ; (2) what is your relationship with the Pastor and the parents at the current school you work in?, and; (3) what would you do at the school to implement communal prayer? *Id.*, at ¶¶11, 13.

- Objection: *Id.*
- Plaintiff does not dispute that questions were posed similar (or perhaps identical) to those above.

53. Almost immediately after being hired, Plaintiff agreed to be interviewed by the “Journal News,” a newspaper servicing Rockland County, New York. *Novikoff Dec.*, at Ex. “I”.

- No dispute.

54. In this article, which was entitled “Strong Faith Motivates New St. Anthony Principal,” Plaintiff was quoted as saying:

- “[w]e educate the children ... and help to prepare them as life-long learners as well as practitioners of the faith”;
- “[f]amilies are looking for a strong Catholic faith-based education and we want to give that opportunity to them[,]” and;
- “[t]here are good things we are doing, ... we are going to move forward with these things, giving a sound foundation for families who would like a Catholic education.”

Id.

- Objection: Hearsay; lack of foundation; lack of authentication. Plaintiff does not vouch for what a reporter writes.
- Plaintiff disputes the bullets as inaccurate quotes (and inadmissible hearsay absent the news reporter’s direct testimony). *See*, Fratello Decl. at ¶3.

55. Plaintiff was pictured for the article in front of a banner saying “Catholic Schools – Our Children Our Faith” with religious symbols, including the Cross, displayed. *Id.*

- *Objection: There do not appear to be “religious symbols” displayed, other than a cross. The photo speaks for itself.*

56. Monsignor Reynolds perceived Plaintiff as being an excellent “Religious Leader” during her first year as Principal at St. Anthony. *See*, Novikoff Dec., at Ex. “J.”

- Objection: Hearsay; lack of foundation; lack of authentication, and not a statement of material fact. No affidavit from Monsignor Reynolds is provided.

57. Monsignor Reynolds rated Plaintiff as ‘Excellent’ with regard to many criteria associated with being a “Religious Leader.” *Id.*

- Objection: *Id.*
- As stated above, at ¶ 44: Plaintiff was “religious” (as a practicing Catholic), and was a “leader,” as principal of the school. She demonstrated excellent values in both regards. *See*, Fratello Decl. at ¶ 3.

58. Sister Helen Doychek, then the District Superintendent of Dutchess, Orange, Rockland, Sullivan and Ulster Counties and Plaintiff's direct supervisor, also evaluated Plaintiff during her first year at St. Anthony's and similarly viewed Plaintiff as an excellent Religious Leader of the School. *See, Novikoff Dec., at Ex. "K"*.

- Objection: *Id.*

59. In her "Evaluator's Appraisal of Principal," Ms. Doychek "commend[ed] Plaintiff as a "Religious Leader," identifying numerous accomplishments with regard to her being a Religious Leader, including: (1) renewing the Catholic Identity of St. Anthony School []; (2) setting a good example as a religious leader; (3) bringing a renewed sense of Christian Spirituality []; (4) creating an atmosphere rich with a sense of Catholic Community, (5) making religious values, attitudes and behavior the focus of life at the School, (6) providing opportunities for children to participate in service projects that will benefit others outside the school community, and; (7) communicating a vision of a Catholic Community in which differences and variety are accepted, welcomes and cherished. *Id.*

- Objection: *Id.*
- Additional specific objections: This hearsay document is also manifestly self-serving and reflects the religious bend and bias of a member of a religious order (as Sister D is a nun).
- Plaintiff disputes any inference that Sister Doychek communicated any of the above directly to Plaintiff. *See, Fratello Decl. at ¶ 3.*

60. Ms. Karen Ladolcetta, a Kindergarten teacher at St. Anthony's, *see, Declaration of Karen Ladolcetta, sworn to on April 15, 2015, ("Ladolcetta Dec."), at ¶1*, commented in her evaluation of Plaintiff as a "Religious Leader" that Plaintiff "shows by her actions, words and deeds what a loving and Christian person she is." *Id., at ¶26; see, also, id., at Ex. "A."*

- Objection: *Id.*
- Plaintiff disputes any inference that she is a spiritual or pastoral leader or minister. Plaintiff does not dispute Ms. Ladolcetta's statement that Plaintiff "shows by her actions, words and deeds what a loving and Christian person she is" or her description on page 5 of the evaluation form [DEFTS-000429] of Plaintiff's "greatest strengths: Her: 1 friendliness, 2 availability, 3 positive attitude, 4 helpfulness, 5 accommodating nature, 6 enthusiasm, 7 socializing skills, 8 warm, [and] 9 handles problems effectively."

61. Ms. Margaret Murphy, a teacher at St. Anthony's, commented in her evaluation of Plaintiff as a "Religious Leader" that Ms. Fratello has "brought a new sense of Christian spirituality. . . [.]” *See, Novikoff Dec., at Ex. “L,” at BS# 000445.*

- Objection: *Id.*
- Plaintiff disputes the belief that Plaintiff “brought a new sense of Christian spirituality” to St. Anthony’s School, but does not dispute the qualifying statement of Ms. Murphy “exhibited by her joyful demeanor and [service?] activities.” *See, Fratello Decl. at ¶ 3.* Plaintiff brought normalcy to the children. *Id.*

62. Ms. Murphy further commented concerning Plaintiff's "Greatest Strength" that [Plaintiff's] "greatest strengths are her understanding of and importance of catholic education [and] Ms. Fratello has been a blessing as her Christian leadership has changed the tone of our school in the past 7 months.” *Id., at BS# 000449.*

- Objection: *Id.*
- Plaintiff disputes any inference that “catholic education” means anything more than a private school education [as received by non-Catholic students) taught in an atmosphere of Catholic and Christian values. *See, Fratello Decl. at ¶ 3.*

63. Ms. Lois Dorsey, a teacher at St. Anthony's, commented that Ms. Fratello's "Greatest Strength" was that she "was a champion of the children and of a Christian environment." *See, Novikoff Dec., at Ex. "M," at BS# 000454.*

- Objection: Id.
- Plaintiff does not dispute that she was a "champion of the children" and strongly believed in the value of a Christian educational environment. *See, Fratello Decl. at ¶ 3.*

64. Ms. Carol McGuirk, a Second Grade teacher at St. Anthony's, *see, Declaration of Carol McGuirk, sworn to on April 15, 2015, ("McGuirk Dec."), at ¶1*, stated in her evaluation of Plaintiff as a "Religious Leader" that "Mrs. Fratello sets a good example as a religious leader." *See, McGuirk Dec., at ¶11; id., at Ex. "A."*

- Objection: Id. Additionally, the witness has no authority to speak on behalf of the Roman Catholic Church or Archdiocese.
- Plaintiff disputes that she was a spiritual "religious leader." *See, Fratello Decl. at ¶ 3.*

65. Ms. MaryAnn Driscoll, an English and Religion teacher at St. Anthony's, *see, Declaration of Mary Ann Driscoll, sworn to on April 15, 2015, ("Driscoll Dec."), at ¶1*, stated in her evaluation of Plaintiff as a "Religious Leader" that "Joanne has renewed the Catholic identity of St. Anthony School. It is refreshing." *See, Driscoll Dec., at ¶24; id., at Ex. "A."*

- Objection: Id. Additionally, the witness has no authority to speak on behalf of the Roman Catholic Church or Archdiocese.
- Plaintiff disputes that she was a spiritual "religious leader." She does not dispute that her presence at St. Anthony's School was "refreshing." *See, Fratello Decl. at ¶ 3.*

66. Upon her hire as Principal at St. Anthony's, Plaintiff implemented a new prayer

system within the school, the purpose of which was for the students to become “more involved” in prayer. *See, Declaration of AnnMarie Weber, sworn to on April 15, 2015, (“Weber Dec.”), at ¶8.*

- Standing objections as to Ms. Weber: The witness has no authority to speak on behalf of the Roman Catholic Church or Archdiocese. Plaintiff disputes much of what Ms. Weber states in her Declaration. Ms. Weber’s employment is obviously depending upon being in the good graces of her employer, the Defendants herein.
- Plaintiff disputes any inference that implementation of a new prayer system was a religious activity. *See, Fratello Decl. at ¶ 3.*

67. Every morning, at approximately 8:05 a.m., an eighth-grader would meet with Plaintiff, after which Plaintiff would introduce him/her over the loud speaker and the student would then recite Prayer. Plaintiff would then respond to the Prayer by stating “Praise to you Jesus Christ.” The student would then read another Prayer over the loud speaker, at which time Plaintiff would recite the “Our Father” prayer. *Id.*

- Plaintiff disputes any inference that this is not what any good Catholic would do under such circumstances. The “Our Father” and “Hail Mary” prayers are universally known by Roman Catholics. *See, Fratello Decl. at ¶ 3.*

68. At around 2:15 p.m., Plaintiff would often recite over the loud speaker an afternoon “reflection” containing a spiritual message to the entire school. *Id., at ¶9; see, also, Connelly Dec., at ¶15¹ ; Ladolcetta Dec., at ¶13; Driscoll Dec., at ¶16; Lewis Dec., at ¶8² .*

- Plaintiff disputes that she did this, but even if she had, she disputes any inference that this is not what any good Catholic would do under such

¹ The “Connelly Dec.” refers to the *Declaration of Sister Daniel Connelly, sworn to on April 15, 2015.*

² The “Lewis Dec.” refers to the *Declaration of Sister Lynn Ann Lewis, sworn to on April 15, 2015.*

circumstances. *See*, Fratello Decl. at ¶ 3. (For the purposes of this motion only, however, Plaintiff does not dispute Defendants’ assertion.)

69. On Fridays in October, Plaintiff would recite over the loud speaker a “Decade of the Rosary” in honor of the Feast of Our Lady the Rosary. In furtherance of this, Plaintiff would say over the loud speaker – “In the name of the Father, and the Son and of the Holy Spirit – Amen,” then proceed to recite the “Our Father” prayer, say ten Hail Mary’s, and then recite the “Glory Be” prayer. *See*, Weber Dec., at ¶11.

- Plaintiff disputes that she did this, but even if she had, she disputes any inference that this is not what any good Catholic would do under such circumstances. (For the purposes of this motion only, however, Plaintiff does not dispute Defendants’ assertion.)

70. At the beginning of Plaintiff’s tenure as Principal of St. Anthony’s, Plaintiff advised the faculty at a meeting that she would provide rosary beads to any student and/or faculty member who needed, for the purpose of facilitating prayer. *Id.*, at ¶10.

- Plaintiff disputes that she did this, but even if she had, she disputes any inference that this is not what any good Catholic would do under such circumstances. (For the purposes of this motion only, however, Plaintiff does not dispute Defendants’ assertion.)

71. Plaintiff would recite the Prayer of the Rosary over the loudspeaker throughout October and May. *See*, Lewis Dec., at ¶9.

- Plaintiff disputes that she did this, but even if she had, she disputes any inference that this is not what any good Catholic would do under such circumstances. (For the purposes of this motion only, however, Plaintiff does not dispute Defendants’ assertion.)

72. On most school days in December during the Advent season, Plaintiff would read the story of the “Jesse Tree” to students over the loud speaker, and explain that the ornaments of

the Jesse Tree tell the story of God in the Old Testament. *See, Connelly Dec., at ¶19; Ladolcetta Dec., at ¶21; Driscoll Dec., at ¶20; Lewis Dec., at ¶13.*

- Plaintiff disputes that she did this. *See, Fratello Decl. at ¶ 3.*

73. The Advent season begins on the fourth Sunday before Christmas Day and ends on Christmas Eve. The focus of the entire season is preparation to celebrate the birth of Jesus Christ and the anticipation of Christ the King. *See, Weber Dec., at ¶13; Connelly Dec., at ¶19, n.2; Ladolcetta Dec., at ¶21, n.3; Driscoll Dec., at ¶20, n.2; Lewis Dec., at ¶13, n.3.*

- Plaintiff disputes the assertion that in St. Anthony's School, either now or when she was principal, that the school's focus was "preparation to celebrate the birth of Jesus Christ and the anticipation of Christ the King." The schools focus at all times was education, and the vast majority of student learning time was devoted to secular subjects. *See, Fratello Decl. at ¶ 3.*

74. In connection with the Jesse Tree lesson, Plaintiff would also meet with a student in her office, at which time Plaintiff would pick out an ornament to decorate the School's Jesse Tree, and then engage the student in discussion about the religious meaning of the ornament. *See, Weber Dec., at ¶ 14.*

- Plaintiff disputes that she did this, but even if she had, she disputes any inference that this is not what any good Catholic would do under such circumstances. *See, Fratello Decl. at ¶ 3.*

75. During the Advent Season, Plaintiff would additionally read the St. Nicholas Day Blessing of Candy Canes to the students and faculty over the loud speaker. *See, Connelly Dec., at ¶20-21.*

- Plaintiff disputes that she did this, but even if she had, she disputes any inference that this is not what any good Catholic would do under such circumstances. *See, Fratello Decl. at ¶ 3.*

76. During the Christmas season, Plaintiff would also lead the first and third grade students, along with their music teacher, to a St. Anthony's Senior Citizens' meeting in the Church to recite religiously themed Christmas carols to the elderly. *See, Weber Dec., at ¶20.* Plaintiff sat with a student in her office to read the children's' book, Little Owl and the Star: A Christmas Story. *See, Novikoff Dec., at Ex. "N," at BS# 024509.*

- Plaintiff disputes that she did this, but even if she had, she disputes any inference that this is not what any good Catholic would do under such circumstances. *See, Fratello Decl. at ¶ 3.*
- Plaintiff does not recall this, but disputes any inference that this is not what any good Catholic might do. To Plaintiff's knowledge and belief, all Christmas carols are religiously themed.

78. During Plaintiff's recitation of this nativity story to the student, she paused to ensure that the child comprehended the same. Plaintiff asked the student if she knew who sat in the manger that they had "just learned about," at which time the student, with Plaintiff's guidance, replied "Three Kings, the sheep [] and the camels, the angels and baby Jesus...[Mary] and God...[.]" *Id.*

- Plaintiff does not recall this, but agrees that a good Catholic may have explained a Christmas story to a child. *See, Fratello Decl. at ¶ 3.*

79. Plaintiff required the display of religious symbols and figures within the classroom and the School building. *See, Weber Dec., at ¶26.*

- Plaintiff disagrees that she required the display of religious items. Rather, this was the community expectation (and the Pastor's requirement, as to certain items). *See, Fratello Decl. at ¶ 3.*

80. Plaintiff directed her administrative assistant to display an advent wreath on a table outside her office. *Id., at ¶27.*

- Plaintiff disagrees about “directed”, but did not discourage the bringing of the “Christmas spirit” to the office environment, e.g., the display of a wreath and other Christmas decorations and displays (as do most Christians during this season). *See, Fratello Decl.* at ¶ 3.

81. Plaintiff directed her teachers to display advent wreaths in their respective classrooms. *Weber Dec.*, at ¶28; *Connelly Dec.*, at ¶22; *Ladolcetta Dec.*, at ¶22; *Driscoll Dec.*, at ¶21; *Lewis Dec.*, at ¶14.

- Plaintiff disagrees that “directed” teachers to display wreaths. Plaintiff also finds it almost miraculous that each of the deponents employ exactly the same words to describe the facts Defendants assert are material. Plaintiff objects that it appears obvious that Defendants’ counsel are writing these declarations,³ with the deponents being instructed to sign under threat of being viewed as not cooperating with, or being disloyal to, their employer, the Defendants. OMIT??: These sheep are following whom they believe to be the Archdiocese shepherd. *See, Fratello Decl.* at ¶ 3.

82. Plaintiff prominently displayed a Crucifix in her office. *Weber Dec.*, at ¶29; *Connelly Dec.*, at ¶23; *Ladolcetta Dec.*, at ¶23; *Driscoll Dec.*, at ¶22; *Lewis Dec.*, at ¶15.

- *No dispute.*

83. Each year at the graduation ceremony for the Eighth grade students, Plaintiff would stand on the pulpit within the Sanctuary, and present a religiously themed graduation speech. *Weber Dec.*, at ¶12.

- Plaintiff disputes that she did this, but even if she had, she disputes any inference that this is not what any good Catholic would do under such circumstances.

³ Much of what the Defendants’ deponents state under oath is identically-worded across the various declarations. For example, almost every deponent states under oath that the “Archdiocese was incorrectly identified as the Roman Catholic Archdiocese of New York in the caption.” First, it is highly unlikely that these deponents (elementary school teachers and staff) would know the correct identity of the Archdiocese, and second, Plaintiff believes the caption is in fact correct.

Plaintiff sought to give a motivational and common sense “be good” speech. *See, Fratello Decl.* at ¶ 3.

84. At the end of the speech, Plaintiff would lead the School, along with all of the students, parents and clergy in attendance, in Prayer. Plaintiff would then recite more prayer and further “bless” the students. *Id.*

- Plaintiff disputes that she did this, but even if she had, she disputes any inference that this is not what any good Catholic would do under such circumstances. It is Plaintiff’s religious belief, and understanding of Roman Catholic doctrine, that a lay woman (e.g., Plaintiff) has no religious authority to “bless” others, including students. *See, Fratello Decl.* at ¶ 3.

85. Plaintiff attended, in her capacity as Principal, many school-related religious ceremonies and/or Masses attended by students and their parents, including but not limited to:

***The Second Grade students’ First Holy Communion ceremony, (*see, Weber Dec., at ¶21*).

***Sacrament of First Reconciliation, (*see, McGuirk Dec., at ¶8*);

***Confirmation (*see, Weber Dec., at ¶22*);

***Catholic School Week Mass (*see, Weber Dec., at ¶23*);

***Church’s Sunday Mass, (*see, Weber Dec., at ¶24; Connelly Dec., at ¶18; Ladolcetta Dec., at ¶16*), and;

***Sunday Mass in June in celebration of the Feast of St. Anthony (*see, Weber Dec., at ¶25*).

- Plaintiff disputes that she did all this or most of this, but even if she had, she disputes any inference that this is not what any good Catholic would do under such circumstances. *See, Fratello Decl.* at ¶ 3. For the purpose of this motion only, Plaintiff does not dispute the Defendants’ assertion.

86. The Sacrament of First Reconciliation ceremony is very important within the Catholic Faith and is considered a major spiritual accomplishment for these young students. *See, McGuirk Dec., at ¶8.*

- Objection: Immaterial, irrelevant, and not a statement of fact.

87. Plaintiff would join the faculty and students at the Schools’ monthly “First Friday Mass.” *See, Connelly Dec., at ¶17; Ladolcetta Dec., at ¶15; Driscoll Dec., at ¶18; Lewis Dec., at ¶12.*

- Plaintiff disputes that she did all this or most of this, but even if she had, she disputes any inference that this is not what any good Catholic would do under such circumstances. *See, Fratello Decl. at ¶ 3.* For the purpose of this motion only, Plaintiff does not dispute the Defendants’ assertion.

88. The Catholic Church designates the second or third Sunday in September as “Catechetical Sunday” – a day on which to celebrate and pray for the Church’s mission to teach the Gospel to all people. *See, Ladolcetta Dec., at ¶18.*

- Objection: Immaterial, irrelevant, and not a statement of fact.
- Plaintiff disputes the assertion that this day is to “pray for the Church’s mission to teach the Gospel to all people.” Plaintiff believes that canon law and Roman Catholic Church doctrine distinguishes the Church’s “teaching mission.” Parents of children are viewed as having this teaching mission, and catechists are formally commissioned by the church. Plaintiff is not a catechist (other than to her own child as a parent), and was never commissioned. *See, Fratello Decl. at ¶3. See also, Statement of U.S. Conference of Bishops (document available online at <http://www.usccb.org/beliefs-and-teachings/how-we-teach/catechesis/catechetical-sunday/catechetical-sunday-about.cfm>) :*

89. St. Anthony’s Church celebrates this day by holding a Catechetical Sunday Mass and Plaintiff would be present at these masses, which were attended by students and their family. *Id.*

- Plaintiff disputes that she did all this or most of this, but even if she had, she disputes any inference that this is not what any good Catholic would do under such

circumstances. *See, Fratello Decl.* at ¶ 3. For the purpose of this motion only, Plaintiff does not dispute the Defendants' assertion.

90. Plaintiff would work closely with the teachers on a regular and consistent basis to carry out the School's religious and educational missions. *See, gen., e.g., Connelly Dec.; Ladolcetta Dec.; Driscoll Dec.; Lewis Dec.; McGuirk Dec.*

- Objection: this is an overbroad and conclusory assertion; vague and ambiguous.
- Plaintiff does not dispute that she worked closely with teachers and staff to carry the St. Anthony's School's mission (which mission is stated in its handbook). *See, Fratello Decl.* at ¶ 3.

91. The teachers were required each week to provide Plaintiff with a copy of the lesson plan book. *See, Connelly Dec., at ¶¶8-11; Ladolcetta Dec., at ¶¶7-9; Driscoll Dec., at ¶¶8-10.*

- Objection: *See* objections at ¶81, *supra*. Again miraculously, Driscoll's and Connelly's declaration paragraphs are virtually identical, and Ladolcetta's declaration almost identical.
- Plaintiff does not dispute that she was provided with lesson plan books by teachers.

92. A large part of the religious curriculum for second graders is instruction about Mass, Biblical readings/responses, Communion and the body and blood of Christ, all in preparation of the students' First Holy Communion. *See, McGuirk Dec., at ¶9.*

- Objection: irrelevant and immaterial, and hearsay.

93. Plaintiff mandated, *inter alia*, that the lesson plan books identify the objective of each particular lesson, the method by which it is taught and further indicate the Value and Saint ("Value/Saint") which would correspond with the respective lesson. The Value/Saint is a chart that Plaintiff handed out to the teachers at the beginning of each year, identifying a Catholic Saint and a corresponding Catholic value to incorporate into the curriculum. *See, Connelly Dec., at*

¶¶8-9; *Ladolcetta Dec.*, at ¶¶7-9; *Driscoll Dec.*, at ¶¶8-9; *McGuirk Dec.*, at ¶6.

- Objection: See objections at ¶81 and ¶ 91, *supra*. As to the assertions, again Driscoll's, Connelly's, Ladolcetta's and McGuirk's declaration paragraphs are virtually identical.
- Plaintiff does not dispute that she handed out a chart with Saints and values for classroom consideration, that her assistant printed, following Archdiocese directions. *See*, Fratello Decl. at ¶ 3.

94. Teachers were required by Plaintiff to include religious teachings into the lesson plans reviewed by Plaintiff. *See*, *Connelly Dec.*, at ¶¶8-9; *Ladolcetta Dec.*, at ¶8; *Driscoll Dec.*, at ¶9; *McGuirk Dec.*, at ¶¶8-9.

- Objection: Defendants' assertion is conclusory, and the phrase "religious teachings" is ambiguous.
- Plaintiff does not dispute that she expected teachers to relate Christian and Roman Catholic doctrine and teachings to (especially Christian and Catholic) students. *See*, Fratello Decl. at ¶ 3.

95. Plaintiff would also review and sign off on the lesson plan book of lay teachers who had significant responsibility for teaching Religion to the younger elementary school children. *See*, *McGuirk Dec.*, at ¶8.

- Objection: Irrelevant and immaterial.
- Plaintiff disputes any inference that she was responsible for religious training or in supervising teachers (lay or otherwise) on religious matters. Plaintiff was not a catechist. *See*, Fratello Decl. at ¶ 3.

96. Religion is infused into each class at the school. *See, e.g.*, *Connelly Dec.*, at ¶9.

- Objection: Conclusory, irrelevant, immaterial, lacking in foundation, vague and ambiguous (especially the terms "religion" and "infused"), and hearsay.

- Plaintiff does not dispute that teachers are expected to bring Christian and Catholic values into the classroom, and to incorporate religion into the classroom where appropriate.

97. Plaintiff would observe the teachers in their classrooms to evaluate, *inter alia*, a teacher's ability to integrate Catholic values into the subject matter. *See, Connelly Dec., at ¶7.*

- Objection: The deponent, Ms. Connelly, can speak only for her own observation, which was only her class. The assertion is otherwise conclusory, irrelevant, immaterial, lacking in foundation, vague and ambiguous (especially the phrase "Catholic values").
- Plaintiff does not dispute that she sought to ensure that Catholic values were found within the classroom.

98. For example, Sister Connelly, when teaching a science class, would "teach the children that the Earth was created by God, and is to be used as a place to live, enjoy and love." *Id., at ¶9.*

- Objection: The assertion is conclusory, irrelevant, immaterial, and not a statement of fact, but rather of belief. Moreover, Sister Connelly's "teaching" is not unique to Roman Catholicism, Christianity or any of the world's major religions.
- Plaintiff does not dispute that Sister Connelly may have taught what she states.

99. Plaintiff also instructed teachers who taught religion to include religiously important themes into their lessons. *See, Novikoff Dec., at Ex. "O".*

- Objection: Exhibit "O" does not support the assertion. It is also conclusory, irrelevant, immaterial, vague, ambiguous, and not a statement of fact.

100. Plaintiff received an e-mail from an Archdiocesan administrator concerning joining "in prayer during the month of January for the Intention of Respect for Human Life." Plaintiff forwarded this e-mail to the faculty of St. Anthony's, included on which was the following handwritten note from her:

Id.

Teachers,

Please include ---- (age appropriate) into your Religion classes.

Thank you,

Joanne

- Plaintiff does not dispute her handwritten note.

101. The curriculum for religion classes would be reflected in lesson plan books submitted to Plaintiff for review. *See, Connelly, Dec., at ¶10.*

- Objection: Hearsay as to all but Deponent Connelly's observations. It is also conclusory, irrelevant, immaterial, vague, ambiguous, and not a statement of fact.
- Plaintiff disputes any inference that she supervised religious instruction, other than in a purely administrative capacity. *See, Fratello Decl. at ¶ 3.*

102. Plaintiff would also require teachers to attend monthly faculty meetings at the School to discuss upcoming events, secular and non-secular. *See, Connelly Dec., at ¶12; Ladolcetta Dec., at ¶10; Driscoll Dec., at ¶11.*

- Objection: Conclusory, irrelevant, immaterial, and identical declaration statements (see objections at ¶ 81 and ¶ 91, *supra*).
- Plaintiff does not dispute that she held regular, monthly faculty meetings, but disputes any inference that she acting in any sort of pastoral or ministerial capacity, and to the extent that "non-secular" implies such, it is unsupported by the declarations (e.g., Connelly—"discuss ... religious events to be held at the School"; Ladolcetta—same; Driscoll—same). *See, Fratello Decl. at ¶ 3.*

103. Each monthly meeting began with a Prayer with Plaintiff participating in delivering the Prayer. *Id.*

- Plaintiff disputes that she "delivered" (led) prayer, but even if she had, she

disputes any inference that this is not what any good Catholic would do under such circumstances. *See, Fratello Decl.* at ¶ 3. For the purpose of this motion only, Plaintiff does not dispute the Defendants' assertion.

104. Plaintiff required teachers to attend a "Standard and Goals" meeting at the commencement of each School year; Plaintiff led these meeting and each meeting opened with the recitation of Prayer, in which Plaintiff participated. *See, Connelly Dec., at ¶13; Driscoll Dec., at ¶12.*

- Plaintiff disputes that she "delivered" (led) prayer, but even if she had, she disputes any inference that this is not what any good Catholic would do under such circumstances. *See, Fratello Decl.* at ¶ 3. For the purpose of this motion only, Plaintiff does not dispute the Defendants' assertion.

105. Plaintiff would also attend Principal Conferences where the Principals within Rockland County would discuss the special events taking place the following month at their respective schools. *See, Cassel Dec., at ¶¶14-16.*

- Objection: Conclusory, irrelevant, immaterial, and vague.
- Plaintiff does not dispute that she individually met with Ms. Cathleen Cassell, who is a lay Archdiocese Superintendent of Schools' church employee. She is not a minister. *See, Fratello Decl.* at ¶ 3.

106. By way of example, these Principal Conferences would include discussing the implementation and coordination of the annual Rose Mass, which was held in January of each year. The Rose Mass, also called the Respect for Life Mass, was a special mass for all Rockland County Catholic School eighth grade students. The Principals within Rockland County would rotate which school planned, implemented and hosted this annual event. Plaintiff held the Rose

Mass one year at St. Anthony's. *Id.*

- Objection: Conclusory, irrelevant, immaterial, and vague.
- Plaintiff does not dispute that she was involve administrative matters, as school principal, regarding the Rose Mass.

107. The message of the Rose Mass was to teach the children that human life is a precious gift from God; that each person who receives this gift has responsibilities toward God, self and others; and that society, through its laws and social institutions, must protect and nurture human life at every stage of its existence. *Id.*

- Objection: Conclusory, irrelevant, immaterial, and vague. Additional objection: Masses, including the Rose Mass, are conducted by the ordained Parish Priest or perhaps the Bishop.

108. Plaintiff would also lead, direct and/or manage all of the school-related religious events that took place at the School. *See, Ladolcetta Dec., at ¶11; Driscoll Dec., at ¶13.*

- Objection: Conclusory, irrelevant, immaterial, ambiguous and vague. The Ledolcetta affidavit does not support the factual assertion (As to the “‘Best Friends Animal Society’ program... [Plaintiff] approved supporting their cause”).
Ms. Driscoll asserts that Plaintiff approved liturgical “hymns, ... decorations ... and the lay persons to recite some of the Prayer during these ceremonies.” She refers to the Thanksgiving Mass and May Crowning Mass. The Court can take judicial notice that a lay principal has no supervisory role in a Catholic Mass—that would be blasphemy.
- Plaintiff disputes this assertion. The Parish Priest and Director of Religion were responsible for all “religious” events. Additional objection: Masses, and all liturgical matters, are within the complete province and control of the Parish Priest or Bishop. *See, Fratello Decl. at ¶ 3.*

109. Plaintiff's approval was needed for a teacher to undertake a religiously themed initiative within the School. *Driscoll Dec., at ¶13.*

- Objection: Conclusory, irrelevant, immaterial, ambiguous and vague. *See* prior objection as to Ms. Driscoll’s declaration. The factual assertion is not supported by the declaration (a Roman Catholic Mass is not a “religiously themed initiative”).

110. For example, the School’s Liturgy Committee was responsible for selecting the hymns to be recited, the decorations used and lay persons to recite Prayer during the Thanksgiving Liturgy, which is a Mass held for the Thanksgiving Holiday, and May Crownings, which is a special Mass held in May in honor of Mary the Mother of Jesus and the Church. The Plaintiff had to approve the Liturgy Committee’s selections. *See, Driscoll Dec. at ¶13.*

- Objection. Same as prior 2 paragraphs.
- Plaintiff did not approve liturgical items. *See, Fratello Decl. at ¶ 3.*

111. The Liturgy Mass was attended by students and their families. Plaintiff attended this Mass, and would speak with students and their families after Mass. *See Driscoll Dec., at ¶¶ 13 and 18.*

- Objection: Conclusory, irrelevant, immaterial, ambiguous and vague. Additional objection: The factual assertion is not supported in any way by the declaration.

112. On another occasion, a teacher sought the School’s sponsorship of the “Best Friends Animal Society” as part of the School’s “Monthly Mission.” This teacher presented this idea to Plaintiff and, after being questioned about the program, Plaintiff approved the School’s support. *See, Ladolcetta Dec., at ¶11.*

- Same objection as ¶ 108, *supra*.

113. The School’s “monthly mission” is a program wherein the School selects a different charity or a cause to support each month. This program is intended to teach the students “Catholic values,” *i.e.*, the importance of giving back and supporting the community. The Principal manages the “monthly mission.” *See, Ladolcetta Dec., at ¶11, n.2.*

- Objection: Conclusory, irrelevant, immaterial, ambiguous and vague. Additional objection: Supporting charitable not-for-profit organizations is benevolent, but not exclusively Christian or Catholic.
- Plaintiff does not dispute that, as school administrator, she was involved in student's charitable activities. *See, Fratello Decl.* at ¶ 3.

114. In honor of the Feast of St. Anthony, which is held in June, Plaintiff would plan a special ceremony at the School and would attend Sunday Mass attended by students and their parents. Thereafter, she would meet with the students, their families and faculty, bringing with her a statue of St. Anthony placed in prominence (which has religious symbolism). *See, Lewis Dec., at ¶10.*

- Objection: Conclusory, irrelevant, immaterial, ambiguous and vague.
- Plaintiff does not dispute that, as school administrator, she was involved in the Feast of St. Anthony.

115. On or about September 11 of each year, Plaintiff hosted a September 11 memorial prayer at the School. Plaintiff, faculty and the students would attend. At this Memorial Prayer, Plaintiff would stand in front of the gathering and recite a Prayer in remembrance of the victims of the attack on that day. Plaintiff would further recite Bible verses, such as Matthew 5:1-2, 13-16, *id.*, and then recite the "Our Father" prayer. *See, Ladolcetta Dec., at ¶19.*

- Objection: Conclusory, irrelevant, immaterial, ambiguous and vague.
- Plaintiff does not dispute that, as school administrator, she attended the September 11th memorial activities, and perhaps recited a prayer or bible verses, as any good Catholic might do on such occasion (or even her attorney might do, as an Iraq and Afghanistan veteran). *See, Fratello Decl.* at ¶ 3.

116. Throughout Plaintiff's tenure as Principal, she would regularly send "memos" or e-mails directing that the teachers attend Mass at the Church for school related events, as well as

other religious events. *See Connelly Dec.*, at ¶16; *Ladolcetta Dec.*, at ¶14; *Driscoll Dec.*, at ¶17; *Lewis Dec.*, at ¶12.

- Objection: Conclusory, irrelevant, immaterial, ambiguous and vague.
- Plaintiff does not dispute that, as school administrator, she asked teachers to attend Church at appropriate times. She did not have the authority to “direct” this-- the Pastor did. *See, Fratello Decl.* at ¶ 3.

117. Memoranda and e-mails under Plaintiff’s name to St. Anthony’s teachers communicated her attendance at and/or her intent to attend school-related Masses with St. Anthony students, (both at St. Anthony’s and at other Churches), as well as with the parents. *See, Novikoff Dec.*, at Ex. “P.”

- Objection: Conclusory, irrelevant, immaterial.
- Plaintiff does not dispute that, as school administrator, she indicated at various time that she hoped to attend school-related Masses, although more often than not her administrative duties kept her from attending the actual Mass. *See, Fratello Decl.* at ¶ 3. . For the purpose of this motion only, Plaintiff does not dispute the Defendants’ assertion.

118. Plaintiff drafted and oversaw the monthly publication and dissemination to the students’ parents of the St. Anthony’s Monthly Newsletter. *See, Weber Dec.*, at ¶16-17; *see also, Weber Dec.*, at Exs. “C” – “O”.

- Objection: Conclusory, irrelevant, immaterial.
- Plaintiff does not dispute that, as school administrator, she supervised the newsletter. Much of the content, however, was drafted by others, including her administrative assistant, Ms. Weber. *See, Fratello Decl.* at ¶ 3.

119. With a religious symbol on these Newsletters, these Newsletters would often recite Catholic doctrine and/or Prayer. *Id.*, at ¶18; *see, gen., Weber Dec.*, at Exs. “C” – “O”.

- Objection: Conclusory, irrelevant, immaterial, hearsay. The documents speak for themselves. Moreover, to the extent the message conveys Plaintiff's religious belief, this Court should permit Plaintiff her First Amendment right to express her belief, and not penalize her for such expression.

120. A substantial number of these Messages contained some variation of the following message from Plaintiff involvement and/or to the parents: "May God Continue to bless you and your families." *See, Weber Dec., at ¶17; see also, Weber Dec., at e.g., Exs. "C," "H," "K," "L," "M," and "O" at BS#; 000466; 000472; 000473; 000475; 003511; 004075; 004390.*

- Objection: Conclusory, irrelevant, immaterial, hearsay. President Obama frequently asks for God's blessing. Moreover, to the extent the message conveys Plaintiff's religious belief, this Court should permit Plaintiff her First Amendment right to express her belief, and not penalize her for such expression.

121. These Messages also acknowledged Plaintiff's organization and/or participation in school related masses in her capacity as Principal, either often thanking the families for joining her at a school related Mass, or inviting these families to join her at a school related mass. *Id., at e.g., Exs. "D," "F," "H," "I," "J," "K," "L," "N," and "O," at BS# 000472; 000469; 004238; 000473; 000475; 000321; see, also, Novikoff Dec. at., e.g., Ex. "P" at BS# 000240; 000247; 000332; 000313; 000387; 000374; 000395; 000397; 000334; 000336; and 000518.*

- Objection: Conclusory, irrelevant, immaterial, hearsay.
- Plaintiff was the school administrator. She acted as any good Catholic would under the circumstances. Plaintiff disputes any inference that only she, and not the teachers, attended Mass, and encouraged students and their families to do so, and thanked them for doing so.

122. Plaintiff also often communicated to the parents in her monthly Message her joy and/or enthusiasm in joining with the students in their "spiritual," *i.e.*, "religious" journey in

finding Christ, reporting the progress of the student's spiritual development and thanking parents and faculty for their assistance in helping the students to achieve this seminal mission of the Archdiocese. *Weber Dec.*, at e.g., *Exs. "D," "H," "L," "N," and "O" at BS#.* 000469; 000472; 000473; 004238.

- Objection: Conclusory, irrelevant, immaterial, hearsay.
- Plaintiff was the school administrator. She acted as any good Catholic would under the circumstances. Plaintiff disputes any inference that she acting in a manner other than what any good Catholic would do in an administrative role. *See, Fratello Decl. at ¶ 3.*

123. Plaintiff used her Message as a vehicle to encourage the religious/spiritual learning and growth of the students outside of school and to remind the parents of upcoming events of religious significance and how they should relate to their child's spiritual development. *Id.*, at e.g., *Exs. "I," "F," "L," "N."*

- Objection: Conclusory, irrelevant, immaterial, hearsay.
- Plaintiff was the school administrator. She acted as any good Catholic would under the circumstances. Plaintiff disputes any inference that she acting in a manner other than what any good Catholic would do in an administrative role. *See, Fratello Decl. at ¶ 3.*

124. Plaintiff gave the following words of advice to her last graduating class, the Class of 2011:

... I was very confident that your spiritual, educational, and intellectual growth would have been achieved and you have proven that following Jesus's teaching along with the love and guidance from your parents, teachers and the community members that it was possible.

...

As you leave our school family, may the God of peace

protect you, equip you, and work with you, through Jesus Christ, to whom be glory forever and ever. Amen.

God Bless you always,

Ms. Fratello

Novikoff Dec., at Ex. "Q," at BS# 024458.

- Objection: Conclusory, irrelevant, immaterial.
- Plaintiff was the school administrator. She acted as any good Catholic would under the circumstances. Plaintiff disputes any inference that she acting in a manner other than what any good Catholic would do in an educational administrative role. *See, Fratello Decl. at ¶ 3.*

PLAINTIFF'S COUNTER-STATEMENT OF MATERIAL FACT

1. Plaintiff was hired as a lay principal. *See, Fratello Decl. at ¶ 3.*
2. Plaintiff received no religious training after grammar school. *Id.*
3. Plaintiff was never informed by any Archdiocese official that she was a minister of the church. *Id.*
4. Plaintiff was not given any formal (or informal) commission as a "catechist." *Id.*
5. Plaintiff is not an ordained minister. *Id.*
6. The Roman Catholic Church has rules, such as its canon law, that describe its ministry and its laity. *Id.*
7. Plaintiff is a member of the Roman Catholic Church's laity. *Id.*
8. No religious official of the Roman Catholic Church directly appointed (by direct personal communication) Plaintiff to any pastoral position in the church. *Id.*
9. The governance of the Roman Catholic Church is described in its canon law. *Id.*
10. The governance of the Roman Catholic Church is through its ordained ministry. *Id.*
11. Specifically the governance of the Roman Catholic Church is through its bishops, headed by the Pope. *Id.*

12. The laity have no direct role in the governance of the Roman Catholic Church. *Id.*
13. Women are not allowed to be ordained ministers in the Roman Catholic faith. *Id.*
14. The Roman Catholic Church has education as one of its missions. *Id.*
15. As part of its mission of education, the Roman Catholic Church is involved with the education of elementary school students, high school students, college students, and graduate school students in fields such as law and medicine. *Id.*
16. The Roman Catholic Church also engages in charitable work, and activities which benefit the general society, such as the providing nursing homes, orphanages, health clinics, hospitals and medical centers. *Id.*
17. Institutions affiliated with or run by the Roman Catholic Church routinely have a person at such institution who acts as the Pastor or Minister. *Id.*
18. As an example, Seton Hall University has a lay president, appointed by the board of trustees, and a Pastor who serves as the University's minister. *Id.*
19. "Catholic Education," generally speaking, involves the teaching of secular subjects at the elementary, secondary, college or graduate level, with Christian and Catholic values infused, to the extent practical, into the schooling. *Id.*
20. Religious education at the elementary school level is primarily the responsibility of the parents, assisted by teachers of religion ("catechists") at the elementary school. *Id.*
21. School catechists receive training in this regard. *Id.*
22. Specifically, catechist training may include several hours of online instruction (much less than a college semester's worth of work), and self-certification of training after completion of the instruction. *Id.*
23. The U.S. Conference of Bishops has stated that:

"Why do we have a special day set aside to commission catechists?"
Catechesis is a distinct and special ministry in the Church. As the Catechism of the Catholic Church makes clear, "Catechesis is intimately bound up with the whole of the Church's life . . . her inner growth and correspondence with God's plan depend essentially on catechesis" (no. 7). This ministry of teaching in the name of the Church has a profound dignity, which is why catechists are formally commissioned by the Church. It is only fitting that we set aside a day to highlight this ministry

and invite the entire church community to think about our responsibility to share our faith with others.

How are parents, the primary catechists of their children, recognized on Catechetical Sunday?

Parents are truly the primary catechists of their children. They prepare the soil and plant the first seeds of faith. On Catechetical Sunday, we not only highlight the work of catechists in parishes and schools, but we also commend parents and guardians and encourage them to take seriously their role of making their Catholic households a place where faith is passed on to the next generation. This is why the rite of blessing of catechists used on Catechetical Sunday includes an optional blessing of parents and guardians.

See, statement available at: <http://www.usccb.org/beliefs-and-teachings/how-we-teach/catechesis/catechetical-sunday/catechetical-sunday-about.cfm>) :

24. Plaintiff was never “commissioned” as a catechist by the Roman Catholic Church. *Id.*
25. Plaintiff was not a member of the local parish, namely, the St. Anthony’s Church. *Id.*
26. Plaintiff was and is a member of a different, unaffiliated parish. *Id.*
27. Plaintiff was involved in no way in the governance of the Roman Catholic Church or the local parish, St. Anthony’s Church. *Id.*
28. Plaintiff was not a minister of the Roman Catholic Church. *Id.*
29. Plaintiff was not appointed by the Roman Catholic Church to a position in which she was assigned pastoral or ministerial duties. *Id.*
30. Plaintiff was not terminated as a result of being excommunicated from the Roman Catholic Church, or found to be immoral, or found to have violated Roman Catholic Church rules, or otherwise found to have been a “bad” or “non-practicing” Catholic. *Id.*
31. No religious authority removed Plaintiff from any religion position. *Id.*
32. Rather, Plaintiff’s employment contract as a lay principal was simply not renewed. *Id.*
33. Plaintiff’s contract was not renewed because the new Pastor at St. Anthony’s Church was a sexist, and discriminatorily caused Plaintiff’s contract not to be renewed because of

sexism. *Id.*

34. There was no religion-based reason for Plaintiff's termination. *Id.*

Respectfully submitted,

Dated: Stony Point, New York
May 22, 2015

_____/S/_____
Michael D. Diederich, Jr.
Attorney for Plaintiff
361 Route 210
Stony Point, NY 10980
(845) 942-0795
Mike@DiederichLaw.com

COPY TO:
RIVKIN RADLER LLP
Kenneth A. Novikoff
Barry I. Levy
Jacqueline Siegel
926 RXR Plaza
Uniondale, New York 11556-0926
(516) 357-3000
ken.novikoff@rivkin.com
Counsel for Defendants, Archdiocese of New York
i/s/h/a/ Roman Catholic Archdiocese of New York,
St. Anthony's Shrine Church, and St. Anthony's School

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOANNE FRATELLO

Plaintiff,

PLAINTIFF'S RULE 56.1
STATEMENT IN SUPPORT OF
CROSS-MOTION TO STRIKE
MINISTERIAL IMMUNITY
DEFENSE

-against-

12 Civ. 7359 (CS)(CMS)

ROMAN CATHOLIC ARCHDIOCESE
OF NEW YORK, *et al.*,

ECF CASE

Defendant.

Plaintiff Joanne Fratello, by her attorney Michael D. Diederich, Jr., hereby sets for material facts not genuinely in dispute, pursuant to Local Rule 56.1, in support of Plaintiff's cross-motion for summary judgment under FRCP Rule 56 requesting that Defendants' *Hosanna-Tabor* ministerial immunity defense be stricken.

I. LAY PRINCIPAL'S EMPLOYMENT CONTRACT & HIRING CRITERIA

Employment with Archdiocese/St. Anthony's School

1. Plaintiff was first hired in the Archdiocese as a lay teacher. *See*, accompanying Declaration of Joanne Fratello ("*Fratello Decl.*") at ¶3.

2. The Archdiocese does not require that its parochial school teachers be Roman Catholic. *Id.*

3. In applying for employment with the Archdiocese, Plaintiff reasonably believed that she was applying for an educational position. *Id.*

4. Plaintiff's academic credentials are in education, and she has no academic credentials whatsoever in religion or theology. *Id.*

5. In being promoted to (lay) elementary school principal, Plaintiff reasonably believed that she was being advanced as an educator. *Id.*

6. St. Anthony's School was founded in 1953 by the Dominican Sisters of Sparkill, and is highly respected for its academic excellence. *Id.*

7. The "mission" of St. Anthony's School, as stated on its current website, is as follows:

"The Mission of St. Anthony School is to provide a high-quality, educational experience that enhances each child's spiritual, emotional, intellectual and social growth. Our faculty and staff prepare our students to become future leaders and responsible stewards of God's creation."

See, Exhibit 27, found at <http://www.stanthonyschoolnanuet.org/about-us/>

8. This description did not lead Plaintiff to believe that she was sought as a "minister" in any way. *Id.*; and *Fratello Decl. at ¶ 3*.

Interview process

9. Plaintiff was interviewed by officials of the Archdiocese Superintendent of Schools and found qualified to be hired as an elementary school principal. *Fratello Decl. at ¶ 3*.

10. During this interview process, Plaintiff was not asked about any religious matters, other than her stating on her application that she was a practicing Catholic. She was not asked about her religious background; about whether she had any training or education in religion or theology; or about whether she felt herself competent to act in any way as a minister or to perform ministerial functions.¹ *Id.*

Contract terms

11. Plaintiff Fratello's latest contractual relationship with Defendants is reflected in Plaintiff's contract of employment entitled "Contract of Employment for Lay Principals—

¹ For purposes of Defendants' motion for summary judgment herein, Plaintiff will not dispute Defendant's assertion. Many of Defendants' 56.1 Statement assertions are incorrect. However, because Defendants could ask certain questions or make such demands of future candidates for principal, or do this upon Plaintiff's reinstatement, she will not contest many of the assertions so as to avoid unnecessary disagreement).¶

Archdiocese of New York” executed on July 3, 2007 (hereinafter “2007 Lay Principal Contract”). *See*, Exhibit 14.²

12. The 2007 Lay Principal Contract states that the job position is “lay.” *Id.*

13. The 2007 Lay Principal Contract states that that the “Office of the Superintendent of Schools” has approved Plaintiff as “qualified for the position of elementary school principal.” *Id.*

14. The contract goes on to state, at “Responsibilities” (numbered paragraph 2), that “[t]he principal [Plaintiff] shall be subject to, and employed pursuant to, the rules, regulations, policies and procedures of the school, the Office of Superintendent of Schools, and the State of New York....” *Id.* This paragraph states nothing about any “religious,” “pastoral,” or “ministerial” duties or responsibilities. *Id.*

15. Plaintiff reasonably believed that she was being hired as an educational administrator (“lay principal”) at a Roman Catholic-affiliated elementary school, and that the employment included the “bona fide occupational qualification” that she be a “practicing Catholic.” There was nothing in the contract, or in the written job application materials, indicating anything to the contrary. *See, id, see also Fratello Decl.* at ¶ 3.

16. The contract describes “Termination” at numbered paragraph 3. Nothing in that paragraph or its subparts indicate anything more than that Plaintiff is required to be an upstanding employee, by conducting herself as a good Catholic. In this regard, ¶ 3(d) states that:

“The principal recognizes the religious nature of the Catholic school and agrees that the employer retains the right to dismiss principal for immorality, scandal, disregard or disobedience of the policies or rules of the Ordinary of the Archdiocese of New York, or rejection of the official teaching, doctrine or laws of the Roman Catholic Church, thereby terminating any and all rights a principal may have hereunder, subject,

² This was Amended Complaint Exhibit 14. All of Plaintiff’s exhibits are referred to as “Exhibit.”

however, to the personal due process rights promulgated by Archdiocesan ecclesiastical authorities.” (*emphasis added*)
Id.

17. Thus, the employer permitted itself the right to terminate Plaintiff for cause, for example, by rejecting the teachings of the Roman Catholic Church when she is employed at a Roman Catholic school. *Id.*

18. The 2007 Lay Principal Contract concluded by stating that:

“This contract constitutes the complete agreement between the parties and may only be amended by a. written addendum signed by the parties.”
Id.

Qualifications for Principal (“School Leader”)

19. The Archdiocese seeks qualified principals as follows:

“School Leader Qualifications

The Archdiocese of New York seeks qualified applicants for leadership positions in our schools.

We look for intelligent, results-oriented candidates with outstanding educational vision, leadership skills, organizational ability and interpersonal strengths to serve as principals for elementary (grades PreK-8) and secondary (grades 9-12) schools. These leaders must be committed Catholics who can inspire faculty and staff and engage parents and students in the promise of spiritual development and academic excellence.

Candidates must have the ability to create a high-expectations environment for teachers, students, and families. They must inspire a culture where faculty and staff members work collaboratively to ensure the holistic achievement of every student.

Candidates must also demonstrate strengths in organization, data- and mission-driven decision-making, interpersonal relationships and communication, effective supervision of instruction, assessment and professional development and financial planning.

Candidates must meet the following requirements:

- Practicing Catholic
- Minimum five years teaching experience or five years cumulative experience in teaching and/or administrative role
- Earned Master’s degree in Education or Master’s equivalent (or in progress) OR NYS School Building Leader certification (or equivalent)

- Preference is given to candidates with Level 1 and Level 2 Catechist certification or in progress (if prior position did not require Catechist certification, then both levels must be completed within three years of principalship).

Salary is commensurate with credentials and experience.

See, Exhibit 22, available online at: <http://buildboldfutures.org/careers/school-leader-qualifications/>

20. The only religious requirement for being hired into the position of principal (“school leader”) is that the person be a “practicing Catholic.” *Id.*

21. Plaintiff was approved for a three year period by the Archdiocese in April 2007; thanked for her service to St. Josephs School in June 2007; and again approved for a three year period by the Archdiocese in May 2008. See, *Fratello Decl.* at ¶ 3; see also, Exhibit 16. There is no indication that any religious figure or authority was part of this approval process. *Id.*

22. The application information for the position of principal summarized the job as follows:

“JOB SUMMARY: The Archdiocese of New York seeks committed Catholics who can inspire and engage faculty, staff, parents and students in the pursuit of spiritual development and academic excellence. These dynamic administrators should demonstrate outstanding educational vision, professionalism, leadership skills, organizational ability and interpersonal strengths to serve as Principals for elementary (grades K-8) and secondary (grades 9-12) schools. Candidates must set high expectations and foster a culture of continuous improvement in which every member of the school community works collaboratively to ensure the holistic achievement of every student.

See, Exhibit 23, available online at <http://buildboldfutures.org/assets/files/SchoolLeadersStage1.pdf>

23. The above does not require, or even suggest, that pastoral or ministerial skills are required. *Id.*

24. The application information for the position of principal indicated that:

“CANDIDATES MUST DEMONSTRATE PROFICIENCY IN THE FOLLOWING:

VISION, MISSION, AND GOALS

- ☐ Embody Christ centered principles
- ☐ Encourage the spiritual growth, academic achievement, and social development of each and every student
- ☐ Exercise spiritual leadership to ensure a thriving Catholic school community including faculty and parents
- ☐ Embrace the diversity of the community

TEACHING AND LEARNING

- ☐ Develop, motivate and empower staff and cultivate excellent teaching
- ☐ Embrace lifelong learning for self, faculty and students
- ☐ Direct focus on student achievement
- ☐ Effectively use assessment data to set annual improvement goals
- ☐ Desire to grow beyond current achievements, aspire to excellence

MANAGING ORGANIZATIONAL SYSTEMS AND SAFETY

- ☐ Diligent work ethic and service minded, with attention to detail
- ☐ Organize, schedule and manage priorities effectively
- ☐ Sustain, support and, where applicable, grow student enrollment, including recruitment and retention of students
- ☐ Understand and participate in school finances, including preparing budgets and making financial projections
- ☐ Establish a safe and secure learning environment
- ☐ Appropriately delegate and supervise leadership responsibilities

COLLABORATING WITH FAMILIES, MEMBERS OF THE FAITH COMMUNITY, AND COMMUNITY-AT-LARGE

- ☐ Think strategically and facilitate improvements in faculty and staff professional environment
- ☐ Engage internal and external constituents to secure resources for the school and students
- ☐ Recruit business and community leaders to provide support to the school
- ☐ Build alumni support for the school
- ☐ Willingness to promote Catholic education through marketing and other advancement activities
- ☐ Network with external community to promote their school

See, Id.

25. The above is appropriate for a lay principal of any private school with a multi-denominational student body not restricted to Roman Catholics; is not the job description of a Roman Catholic pastor or minister; and is not the skill set of a person expected to perform Roman Catholic ministerial or pastoral duties. *See, Fratello Decl. ¶ 3.*

Contract non-renewal and non-mediation of the dispute

26. Plaintiff was an experienced principal. *Id.*

27. As such, she was entitled to the mediation process set forth in the Archdiocese Administrative Manual. *See*, Exhibit 28 (BS DEFTS023813-14).

28. The Pastor ignored this process, which action is further indication of gender-based discriminatory animus. *Id.*, and *Fratello Decl.* at ¶ 3.

29. The mediation process is not in any way “religious” or “ecclesiastical.” *Id.*

II. ST. ANTHONY’S SCHOOL IS NOT A CHURCH

30. Plaintiff was offered employment by St. Anthony’s School. St. Anthony’s School is a church-affiliated private school, not a church.

31. The N.Y.S. Department of Education governs St. Anthony’s School as a private school. *See, e.g.*, Plaintiff Exhibit 13. The Archdiocese acknowledges (expressly or impliedly) that its parochial schools, such as St. Anthony’s School, are considered private schools under the New York State Education Law. *Id.*; Defendants’ Exhibit A (Archdiocese’s Administrative Manual).

III. NON-DISCRIMINATION POLICY OF ARCHDIOCESE

32. The Archdiocese has a non-discrimination policy. Its Administrative Manual, furnished by Defendants as Exhibit A to the Declaration of Mary Jane Daley, states that Archdiocese schools “pursue their educational goals and all activities with an understanding of the essential quality of all persons as rooted in the teachings of Jesus Christ,” and that it is the policy of the archdiocese not to

“discriminate on the basis of race, creed, color, national origin, sex, age, disability, and marital status or alienage in their employment, educational and admission policies.”

See, Exhibit “29” (from Manual).

33. The school leader (principal) has the responsibility of ensuring that the Archdiocese's non-discrimination policy is complied with in the school. That is easily done in an administrative capacity. However, if the principal is deemed a Catholic "minister," it would be much more difficult to enforce the above-referenced policy against religious ("creed") discrimination. Additionally, if the principal loses civil law protection through employer "ministerial immunity," the principal will be left unprotected if he or she comes to the aid of an employee or student experiencing unlawful discrimination, such as sexual harassment. *Id.*; *Fratello Decl.* ¶ 3.

IV. PAYING A SALARY TO A CHURCH MEMBER/MINISTER MAY VIOLATE THE INTERNAL REVENUE CODE

34. Defendant St. Anthony's School is (or purports to be) a U.S. Internal Revenue Code § 501(c)(3) not-for-profit organization. *See*, Deposition of Mary Jane Daley ("*Daley Tr.*") at page 20, line 23 (Exhibit 34).

35. The § 501(c)(3) exempt purpose given to the IRS for St. Anthony's School was, to the best of Plaintiff's recollection, "educational." *See*, *Fratello Decl.* ¶ 3.

36. As a § 501(c)(3) charitable organization, St. Anthony's School has purposes in provides charitable (educational and religious) to the local community.

37. IRS rule prohibit members of a § 501(c)(3) charitable organization from obtaining financial profit from membership in the organization. *See*, IRC § 501.

38. Plaintiff was never a member of St. Anthony's School or St. Anthony's Church.

39. If Plaintiff is deemed a member or minister of St. Anthony's Church and St. Anthony's School (as Defendants assert), the payment by St. Anthony's School to Plaintiff of a salary (as lay principal) may be in violation of the charitable organization status of § 501(c)(3).

40. St. Anthony's School provides for the secular and religious education of St. Anthony's Church members, which educational services have monetary value. St. Anthony's School also compensates its lay teachers and its lay principal. If St. Anthony's School considers these employees to be its members or ministers, the result will be that St. Anthony's School's "net earnings [will] ... inure to the benefit of [] private ... individual[s]." It may then be in violation of its exempt non-profit status under § 501(c)(3). *See, e.g.*, <http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Inurement-Private-Benefit-Charitable-Organizations> ; see also [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501\(c\)\(3\)-Organizations](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501(c)(3)-Organizations).

V. RELIGIOUS VERSUS EDUCATIONAL MISSIONS OF ROMAN CATHOLIC CHURCH

41. The Archdiocese's home page on its website (<http://archny.org/>) has separate heading for "Pastoral" and "Education." Plaintiff's understanding is that the "pastoral" activities of the Archdiocese are its (especially in-church) spiritual activities, and that its "educational" involve the education of children in a principally non-denominational Christian environment in a Catholic setting. *See*, website at <http://archny.org/>.

42. In the Archdiocese's Catholic Schools, 23 percent of the students are non-Catholic. *See Exhibit 19*; see also, <http://buildboldfutures.org/about-us/>

43. The Archdiocese's marketing of its brand, the "Catholic Schools," is to the general public with potential customers (school-aged children and their parents) being of many different faiths. *See, Fratello Decl. at ¶ 3.*

44. All faiths (and even non-believers) are welcome at the Archdiocese's Catholic Schools. *Id.*

45. The current “Catholic Schools” webpage of the Archdiocese has a “careers” site which solicits job applicants as follows:

“Teach. Lead. Serve.

The principals and teachers of our schools are well-educated, motivated and committed people who are eager to share their faith and talents with the children in our vast school system. They know that what students learn in Catholic schools goes beyond the textbooks. They are determined to help each student develop faith, character and a love of learning. We recruit the best and the brightest and we support them with the tools and guidance they need: orientations, targeted professional development and the opportunity to earn advanced degrees at our partner Catholic colleges and universities. We are committed to the personal and professional growth of our teachers and principals. We value their faith-filled service and applaud their commitment to Catholic education.

See also, <http://buildboldfutures.org/careers/>

46. The Archdiocese seeks qualified teachers, including non-Catholics, though it may give preference to practicing Roman Catholics. See, <http://buildboldfutures.org/careers/teacher-application/> ; Exhibits 22 – 24.

47. There is no indication or suggestion in any of the application paperwork that teachers in the Archdiocese’s Catholic Schools will be required to serve as ministers, or to perform pastoral or ministerial functions.

VI. ROLE OF “LAY PRINCIPAL”—IN LOCO PARENTIS, AND NOT “MINISTERIAL”

48. As the elementary school principal, Plaintiff Fratello’s relationship with the school children was to stand *in loco parentis* over the children entrusted to her.³ See, *Fratello Decl. at ¶ 3*.

49. Plaintiff had a primary responsibility toward the children, entrusted to her care by the children’s parents. *Id.*

³ See, e.g., *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 654-55 (1995).

50. Plaintiff's responsibility was toward the children, on behalf of their parents. *Id.*

51. Plaintiff had a duty to reasonably abide by the directions of a child's parent. *Id.*

52. For example, a parent has the right to take his or her child out of the school, or to inform the school that the child no longer believed in the Roman Catholic faith, and Plaintiff, as school principal, would be required to abide by such parental direction. *Id.*

53. The Archdiocese expects parents to provide basic religious training and guidance to the parents' children. This includes teaching the religious faith and reading religious prayers to children. *Id.* Parents provide the most important and primary role in their child's religious education. *See*, Decl. of Sister Kate, at ¶ 23.

54. In the capacity of *in loco parentis*, Catholic Schools' teachers and administrators could properly recite prayers with the school children. *See*, *Fratello Decl.* at ¶ 3.

55. Roman Catholics parishioners do not become ministers of the Roman Catholic religion merely by teaching their children about the religious faith or reciting prayers with their children. *Id.*

56. Similarly, Roman Catholic teachers or school administrators do not become ministers of the Roman Catholic religion merely by teaching the children in their control *in loco parentis* about the religious faith or reciting prayers with their children. *Id.*

57. Plaintiff, as school principal, had responsibility to make sure that the requirements of the state educational laws were followed and the children taught what was required under New York State law.⁴ *Id.* ; *Daley Tr.* at page. 21, lines 7-13. (Exhibit 34.)

58. Plaintiff, as school principal, had no direct duty or responsibility over spiritual matters. *Id.*; Exhibit 28 (Manual, at § 320).

⁴ *See*, Morse v. Frederick, 551 U.S. 393, 416, 127 S. Ct. 2618, 2633, 168 L. Ed. 2d 290 (2007).

VII. RULES, STRUCTURE & GOVERNANCE OF THE ROMAN CATHOLIC CHURCH

59. The canon law of the Catholic Church is the system of laws and legal principles made and enforced by the hierarchical authorities of the Church to regulate its external organization and government and to order and direct the activities of Catholics in the mission of the Church. Canon law serves as the Roman Catholic Church's bylaws. *See, Fratello Decl.* ¶ 3; Roman Catholic Code of Canon Law.⁵

60. Roman Catholic lay officials (such as the Superintendent of Schools) asserted and had no ecclesiastical jurisdiction over Plaintiff, either as an individual or in her capacity as lay school principal. *Id.*

61. Plaintiff's understanding of Church doctrine is that the parish priest had no religious jurisdiction over Plaintiff, either as an individual or in her capacity as lay school principal, as this would be in the province of the bishop. *Id.*; *see also Declaration of Kate Kuentler*, at ¶ 10.

62. The Catholic Church describes as its hierarchy its bishops, priests and deacons, with authority resting chiefly with the bishops, while priests and deacons serve as their assistants, co-workers or helpers. *See, Catechism of the Catholic Church*, 873, 880 - 887.⁶

63. As to preaching the Gospel of God, this is done by "Bishops, with priests as co-workers." *Id.*, at 888.

64. Canon 227 provides, essentially, that the Laity should have the same freedoms as their fellow citizens. On its face, this Canon prohibits Roman Catholic Church officials from asserting ministerial immunity regarding Plaintiff Fratello, because in so doing it is depriving her

⁵ Found online at: http://www.vatican.va/archive/ENG1104/_INDEX.HTM.

⁶ Available online at: <http://www.vatican.va/archive/ccs/archive/catechism/p123a9p4.htm>.

of the freedom to be protected by the civil law in her employment, and to be free of gender discrimination in the workplace.

65. Canon 230, §1 indicates that Lay men can be admitted "...through the prescribed liturgical rite to the ministries of lector and acolyte." A woman cannot.

Ministries of service

66. The Roman Catholic Church sponsors ministries of service, which include education, literacy, social justice, health care and economic development.

67. This service is does not involve or focus on evangelization or the spiritual, but rather is done to aid others in their lives. Missionaries can chose to engage in ministries of service. The Church can also do this "at home." Examples are the Archdiocese "Catholic Schools," and also Catholic universities, medical centers and other civic activities. *See, Fratello Decl.* at ¶ 3.

68. "Canon 515 - §1. A parish is a definite community of Christian faithful established on a stable basis within a particular church; the pastoral care of the parish is entrusted to a pastor as its own shepherd under the authority of the diocesan bishop." (*emphasis added*)

69. St. Anthony's School belongs to the Parish. The Pastor (parish priest) is responsible for its pastoral care, as its minister, supervised by the bishop. *See, Fratello Decl.* at ¶ 3.

70. The discriminatory non-renewal of Plaintiff's contract was in no way related to pastoral care of the parish (e.g., the school children), and in no way affected the "church hierarchy" or church governance. *Id.*; Cf., [*Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116, 73 S.Ct. 143, 97 L.Ed. 120 \(1952\)](#); *Hosanna-Tabor* at p. 705.

71. The non-renewal of Plaintiff's contract was not an ecclesiastical determination; rather, it was simply an (unlawful) employment determination (and one which would have violated Plaintiff's contract, had it not expired). *Id.*, *Cf. Hosanna-Tabor* at page 705.

VIII. ARCHDIOCESE'S "CATHOLIC SCHOOLS"

72. The Archdiocese' "Catholic School" are required by N.Y.S. law to provide an education that is "at least substantially equivalent" in both "time and quality" to the instruction the students would receive if attending the public schools in the district where they reside, with instruction received from "competent teachers." *See*, N.Y.S. Education Law §§ 3204(2) & 3210(2); NYSBA, SCHOOL LAW (34th Ed. 2012) § 37:2; *Fratello Decl.* at ¶ 3.

73. As to the adequacy of secular instruction, this is a responsibility of the public school system's superintendent, to discuss with the private school's administrator. SCHOOL LAW, *supra*, § 37:4.

74. It was the responsibility of Plaintiff, as principal, to ensure the adequacy of the secular instruction at St. Anthony's under New York State law. *See*, *Fratello Decl.* at ¶ 3.

Archdiocese Superintendent of Schools' supervision of the Catholic Schools

75. The Archdiocese Catholic Schools are supervised by the Archdiocese's Superintendent of Schools ("Superintendent"). The Superintendent is a lay member of the Church and is not an ordained minister. His subordinate administrators include lay regional and district superintendents. *See*, *Fratello Decl.* at ¶ 3.

76. The Archdiocese's Catholic Schools principals and assistant principals are denominated "school leaders" by the Archdiocese. *Id.*, and Exhibits 22 – 24.

77. The Superintendent and Archdiocese do not require that the a school leader possess any advanced training in the Church's religion. *Id.*; *Fratello Decl.* at ¶ 3.

N.Y.S. Religious Corporations Law

78. In New York State, the governance of many different religions is set forth in the N.Y.S. Religious Corporations Law (“RCL”).

79. For example, § 70 of the RCL defines “spiritual officers” to include “the pastor or pastors, the ruling elders, and the deacons.”

80. The RCL § 70 definition of “spiritual officer” can easily be interpreted to include someone such as the Rev. Cheryl Perich, the plaintiff in the Hosanna-Tabor case, had Ms. Perich been subject to New York law. *See, Hosanna-Tabor*, 132 S.Ct. at 700

81. A Roman Catholic Church in New York may be incorporated, with the executed and acknowledgement signed by the archbishop or bishop and the vicar-general of the diocese, the rector of the church, and by two laymen selected by such church officials. RCL § 90.

82. Incorporated Roman Catholic churches in New York have as trustees the archbishop or bishop and the vicar-general of the diocese, the rector of the church, and lay members chosen by them. RCL § 91.

83. Regarding church affairs within New York State, whether an incorporated or unincorporated church, the archbishop, bishop and vicar-general of the diocese are the individuals who have authority regarding internal church governance (and under them the parish priest). *See, e.g., Committee to Save St. Brigid's Inc. v. Egan*, 45 A.D.3d 375, 376, 846 N.Y.S.2d 30 (2007), *appeal withdrawn*, 11 N.Y.3d 921.

84. Plaintiff Fratello was not in any manner part of the governance of St. Anthony’s Church (the parish that operated St. Anthony’s School). *See, Fratello Decl.* at ¶ 3.

IX. COMPARISON OF MRS. FRATELLO AND REV. CHERYL PERICH (of Hosanna-Tabor, 132 S.Ct. 694).

85. Plaintiff's employer was not a religious group with Plaintiff, as an employee, serving as one of the group's ministers. *See, Fratello Decl. at ¶ 3; cf., Hosanna-Tabor*, 132 S.Ct. at 699

86. The Archdiocese' Superintendent of Schools classifies employees as "religious" and "lay." Similarly, the Synod in *Hosanna-Tabor* classifies teachers into two categories: "called" and "lay." *Id.*

87. Ordained Roman Catholic ministers are "called" to the ministry, just as Hosanna-Tabor's Cheryl Perich was "called" to the ministry. *Id.*

88. Unlike the Rev. Perich in *Hosanna-Tabor*, Lay Principal Fratello was not "called to [her] vocation by God through a congregation." *Id.*

89. Reverend Cheryl Perich, the plaintiff in *Hosanna-Tabor*, was:

- a. A Church-ordained minister,
- b. Called to her ministry (in contrast to "lay" employees),
- c. With extensive religious credentials,
- d. With extensive theological higher education,
- e. Appointed and commissioned as a minister, and not working under an employment contract,
- f. Perceived by herself and others to be a minister,
- g. An active teacher of religion, the "Word of God," and spirituality,
- h. Part of, and a leader in, her religious congregation,
- i. Completed a "colloquy" program at a college or university;
- j. Obtained the endorsement of the religious authority [the local Synod district in *Hosanna-Tabor*],
- k. Took and passed an oral examination by a religious faculty committee, and was
- l. A member of and part of her church's internal governance.

90. Plaintiff Fratello did none of this.

91. Plaintiff did not receive from the Archdiocese or the local parish any formal title, such as "Minister of Religion, Commissioned." *Id.*

92. Plaintiff did not receive a formal (or informal) commission or other certification as a catechist. *Id.*

93. Plaintiff was not appointed for an open-ended term, unlike Rev. Perich, the plaintiff in *Hosanna-Tabor*.

94. Plaintiff's employment contract was different in kind from the appointment of Hosanna-Tabor's Rev. Perich, whose appointment which could be rescinded only for cause and by a supermajority vote of the congregation. *Id.*

95. Plaintiff Fratello's employment, prior to becoming a principal, was that of a "lay" or "contract" teacher, similar or identical to those lay (non-religious) positions described in *Hosanna-Tabor*. *Id.*

96. Plaintiff's position as a "lay" and "contract" school administrator (a/k/a principal/ "school leader") was similarly non-religious. *Id.*

97. Plaintiff's position, like that of the lay and contract employees in *Hosanna-Tabor*, was by appointment by the educational supervisory body, without a vote of the religious congregation, to one-year renewable terms. In *Hosanna-Tabor*, the school board appointed lay employees, as did the Defendant Archdiocese's Superintendent of Schools here. *Id.*, *cf.*, *Hosanna-Tabor*, 132 S.Ct. at 699-700.

98. Unlike the situation in *Hosanna-Tabor*, the Archdiocese lay employees are not hired only when "called" employees were unavailable. *Id.*, *cf.* *Hosanna-Tabor*, 132 S.Ct. at 700.

99. Like Hosanna-Tabor's Rev. Perich, Plaintiff Fratello was first employed as a lay teacher. *Fratello Decl.* ¶ yy *Id.* ¶ yy; *Hosanna-Tabor*, 132 S.Ct. at 700; *JN-AFD*. Unlike Hosanna-Tabor's Rev. Perich, Plaintiff Fratello never sought to become a spiritual minister. *Id.*

100. Unlike Ms. Perich in *Hosanna-Tabor*, Plaintiff:

- never pursued any program of religious instruction or calling to the ministry;
- never sought or completed a colloquy;
- never was asked her to become a called teacher;
- never accepted a religious call;
- never received a “diploma of vocation” or any other document designating her as a commissioned minister. *Id.*, at yy.
- never taught a religion class (and certainly not one four days a week as in *Hosanna-Tabor*);
- did not lead students in prayer and devotional exercises each day (and when she did recite a prayer, it was a rote prayer known to all Catholics, such as the Lord’s Prayer);
- did not attend Church Mass on a weekly basis;
- Never led any Mass or other religious service herself (Ms. Perich led her church’s chapel service about twice a year).

Id., cf.. *Hosanna-Tabor*, 132 S.Ct. at 700.

101. There was no “meeting of its congregation” at which Plaintiff was discussed as a religious minister, nor any meeting of any Roman Catholic Church religious body whereby Plaintiff was discussed as a religious minister. There was never any discussion with Plaintiff, or to her knowledge any discussion among Roman Catholic Church officials, regarding her possible removal from an religious ministry. *Id.*

102. Plaintiff Fratello never threatened to assert legal rights prior to the termination of her employment, and even if she had, there is no Roman Catholic Church prohibition against seeking secular redress regarding the employment action of a parochial school. *Id.*

103. The Roman Catholic Church or Archdiocese did not rescind any religious status of Plaintiff Fratello. For example, it did not excommunicate her or impose any other religious sanction. *Id.*

104. Unlike Hosanna-Tabor’s Rev. Perich, Plaintiff Fratello never held herself out to the world as a minister. Neither her subordinates or her superiors at St. Anthony’s School

referred to her as a minister, or considered her to be a religious minister. *Id.*, *cf.* *Hosanna-Tabor*, 132 S.Ct. at 701.

105. A religious principal (e.g., a deacon or a nun) may have had similar duties to a lay principal. However, Plaintiff is in the reverse position to Hosanna-Tabor's Rev. Perich, in that Plaintiff Fratello is a lay employee. *Cf.*, *Hosanna-Tabor*, , 132 S.Ct. at 701-02.

106. As to Plaintiff Fratello, she was not fired as a minister. Rather, her contract of lay employment was not renewed. There was no "religious group" to choose, or un-choose, Plaintiff as a "minister." *Id.*

107. The Archdiocese asserts that a single individual was Plaintiff's "employer," namely, the parish priest, Fr. Jerry Deponai. *Daley Tr.* at page 49, lines 12-16.

108. A lay principal, including Plaintiff when service as principal, is not an ecclesiastical individual." *Id.*, *cf.*, *Hosanna-Tabor*, 132 S.Ct. at 703.

109. Plaintiff's employment termination was not a decision rendered by a Roman Catholic Church bishop, acting in a religious role, nor by the parish priest acting in a religious role, nor was any appeal to any Church ecclesiastical body available and allowed. This was not a situation where, as referenced in *Hosanna-Tabor*:

"questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them."

Id., *citing* *Watson v. Jones*, 13 Wall. 679, 727, 20 L.Ed. 666 (1872).

110. The Roman Catholic Church clearly distinguishes between its clergy (its "ministry") and the laity.

111. Unlike Hosanna-Tabor's Rev. Perich, Plaintiff Fratello was not selected to be a member of the Roman Catholic Church clergy. *Id.*, *cf.*, *Hosanna-Tabor*, 132 S.Ct. at 703; see

also, *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 107, 73 S.Ct. 143, 97 L.Ed. 120 (1952).

112. The Roman Catholic Church’s religious hierarchy does not include lay women service as elementary school principals. *Id. Cf., Hosanna-Tabor*, 132 S.Ct. at 704.

113. Allowing Plaintiff to challenging the wrongful termination of her employment contract as a lay employee does not involve the “free exercise of an ecclesiastical right, the Church’s choice of its hierarchy.” *Id.*

114. The Roman Catholic Church puts its faith and governance in the hands of its ministers—its male clergy. No church religious authority has offered any evidence to the contrary in this case. *Id., cf., Hosanna-Tabor*, 132 S.Ct. at 706.

115. No religious authority of the Roman Catholic Church has deemed Plaintiff to be a religious minister (or an unwanted religious minister). *Id.*

116. The employment contract of a lay employee—here, Plaintiff as a lay school principal—does not involve a “controvers[y] over religious authority or dogma.” *Cf., Hosanna-Tabor*, 132 S.Ct. at 707.

117. Plaintiff was not a head of a religious congregation, nor even a member of the St. Anthony’s Parish. Plaintiff belonged (and belongs) to an entirely different parish and congregation. Thus, she had no role in the governance of St. Anthony’s Parish, and as set forth above, no role whatsoever in Roman Catholic Church governance. *Id., cf., Hosanna-Tabor*, 132 S.Ct. at 707.

118. Minister Perich claimed a special housing allowance on her taxes that was available only to employees earning their compensation “ ‘in the exercise of the ministry.’ (for a

parsonage or housing allowance income tax exclusion)” Plaintiff Fratello did not (and could not). *Id.*, cf., *Hosanna-Tabor*, 132 S.Ct. at 708.

119. Minister Perich indicated that she regarded herself as a minister at Hosanna-Tabor, stating: “I feel that God is leading me to serve in the teaching ministry.... I am anxious to be in the teaching ministry again soon.” Plaintiff Fratello never made any such proclamations, and never viewed herself as a minister. *Id.*, cf., *Hosanna-Tabor*, 132 S.Ct. at 708. Specifically, Plaintiff never regarded herself as a minister of the Roman Catholic Church; never held herself out as such; and St. Anthony’s School staff, patrons (schoolchildren and/or their parents) and the parishioners of St. Anthony’s Church never viewed her as such.⁷

120. Minister Perich’s job duties reflected a role in conveying the Church’s message and carrying out its mission. The Hosanna-Tabor church expressly charged her with “lead[ing] others toward Christian maturity” and “teach[ing] faithfully the Word of God, the Sacred Scriptures, in its truth and purity and as set forth in all the symbolical books of the Evangelical Lutheran Church.” *Id.*, at 48. Plaintiff Fratello was not assigned any such role, and had no such role. Plaintiff Fratello was professionally and spiritually unqualified to teach religion classes, even if she were so inclined, as teaching religion (theology) requires special training and supervision by a priest. This was training not required by Plaintiff’s lay principal job description, and the Parish Priest (and his predecessor, Monsignor Reynolds) required no such religious instruction from the school principal. *Id.*, cf., *Hosanna-Tabor*, 132 S.Ct. at 708.

121. Minister Perich taught her students religion four days a week, and led them in prayer three times a day. Plaintiff Fratello did not teach religion or routinely lead prayer (and if

⁷ The parishioners of the local Church presumably control its school, and its operations, except to the extent that such control is reserved by the Archdiocese.

she occasionally led a prayer, it was merely as a lay Catholic). *Id.*, *cf.*, *Hosanna-Tabor*, 132 S.Ct. at 708.

122. Minister Perich took her students to a school-wide chapel service, and—about twice a year—she took her turn leading it, choosing the liturgy, selecting the hymns, and delivering a short message based on verses from the Bible. Plaintiff Fratello did none of this. *Id.*, *cf.*, *Hosanna-Tabor*, 132 S.Ct. at 708.

123. Minister Perich led her students in a brief devotional exercise each morning. Plaintiff Fratello did not. *Id.*, *cf.*, *Hosanna-Tabor*, 132 S.Ct. at 708.

124. At the Defendant St. Anthony’s School, the people who served as the source of religious instruction were the religion teachers, and the Parish Priest. Plaintiff, as a school administrator, did not. Her job was to hold herself out as a good Christian, and to attend to the job of administering a private elementary school. No Church official ever told her anything to the contrary. *Id.*, *cf.*, *Hosanna-Tabor*, 132 S.Ct. at 708.

125. Because non-Catholics, and even non-Christians, attended the school, it would have been inappropriate for Plaintiff to attempt to evangelize, or to proselytize, the Roman Catholic religion on non-Catholic students. No Roman Catholic Church official ever told her to do so. Proselytizing would run against the “anti-discrimination policy set forth in the Archdiocese Administrative Manual. *Id.*, *cf.*, *Hosanna-Tabor*, 132 S.Ct. at 708. Exhibit 29.

126. Plaintiff’s job was not to “transmit[] the [Roman Catholic] faith to the next generation. This was the Pastor’s job. *Id.*, *cf.*, *Hosanna-Tabor*, 132 S.Ct. at 708.

127. In a Roman Catholic Church-sponsored environment, everyone can be expected to spend some time on spiritual and religious matters. Teachers and Parents alike may teach and say prayers to children. This is simply being a faithful member of a church. It is not make the

person part of Church governance. Plaintiff does not believe that she can be transformed into an unwilling “minister” when the only role she accepted was that of a member of the laity. *See, Fratello Decl. at ¶ 3.*

A. No religious training required for the job—the only BFOQ was to be a “practicing Catholic”

128. Plaintiff was properly required to be a practicing Roman Catholic to be hired for the job.

129. Title VII allows employers to use religion, sex or national origin as a bona fide occupational qualification (“BFOQ”) whenever “reasonably necessary to the normal operation of that particular business or enterprise.”⁸

130. Plaintiff was required to be Catholic for her employment as a lay principal, as this was (at least arguably) “reasonably necessary to the normal operation of that particular business or enterprise.”

131. She was not required to be a minister or quasi-minister to meet the needs of the School. She needed only to be a good Catholic. *See, Fratello Decl. at ¶ 3. ¶*

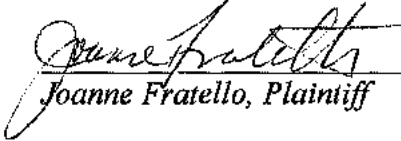
Dated: Stony Point, New York
May 22, 2015



MICHAEL D. DIEDERICH, JR.
Attorney for Plaintiff MD 2097
361 Route 210
Stony Point, NY 10980
(845) 942-0795
Mike@DiederichLaw.com

⁸ See 42 U.S.C. § 2000e-2(e)(1) (“Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees ... , on the basis of his religion, ... in those certain instances where religion, ... is a [BFOQ] reasonably necessary to the normal operation of that particular business or enterprise.”).

*I declare and affirm that the matters
stated in the above Rule 56.1 Statement
referencing my declaration
are true and accurate to the best of my knowledge and belief.*


Joanne Fratello, Plaintiff

TO: Kenneth A. Novikoff, Esq.
Rivkin Radler LLP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOANNE FRATELLO,

Plaintiff,

-against-

ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK,
ST. ANTHONY'S SHRINE CHURCH AND ST.
ANTHONY'S SCHOOL,

Defendants.
-----X

Case No.: 12 civ. 7359
(CS)(CMS)

**DECLARATION IN FURTHER
SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT AND IN
OPPOSITION TO
PLAINTIFF'S CROSS-
MOTION FOR SUMMARY
JUDGMENT**

KENNETH A. NOVIKOFF, an attorney duly admitted to practice law in the Courts of the State of New York, declares pursuant to 28 U.S.C. § 1746(2) that the foregoing is true and accurate:

1. I am a Partner in the law firm of Rivkin Radler LLP, counsel for Defendants ARCHDIOCESE OF NEW YORK i/s/h/a ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK, ("Archdiocese"), ST. ANTHONY'S SHRINE CHURCH, (the "Church"), AND ST. ANTHONY'S SCHOOL, (the "School"), (collectively "Defendants"), in the above-captioned matter. As such, I am fully familiar with the facts and circumstances stated herein.

2. I submit this Declaration in further support of Defendants' motion pursuant to Fed. R. Civ. P. 56(a), seeking judgment summarily dismissing the Amended Complaint filed by Plaintiff Joanne Fratello ("Plaintiff" or "Ms. Fratello"), and in opposition to Plaintiff's cross-motion for summary judgment seeking to strike Defendants' ministerial exception defense.

3. On April 20, 2015, I personally visited the Superintendent of Schools for the Archdiocese of New York's website, *available at* <http://buildboldfutures.org/>, and printed pages from the web site. These pages were annexed to the Declaration of Kenneth A. Novikoff, dated

April 21, 2015, as Exhibit "A," which was submitted with Defendants' Motion for Summary Judgment, dated April 21, 2015.

I declare the truth of the following subject to the penalties of perjury.

Dated: Uniondale, New York
July 2, 2015

/s/
KENNETH A. NOVIKOFF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOANNE FRATELLO,

Case No.: 12 civ. 7359
(CS)(CMS)

Plaintiff,

-against-

ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK,
ST. ANTHONY'S SHRINE CHURCH AND ST.
ANTHONY'S SCHOOL,

Defendants.
-----X

**SUPPLEMENTAL DECLARATION OF MARY JANE DALEY IN FURTHER
SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY
JUDGMENT**

Mary Jane Daley, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I am employed as the Regional Superintendent of Dutchess and Northern Westchester/Putnam Regions ("Superintendent"). I have held the title of Superintendent since September 2008.¹ Prior to that, I was a Principal of a Catholic school within the Archdiocese of New York from September 1, 1993 to August 1, 2008.

2. I have personal knowledge of the facts contained herein and do swear that all the facts in this supplemental declaration are to the best of my knowledge and belief.

¹ From September 2008 until September 2012, my position title was "District Superintendent." As District Superintendent, I oversaw the Catholic schools located in Rockland, Dutchess, Orange, Sullivan and Ulster Counties. As Regional Superintendent, I oversee the Catholic School located in Dutchess and Northern Westchester/Putnam Regions. My duties and responsibilities under both titles are the same. The Counties of Rockland, Dutchess, Orange, Sullivan and Ulster Northern Westchester/Putnam will hereinafter be referred to as "Region."

3. This supplemental declaration is respectfully submitted in further support of the Archdiocese of New York (the "Archdiocese"), St. Anthony's Shrine Church, (the "Church"), and St. Anthony's School's (the "School"), motion for summary judgment concerning whether the position of Principal of the School, and more particularly, whether Joanne Fratello, ("Plaintiff"), as Principal, occupied a "ministerial" position, and in opposition to Plaintiff's cross-motion for summary judgment. In my capacity as Superintendent, I am familiar with the facts and circumstances surrounding this action, as well as Plaintiff's claims.

4. As stated in my previous Declaration, dated April 20, 2015, in my capacity as Superintendent, and as part of my duties and in the normal course of business, I maintain and have access to the Archdiocese's employment records for personnel employed within my Region. As such, I am fully familiar with the Archdiocese's record-keeping practices in connection with principals' personnel files within my Region.

5. The Archdiocese, in the regular and customary course of business, conducts evaluations of each newly hired principal at the conclusion of their first year employed by a particular school. As part of the evaluation, formal performance review sheets (i) are completed by the Pastor of the school the principal is employed (ii) are completed by the principal's Regional Superintendent and; (iii) are provided to the teachers within the applicable school, and, accordingly, each teacher is given the opportunity to and expected to complete said evaluation. The principal is graded on the following: religious leader, instructional leader, communicator and administrator. In addition, the principal completes a self-evaluation in connection with his or her performance that school year. These formal evaluations are drafted, maintained and relied upon for the purpose of deciding whether or not to approve a principal for a subsequent three year term. The Archdiocese does, in fact, utilize these evaluations for that

specific purpose. If approved, the principal will be subject to formal performance reviews every three years.

6. In my capacity as Superintendent, I am familiar with Plaintiff's personnel file. This is comprised of, *inter alia*, (i) Ms. Joan Wall's evaluation of Plaintiff, dated March 6, 2007; (ii) Ms. Diane Morgiewicz's evaluation of Plaintiff, dated March 4, 2007; (iii) Plaintiff's self-evaluation, dated February 20, 2007; (iv) Monsignor Reynolds' evaluation of Plaintiff, dated March 4, 2008; (v) Sister Helen Doychek's evaluation of Plaintiff; (vi) Ms. Margaret Murphy's evaluation of Plaintiff, dated March 6, 2008; and (vii) Ms. Lois Dorsey's evaluation of Plaintiff, dated March 13, 2008 ("Disputed Personnel Records" or "Evaluations"). Originals and/or copies (the copies which I personally made) of the Disputed Personnel Records have been maintained in my office, located at 60 Liberty Street, Beacon, New York. *A copy of the Disputed Personnel Records is attached hereto as Ex. "A".*

7. I maintain the Disputed Personnel Records in the ordinary and customary course of business for the Archdiocese, as I do for most of the Principals that have been employed as a Catholic School Principal in the Region during my tenure.

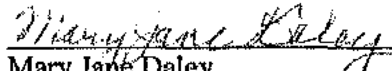
8. I have reviewed all of the Disputed Personnel Records, and they are accurate and identical copies to those contained in the personnel files with the Archdiocese maintained in my office.

9. As set forth above, these Evaluations are routinely made in the regular course of the Archdiocese's business, and the records contained in Plaintiff's personnel files were made in the regular course of the Archdiocese's business. To the best of my knowledge and understanding, the Archdiocese utilized the Evaluations to decide whether or not to offer Plaintiff a three year term at the School, and, based on the Evaluations, did convey such an

offer. All of the records referred to and attached herein were prepared by the personnel of the School and/or the Archdiocese in the ordinary course of business, at or near the time of the acts, conditions or events recorded.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Beacon, NY on June 30, 2015


Mary Jane Daley

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOANNE FRATELLO,

Plaintiff,

-against-

ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK,
et, al.,

Defendant.
-----X

Case No. : 12 civ. 7359
(CS)(CMS)

**DEFENDANTS' RESPONSE
AND COUNTER-STATEMENT
TO PLAINTIFF'S RULE 56.1
STATEMENT**

Defendants Roman Catholic Archdiocese of New York, St. Anthony's Shrine Church and St. Anthony's school, ("Defendants"), respectfully submit this Counter-Statement to the Rule 56.1 Statements of Plaintiff Joanne Fratello ("Plaintiff").

Defendants generally object to Plaintiff's Counter-Statement to the extent that most of Plaintiff's purported "Statements" have already been ruled by this Court, when addressing Plaintiff's respective requests for Interrogatories and for Admissions, as irrelevant to the limited issue before this Court on Plaintiff on Defendants' respective motions.

Defendants further object to any reliance herein by Plaintiff on the Affidavit of Sister Kate Kuentler, sworn to on May 22, 2015. Not only did Plaintiff fail to identify Sr. Kuentler in her Rule 26 Disclosures, *see, Doc. #68*, this Court has previously rejected Plaintiff's attempt to use Sr. Kuentler as an expert witness, *see, Doc. #70*, in addition to holding that "Plaintiff has not established that the proposed witness testimony would be relevant or helpful." *Id.*

Defendants incorporate, as if fully set forth herein, its Rule 56.1 Statement dated April 21, 2015.

NO. 1:

Plaintiff was first hired in the Archdiocese as a lay teacher. *See, accompanying Declaration of Joanne Fratello* (“*Fratello Dec.*”) at ¶3.

RESPONSE TO NO. 1:

Defendant objects to ¶1 as it is not relevant to the “ministerial exception” issue, as it relates to Plaintiff’s position as Principal of the St. Anthony’s School (“School”).

NO. 2:

The Archdiocese does not require that its parochial school teachers be Roman Catholic. *Id.*

RESPONSE TO NO. 2:

No response is required, as this purported statement is not in compliance with Local Rule 56.1. *See, also Response to No. 1.*

NO. 3:

In applying for employment with the Archdiocese, Plaintiff reasonably believed that she was applying for an educational position. *Id.*

RESPONSE TO NO. 3:

No response is required, as this purported statement is not in compliance with Local Rule 56.1. Moreover, Defendant objects as No. 3 is not a material “fact,” but rather purports to offer Plaintiff’s opinion as fact. Further, Defendants object to No. 3 as it is not relevant to the “ministerial exception” issue, as it relates to Plaintiff’s position as Principal of the School.

NO. 4:

Plaintiff’s academic credentials are in education, and she has no academic credentials whatsoever in religion or theology. *Id.*

RESPONSE TO NO. 4:

Plaintiff's citation does not support this specific purported material fact. Further, Defendants object to No. 4 as it is not relevant to the "ministerial exception" issue, as it relates to Plaintiff's position as Principal of the School.

NO. 5:

In being promoted to (lay) elementary school principal, Plaintiff reasonably believed that she was being advanced as an educator. *Id.*

RESPONSE TO NO. 5:

Plaintiff's citation does not support this specific purported material fact. Moreover, Defendants object to No. 5 as it is not a "fact" but rather purports to offer Plaintiff's opinion as fact. Further, Defendants object to No. 5 as it is not relevant to the "ministerial exception" issue as it related to Plaintiff's position as Principal. Lastly, to the extent found relevant by this Court, Defendant disputes that Plaintiff "reasonably" believed she was solely being an advanced as a secular educator. Indeed, Plaintiff received, during the application process and throughout her tenure as a Catholic School Principal, a plethora of instruction and notice from Defendants that the Principal was the religious leader of the school. By way of example:

- The Administrative Manual explicitly provides, *inter alia*, that "[t]he principal is the Catholic leader... of the school," and that the Archdiocese requires its Principals, *inter alia*, to "[be] committed to the mission of evangelization [and] involve the staff in formulating plans that enable the school to meet it religious goals." *Daley Dec.* ^[1] *Ex. "A" at BS 023802-3.*
- The Principal's "Job Scope" within the Administrative Manual provides, *inter alia*, that a "Principal must of necessity be involved in the every aspect of the school operation [and that] [t]he principal oversees the areas of religious education, curricula instruction, formulation and communication of school policy ... [.]". *See, Daley Dec., at Ex. "A," at BS# 023924.*
- The "Job Scope" further provides that a Principal is "responsible for achieving the Catholic mission and purpose of the school... S/he is the animator of the community of faith with the school." *Id.*

^[1] The Declaration of Mary Jane Daley, sworn to on April 20, 2015 and submitted with Defendants' Motion for Summary Judgment, is referred to herein as the "Daley Dec."

- The Archdiocese identifies an elementary school Principal as occupying a “ministerial position.” *Id.*, Ex. “C,” at BS# 024208.
- It is a prerequisite that an Archdiocesan Principal applicant be and/or have achieved *inter alia*: (1) “[a] practicing Catholic . . . with a commitment to the teachings of the Church and to the development of Christian spirit and a community of faith within a school,” and; (2) “[c]omplet[e] [] Levels I and II of the Catechist Certification Program.” *Id.*, at BS# 023808.
- The Archdiocese’s Catholic Values Integration Program, (“CVIP”), identifies the Principal as a “Spiritual Leader”. *Id.*, at Ex. “B” at BS# 024281.
- Plaintiff was required, as part of her application interview process for the Principal position at St. Joseph’s, to submit a letter from her pastor attesting to the fact that regularly attended church. *See, Daley Dec.*, at ¶ 12; *see also, id. at Ex. “A,” BS # 023810.*
- Plaintiff evaluated herself as an Excellent “Religious Leader” as Principal of St. Joseph’s. *See Novikoff Dec.*^[2], at Ex. “E,” at BS# 024173.
- While serving as Principal of St. Joseph’s, Plaintiff was evaluated based on, *inter alia*, her ability to perform as a religious leader. *Id.*, at Ex. “C,” at BS# 24143; Ex. “E,” at BS# 024173.
- During the application process for the Principal position at St. Anthony’s, Plaintiff was interviewed by the Archdiocese’s Principal Search Committee (“Committee”). The Committee’s questions of Plaintiff included, but were not limited to: (1) what is your personal relationship with the church? ; (2) what is your relationship with the Pastor and the parents at the current school you work in?, and; (3) what would you do at the school to implement communal prayer? *See, Declaration of Cathleen Cassel, sworn to on April 15, 2015, (“Cassel Dec.”*^[3]), at ¶¶ 11, 13.
- After her first year as serving as Principal at the School, Plaintiff was evaluated by the Pastor, her supervisor and the teachers based on, *inter alia*, her ability to perform as a religious leader. *See, Novikoff Dec.*, at Exs. “J,” “K;” *see also, the Declaration of Sister Daniel Connelly, sworn to on April 15, 2015 (“Connelly Dec.”)*, at Ex. “A”; *Connelly Dec.*; *Declaration of Karen Ladolcetta, sworn to on April 15, 2015, (“Ladolcetta Dec.”)*, at Ex. “A” *Declaration of Mary Ann Driscoll, sworn to on April 15, 2015, (“Driscoll Dec.”)* at Ex. “A”; *Declaration of Sister Lynn Ann Lewis, sworn to on April 15, 2015 (“Lewis Dec.”)*, at Ex. “A”^[4].

NO. 6:

St. Anthony’s School was founded in 1953 by the Dominican Sisters of Sparkill, and is highly respected for its academic excellence. *Id.*

RESPONSE TO NO. 6:

^[2] The Declaration of Kenneth A. Novikoff, sworn to on April 21, 2015 and submitted with Defendants’ Motion for Summary Judgment, is referred to herein as the “Novikoff Dec.”

^[3] The Cassel Dec. was submitted with Defendants’ Motion for Summary Judgment.

^[4] Each Declaration referenced was submitted with Defendants’ Motion for Summary Judgment.

See, Response to No. 1.

NO. 7:

The “mission” of St. Anthony’s School, as stated on its current website, is as follows:

“The Mission of St. Anthony School is to provide a high-quality, educational experience that enhances each child’s spiritual, emotional, intellectual and social growth. Our faculty and staff prepare our students to become future leaders and responsible stewards of God’s creation.”

See, Exhibit 27, found at <http://www.stanthonyschoolnanuet.org/about-us/>

RESPONSE TO NO. 7:

Defendants do not dispute that the quoted language appears on the above cited website under the title: Mission Statement.

NO. 8:

This description did not lead Plaintiff to believe that she was sought as a “minister” in any way. *Id.*; and *Fratello Dec. at ¶ 3.*

RESPONSE TO NO. 8:

See, Response No. 1 and No. 5.

NO. 9:

Plaintiff was interviewed by officials of the Archdiocese Superintendent of Schools and found qualified to be hired as an elementary school principal. *Fratello Dec. at ¶ 3.*

RESPONSE TO NO. 9:

Disputed. Plaintiff was found to be qualified to be hired as Principal of the St. Joseph’s School and the St. Anthony’s School. *See, Cassel Dec., at ¶ 13.*

NO. 10:

During this interview process, Plaintiff was not asked about any religious matters, other than her stating on her application that she was a practicing Catholic. She was not asked about her religious background; about whether she had any training or education in religion or theology; or about whether she felt herself competent to act in any way as a minister or to perform ministerial functions. *Id.*

RESPONSE TO NO. 10:

Disputed. During the application process for the Principal position at St. Anthony's, Plaintiff was interviewed by the Archdiocese's Principal Search Committee ("Committee"). *See, Cassel Dec. at ¶ 13.* The Committee's questions of Plaintiff included, but were not limited to: (1) what is your personal relationship with the church?; (2) what is your relationship with the Pastor and the parents at the current school you work in?, and; (3) what would you do at the school to implement communal prayer? *Id., at ¶¶ 11, 13.*

Plaintiff was also required, as part of her application interview process for the Principal position at St. Joseph's, to submit a letter from her pastor attesting to the fact that regularly attended church. *See, Daley Dec., at ¶ 17; see also, id. at Ex. "A," BS # 023810*

NO. 11:

Plaintiff Fratello's latest contractual relationship with Defendants is reflected in Plaintiff's contract of employment entitled "Contract of Employment for Lay Principals - Archdiocese of New York" executed on July 3, 2007 (hereinafter "2007 Lay Principal Contract"). *See, Exhibit 14.*

RESPONSE TO NO. 11:

Defendants object to No. 11 as it is vague and ambiguous. Defendants do not dispute that Plaintiff entered into a contract with the School, which was executed on July 3, 2007.

NO. 12:

The 2007 Lay Principal Contract states that the job position is "lay." *Id.*

RESPONSE TO NO. 12:

Undisputed only to the extent that the 2007 Principal Contract does refer to the term “Lay Principal.”

NO. 13:

The 2007 Lay Principal Contract states that that the “Office of the Superintendent of Schools” has approved Plaintiff as “qualified for the position of elementary school principal.” *Id.*

RESPONSE TO NO. 13:

Undisputed only to the extent that the 2007 Principal Contract speaks for itself.

NO. 14:

The contract goes on to state, at “Responsibilities” (numbered paragraph 2), that “[t]he principal [Plaintiff] shall be subject to, and employed pursuant to, the rules, regulations, policies and procedures of the school, the Office of Superintendent of Schools, and the State of New York...” *Id.* This paragraph states nothing about any “religious,” “pastoral,” or “ministerial” duties or responsibilities. *Id.*

RESPONSE TO NO. 14:

Disputed. The Contract incorporates *inter alia*, the Administrative Manual, which explicitly provides, *inter alia*, that “[t]he principal is the Catholic leader... of the school,” and that the Archdiocese requires its Principals, *inter alia*, to “[be] committed to the mission of evangelization [and] involve the staff in formulating plans that enable the school to meet it religious goals.” *Daley Dec.*, Ex. “A” at BS 023802-3.

NO. 15:

Plaintiff reasonably believed that she was being hired as an educational administrator (“lay principal”) at a Roman Catholic-affiliated elementary school, and that the employment included the “bona fide occupational qualification” that she be a “practicing Catholic.” There was nothing in the contract, or in the written job application materials, indicating anything to the contrary. *See, id.* *see also Fratello Dec.* at ¶ 3.

RESPONSE TO NO. 15:

See, Response No. 5.

NO. 16:

The contract describes “Termination” at numbered paragraph 3. Nothing in that paragraph or its subparts indicate anything more than that Plaintiff is required to be an upstanding employee, by conducting herself as a good Catholic. In this regard, ¶ 3(d) states that:

“The principal recognizes the religious nature of the Catholic school and agrees that the employer retains the right to dismiss principal for immorality, scandal, disregard or disobedience of the policies or rules of the Ordinary of the Archdiocese of New York, or rejection of the official teaching, doctrine or laws of the Roman Catholic Church, thereby terminating any and all rights a principal may have hereunder, subject, however, to the personal due process rights promulgated by Archdiocesan ecclesiastical authorities.” (*emphasis added*)
Id.

RESPONSE TO NO. 16:

Undisputed only to the extent that the 2007 Principal Contract speaks for itself. No response is required in connection with the purported statement that “[n]othing in that paragraph or its subparts indicate anything more than that Plaintiff is required to be an upstanding employee, by conducting herself as a good Catholic.” This purported statement is not in compliance with Local Rule 56.1 as is not supported by the record and further, is not a material “fact,” but rather purports to offer Plaintiff’s legal conclusions and/or opinions as fact.

NO. 17:

Thus, the employer permitted itself the right to terminate Plaintiff for cause, for example, by rejecting the teachings of the Roman Catholic Church when she is employed at a Roman Catholic school. *Id.*

RESPONSE TO NO. 17:

See, Response to Nos. 1, 16.

NO. 18:

The 2007 Lay Principal Contract concluded by stating that:

"This contract constitutes the complete agreement between the parties and may only be amended by a written addendum signed by the parties."

RESPONSE TO NO. 18:

See, Response to Nos. 1, 14.

NO. 19:

The Archdiocese seeks qualified principals as follows:

"School Leader Qualifications

The Archdiocese of New York seeks qualified applicants for leadership positions in our schools.

We look for intelligent, results-oriented candidates with outstanding educational vision, leadership skills, organizational ability and interpersonal strengths to serve as principals for elementary (grades PreK-8) and secondary (grades 9-12) schools. These leaders must be committed Catholics who can inspire faculty and staff and engage parents and students in the promise of spiritual development and academic excellence.

Candidates must have the ability to create a high-expectations environment for teachers, students, and families. They must inspire a culture where faculty and staff members work collaboratively to ensure the holistic achievement of every student.

Candidates must also demonstrate strengths in organization, data- and mission-driven decision-making, interpersonal relationships and communication, effective supervision of instruction, assessment and professional development and financial planning.

Candidates must meet the following requirements:

- Practicing Catholic
- Minimum five years teaching experience or five years cumulative experience in teaching and/or administrative role
- Earned Master's degree in Education or Master's equivalent (or in progress) OR NYS School Building Leader certification (or equivalent)
- Preference is given to candidates with Level 1 and Level 2 Catechist certification or in progress (if prior position did not require Catechist certification, then both levels must be completed within three years of principalship).

Salary is commensurate with credentials and experience."

See, Exhibit 22, available online at: <http://buildboldfutures.org/careers/school-leader-qualifications/>

RESPONSE TO NO. 19:

Undisputed only to the extent that Plaintiff's Exhibit 22 sets forth a non-exhaustive list of the qualifications of a principal.

NO. 20:

The only religious requirement for being hired into the position of principal ("school leader") is that the person be a "practicing Catholic." *Id.*

RESPONSE TO NO. 20:

No response is required, as this purported statement is not in compliance with Local Rule 56.1. Specifically, ¶ "20" is not supported by the record, and further, is not a material "fact," but rather purports to offer Plaintiff's legal conclusions and/or opinions as fact.

NO. 21:

Plaintiff was approved for a three year period by the Archdiocese in April 2007; thanked for her service to St. Josephs School in June 2007; and again approved for a three year period by the Archdiocese in May 2008. *See, Fratello Dec.* at ¶ 3; see also, *Exhibit 16*. There is no indication that any religious figure or authority was part of this approval process. *Id.*

RESPONSE TO NO. 21:

Undisputed to the extent that Plaintiff was approved for a three year period. Disputed that there is no indication that any religious figure or authority was part of this approval process. In this regard, Plaintiff's approval was based on Sister Helen Doychek's report and evaluation of Plaintiff. *Plaintiff's Exhibit 16*.

NO. 22:

The application information for the position of principal summarized the job as follows:

"JOB SUMMARY: The Archdiocese of New York seeks committed Catholics who can inspire and engage faculty, staff, parents and students in the pursuit of spiritual development and academic excellence. These dynamic administrators should demonstrate outstanding educational vision, professionalism, leadership skills, organizational ability and interpersonal strengths to serve as Principals for elementary (grades K-8) and secondary (grades 9-12) schools. Candidates must

set high expectations and foster a culture of continuous improvement in which every member of the school community works collaboratively to ensure the holistic achievement of every student.

See, Exhibit 23, available online at <http://buildboldfutures.org/assets/files/SchoolLeadersStagel.pdf>

RESPONSE TO NO. 22:

Undisputed to the extent that the excerpt “Job Summary” speaks for itself.

NO. 23:

The above does not require, or even suggest, that pastoral or ministerial skills are required. *Id.*

RESPONSE TO NO. 23:

Disputed. The Principal’s “Job Scope” within the Administrative Manual provides, *inter alia*, that a “Principal must of necessity be involved in the every aspect of the school operation [and that] [t]he principal oversees the areas of religious education, curricula instruction, formulation and communication of school policy ... [.]” See, *Daley Dec.*, at Ex. “A,” at BS# 023924. The “Job Scope” further provides that a Principal is “responsible for achieving the Catholic mission and purpose of the school... S/he is the animator of the community of faith with the school.” *Id.* Moreover, the Archdiocese specifically identifies an elementary school Principal as occupying a “ministerial position.” *Id.*, Ex. “C,” at BS# 024208.

NO. 24:

The application information for the position of principal indicated that:

“CANDIDATES MUST DEMONSTRATE PROFICIENCY IN THE FOLLOWING:

VISION, MISSION, AND GOALS

- ☐ Embody Christ centered principles
- ☐ Encourage the spiritual growth, academic achievement, and social development of each and every student
- ☐ Exercise spiritual leadership to ensure a thriving Catholic school community including faculty and parents

- ☐ Embrace the diversity of the community
- TEACHING AND LEARNING
 - ☐ Develop, motivate and empower staff and cultivate excellent teaching
 - ☐ Embrace lifelong learning for self, faculty and students
 - ☐ Direct focus on student achievement
 - ☐ Effectively use assessment data to set annual improvement goals
 - ☐ Desire to grow beyond current achievements, aspire to excellence
- MANAGING ORGANIZATIONAL SYSTEMS AND SAFETY
 - ☐ Diligent work ethic and service minded, with attention to detail
 - ☐ Organize, schedule and manage priorities effectively
 - ☐ Sustain, support and, where applicable, grow student enrollment, including recruitment and retention of students
 - ☐ Understand and participate in school finances, including preparing budgets and making financial projections
 - ☐ Establish a safe and secure learning environment
 - ☐ Appropriately delegate and supervise leadership responsibilities
- COLLABORATING WITH FAMILIES, MEMBERS OF THE FAITH COMMUNITY, AND COMMUNITY-AT-LARGE
 - ☐ Think strategically and facilitate improvements in faculty and staff professional environment
 - ☐ Engage internal and external constituents to secure resources for the school and students
 - ☐ Recruit business and community leaders to provide support to the school
 - ☐ Build alumni support for the school
 - ☐ Willingness to promote Catholic education through marketing and other advancement activities
 - ☐ Network with external community to promote their school

See, Id.

RESPONSE TO NO. 24:

Undisputed to the extent that the excerpt set forth from Plaintiff's Exhibit 24 speaks for itself.

NO. 25:

The above is appropriate for a lay principal of any private school with a multi-denominational student body not restricted to Roman Catholics; is not the job description of a Roman Catholic pastor or minister; and is not the skill set of a person expected to perform Roman Catholic ministerial or pastoral duties. *See, Fratello Dec.* ¶3.

RESPONSE TO NO. 25:

No response is required, as this purported statement is not in compliance with Local Rule 56.1. Specifically, ¶ “25” is not supported by the record, and further, is not a material “fact,” but rather purports to offer Plaintiff’s legal conclusions and/or opinions as fact. *See, also, Response No. 1.*

NO. 26:

Plaintiff was an experienced principal. *Id.*

RESPONSE TO NO. 26:

See, Response No. 1.

NO. 27:

As such, she was entitled to the mediation process set forth in the Archdiocese Administrative Manual. *See, Exhibit 28* (BS DEFTS023813-14).

RESPONSE TO NO. 27:

See, Response No. 1.

NO. 28:

The Pastor ignored this process, which action is further indication of gender-based discriminatory animus. *Id.*, and *Fratello Dec.* at ¶ 3.

RESPONSE TO NO. 28:

See, Response No. 1.

NO. 29:

The mediation process is not in any way “religious” or “ecclesiastical.” *Id.*

RESPONSE TO NO. 29:

See, Response No. 1.

NO. 30:

Plaintiff was offered employment by St. Anthony’s School. St. Anthony’s School is a church-affiliated private school, not a church.

RESPONSE TO NO. 30:

See, Response No. 1.

NO. 31:

The N.Y.S. Department of Education governs St. Anthony's School as a private school. *See, e.g.*, Plaintiff Exhibit 13. The Archdiocese acknowledges (expressly or impliedly) that its parochial schools, such as St. Anthony's School, are considered private schools under the New York State Education Law. *Id.*; Defendants' Exhibit A (Archdiocese's Administrative Manual).

RESPONSE TO NO. 31:

See, Response No. 1.

NO. 32:

The Archdiocese has a non-discrimination policy. Its Administrative Manual, furnished by Defendants as Exhibit A to the Declaration of Mary Jane Daley, states that Archdiocese schools "pursue their educational goals and all activities with an understanding of the essential quality of all persons as rooted in the teachings of Jesus Christ," and that it is the policy of the archdiocese not to

"discriminate on the basis of race, creed, color, national origin, sex, age, disability, and marital status or alienage in their employment, educational and admission policies."

See, Exhibit "29" (from Manual).

RESPONSE TO NO. 32:

See, Response No. 1.

NO. 33:

The school leader (principal) has the responsibility of ensuring that the Archdiocese's non-discrimination policy is complied with in the school. That is easily done in an administrative capacity. However, if the principal is deemed a Catholic "minister," it would be much more difficult to enforce the above-referenced policy against religious ("creed") discrimination. Additionally, if the principal loses civil law protection through employer "ministerial immunity," the principal will be left unprotected if he or she comes to the aid of an employee or student experiencing unlawful discrimination, such as sexual harassment. *Id.*; *Fratello Dec.* ¶ 3.

RESPONSE TO NO. 33:

See, Response Nos. 1, 3 and 5.

NO. 34:

Defendant St. Anthony's School is (or purports to be) a U.S. Internal Revenue Code § 501(c)(3) not-for-profit organization. *See, Deposition of Mary Jane Daley ("Daley Tr.")* at page 20, line 23 (Exhibit 34).

RESPONSE TO NO. 34:

See, Response Nos. 1, 3 and 5.

NO. 35

The § 501(c)(3) exempt purpose given to the IRS for St. Anthony's School was, to the best of Plaintiff's recollection, "educational." *See, Fratello Dec. ¶ 3.*

RESPONSE TO NO. 35:

See, Response No. 34.

NO. 36:

As a § 501(c)(3) charitable organization, St. Anthony's School has purposes in provides charitable (educational and religious) to the local community.

RESPONSE TO NO. 36:

See, Response No. 34.

NO. 13:

IRS rule prohibit members of a § 501(c)(3) charitable organization from obtaining financial profit from membership in the organization. *See, IRC § 501.*

RESPONSE TO NO. 37:

See, Response No. 34.

NO. 14:

Plaintiff was never a member of St. Anthony's School or St. Anthony's Church.

RESPONSE TO NO. 38:

See, Response No. 1.

NO. 39:

If Plaintiff is deemed a member or minister of St. Anthony's Church and St. Anthony's School (as Defendants assert), the payment by St. Anthony's School to Plaintiff of a salary (as lay principal) may be in violation of the charitable organization status of § 501(c)(3).

RESPONSE TO NO. 39:

See, Response No. 34.

NO. 40:

St. Anthony's School provides for the secular and religious education of St. Anthony's Church members, which educational services have monetary value. St. Anthony's School also compensates its lay teachers and its lay principal. If St. Anthony's School considers these employees to be its members or ministers, the result will be that St. Anthony's School's "net earnings [will] ... inure to the benefit of [] private ... individual[s]." It may then be in violation of its exempt non-profit status under § 501(c)(3). See, e.g., <http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Inurement-Private-Benefit-Charitable-Organizations>; see also [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501\(c\)\(3\)-Organizations](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501(c)(3)-Organizations).

RESPONSE TO NO. 40:

See, Response No. 34.

NO. 41:

The Archdiocese's home page on its website (<http://archny.org/>) has separate heading for "Pastoral" and "Education." Plaintiffs understanding is that the "pastoral" activities of the Archdiocese are its (especially in-church) spiritual activities, and that its "educational" involve the education of children in a principally non-denominational Christian environment in a Catholic setting. See, website at <http://archny.org/>.

RESPONSE TO NO. 41:

Undisputed to the extent that the Archdiocese's home page on its website has separate headings for "Pastoral" and "Education." See, also, *Response Nos. 1, 3 and 5.*

NO. 42:

In the Archdiocese's Catholic Schools, 23 percent of the students are non-Catholic. *See Exhibit 19*; *See also*, <http://buildboldfutures.org/about-us/>

RESPONSE TO NO. 42:

See, Response No. 1.

NO. 43:

The Archdiocese's marketing of its brand, the "Catholic Schools," is to the general public with potential customers (school-aged children and their parents) being of many different faiths. *See, Fratello Dec. at ¶ 3.*

RESPONSE TO NO. 43:

See, Response No. 1.

NO. 44:

All faiths (and even non-believers) are welcome at the Archdiocese's Catholic Schools. *Id.*

RESPONSE TO NO. 44:

See, Response No. 1.

NO. 45:

The current "Catholic Schools" webpage of the Archdiocese has a "careers" site which solicits job applicants as follows:

"Teach. Lead. Serve.

The principals and teachers of our schools are well-educated, motivated and committed people who are eager to share their faith and talents with the children in our vast school system. They know that what students learn in Catholic schools goes beyond the textbooks. They are determined to help each student develop faith, character and a love of learning. We recruit the best and the brightest and we support them with the tools and guidance they need: orientations, targeted professional development and the opportunity to earn advanced degrees at our partner Catholic colleges and universities. We are committed to the personal and professional growth of our teachers and principals. We value their faith-filled service and applaud their commitment to Catholic education.

See also, <http://buildboldfutures.org/careers/>

RESPONSE TO NO. 45:

Undisputed only to the extent that the excerpt from the following website:
<http://buildboldfutures.org/careers/>, speaks for itself.

NO. 46:

The Archdiocese seeks qualified teachers, including non-Catholics, though it may give preference to practicing Roman Catholics. *See*, <http://buildboldfutures.org/careers/teacher-application/>; Exhibits 22-24.

RESPONSE TO NO. 46:

See, Response No. 1.

NO. 47:

There is no indication or suggestion in any of the application paperwork that teachers in the Archdiocese's Catholic Schools will be required to serve as ministers, or to perform pastoral or ministerial functions.

RESPONSE TO NO. 47:

See, Response No. 1.

NO. 48:

As the elementary school principal, Plaintiff Fratello's relationship with the school children was to stand in loco parentis over the children entrusted to her. *See, Fratello Dec. at ¶ 3.*

RESPONSE TO NO. 48:

See, Response Nos. 1, 3 and 5.

NO. 49:

Plaintiff had a primary responsibility toward the children, entrusted to her care by the children's parents. *Id.*

RESPONSE TO NO. 49:

See, Response No. 48.

NO. 50:

Plaintiff's responsibility was toward the children, on behalf of their parents. *Id.*

RESPONSE TO NO. 50:

See, Response No. 48.

NO. 51:

Plaintiff had a duty to reasonably abide by the directions of a child's parent. *Id.*

RESPONSE TO NO. 51:

See, Response No. 48.

NO. 52:

For example, a parent has the right to take his or her child out of the school, or to inform the school that the child no longer believed in the Roman Catholic faith, and Plaintiff, as school principal, would be required to abide by such parental direction. *Id.*

RESPONSE TO NO. 52:

See, Response No. 48.

NO. 53:

The Archdiocese expects parents to provide basic religious training and guidance to the parents' children. This includes teaching the religious faith and reading religious prayers to children. *Id.* Parents provide the most important and primary role in their child's religious education. *See, Decl. of Sister Kate, at ¶ 23.*

RESPONSE TO NO. 53:

See, Response No. 48.

NO. 54:

In the capacity of *in loco parentis*, Catholic Schools' teachers and administrators could properly recite prayers with the school children. *See, Fratello Dec. at ¶ 3.*

RESPONSE TO NO. 54:

See, Response No. 48.

NO. 55:

Roman Catholics parishioners do not become ministers of the Roman Catholic religion merely by teaching their children about the religious faith or reciting prayers with their children. *Id.*

RESPONSE TO NO. 55:

See, Response No. 48.

NO. 56:

Similarly, Roman Catholic teachers or school administrators do not become ministers of the Roman Catholic religion merely by teaching the children in their control *in loco parentis* about the religious faith or reciting prayers with their children. *Id.*

RESPONSE TO NO. 56:

See, Response No. 48.

NO. 57:

Plaintiff, as school principal, had responsibility to make sure that the requirements of the state educational laws were followed and the children taught what was required under New York State law. *Id.*; *Daley Tr.* at page. 21, lines 7-13. (Exhibit 34.)

RESPONSE TO NO. 57:

Undisputed.

NO. 58:

Plaintiff, as school principal, had no direct duty or responsibility over spiritual matters. *Id.*; *Exhibit 28* (Manual, at § 320).

RESPONSE TO NO. 58:

Disputed. As Principal of the School, Plaintiff's primary duty and responsibility was to serve as a religious leader and direct religious matters. *See, e.g., Novikoff Dec., at Exs. "A," "B," "C," "D," "E," "F," "G," "J," "K," "O"; see, Daley Dec., at Ex. "A," at BS 023765-66, BS 023859, BS 023924; id., Ex. "C," at BS 024208, 024281-3; see, Cassel Dec. at ¶ 10-13; see, gen., the Connelly Dec; Ladolcetta Dec.; Driscoll Dec.; Lewis Dec.; see also, Declaration of*

AnnMarie Weber, sworn to on April 15, 2015 ("Weber Dec."), at e.g., Exs. "C," "H," "K," "L," "M," and "O" at BS; 000466; 000472; 000473; 000475; 003511; 004075; 004390.

NO. 59:

The canon law of the Catholic Church is the system of laws and legal principles made and enforced by the hierarchical authorities of the Church to regulate its external organization and government and to order and direct the activities of Catholics in the mission of the Church. Canon law serves is the Roman Catholic Church's bylaws. *See, Fratello Dec. ¶ 3; Roman Catholic Code of Canon Law.*

RESPONSE TO NO. 59:

See, Response Nos. 1, 3 and 5.

NO. 60:

Roman Catholic lay officials (such as the Superintendent of Schools) asserted and had no ecclesiastical jurisdiction over Plaintiff, either as an individual or in her capacity as lay school principal. *Id.*

RESPONSE TO NO. 60:

See, Response No. 59.

NO. 61:

Plaintiff's understanding of Church doctrine is that the parish priest had no religious jurisdiction over Plaintiff, either as an individual or in her capacity as lay school principal, as this would be in the province of the bishop. *Id.*; *see also Declaration of Kate Kuentler, at ¶ 10.*

RESPONSE TO NO. 61:

See, Response No. 59.

NO. 62:

The Catholic Church describes as its hierarchy its bishops, priests and deacons, with authority rests chiefly with the bishops, while priests and deacons serve as their assistants, co-workers or helpers. *See, Catechism of the Catholic Church, 873, 880 - 887.*

RESPONSE TO NO. 62:

See, Response No. 59.

NO. 63:

As to preaching the Gospel of God, this is done by “Bishops, with priests as co-workers.” *Id.*, at 888.

RESPONSE TO NO. 63:

See, Response No. 59.

NO. 64:

Canon 227 provides, essentially, that the Laity should have the same freedoms as their fellow citizens. On its face, this Canon prohibits Roman Catholic Church officials from asserting ministerial immunity regarding Plaintiff Fratello, because in so doing it is depriving her of the freedom to be protected by the civil law in her employment, and to be free of gender discrimination in the workplace.

RESPONSE TO NO. 64:

See, Response No. 59.

NO. 65:

Canon 230, §1 indicates that Lay men can be admitted “...through the prescribed liturgical rite to the ministries of lector and acolyte.” A woman cannot.

RESPONSE TO NO. 65:

See, Response No. 59.

Ministries of Service**NO. 66:**

The Roman Catholic Church sponsors ministries of service, which include education, literacy, social justice, health care and economic development.

RESPONSE TO NO. 66:

See, Response No. 59.

NO. 67:

This service is does not involve or focus on evangelization or the spiritual, but rather is done to aid others in their lives. Missionaries can chose to engage in ministries of service. The Church can also do this “at home.” Examples are the Archdiocese “Catholic Schools,” and also Catholic universities, medical centers and other civic activities. *See, Fratello Dec. at ¶ 3.*

RESPONSE TO NO. 67:

See, Response No. 59.

NO. 68:

“Canon 515 - §1. A parish is a definite community of Christian faithful established on a stable basis within a particular church; the pastoral care of the parish is entrusted to a pastor as its own shepherd under the authority of the diocesan bishop.” (*emphasis added*)

RESPONSE TO NO. 68:

See, Response No. 59.

NO. 69:

St. Anthony’s School belongs to the Parish. The Pastor (parish priest) is responsible for its pastoral care, as its minister, supervised by the bishop. *See, Fratello Dec. at ¶ 3.*

RESPONSE TO NO. 69:

See, Response No. 59.

NO. 70:

The discriminatory non-renewal of Plaintiff’s contract was in no way related to pastoral care of the parish (e.g., the school children), and in no way affected the “church hierarchy” or church governance. *Id.*; Cf., Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America, 344 U.S. 94, 116, 73 S. Ct. 143 (1952); Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, ___ U.S. ___, 132 S. Ct. 694,705 (2012).

RESPONSE TO NO. 70:

See, Response No. 59.

NO. 71:

The non-renewal of Plaintiff's contract was not an ecclesiastical determination; rather, it was simply an (unlawful) employment determination (and one which would have violated Plaintiff's contract, had it not expired). *Id.*, *Cf. Hosanna-Tabor*, 132 S. Ct. at 705.

RESPONSE TO NO. 71:

See, Response No. 59.

NO. 72:

The Archdiocese' "Catholic School" are required by N.Y.S. law to provide an education that is "at least substantially equivalent" in both "time and quality" to the instruction the students would receive if attending the public schools in the district where they reside, with instruction received from "competent teachers." *See*, N.Y.S. Education Law §§ 3204(2) & 3210(2); NYSBA, SCHOOL LAW (34th Ed. 2012) § 37:2; *Fratello Dec.* at ¶ 3.

RESPONSE TO NO. 72:

See, Response Nos. 1, 3 and 5.

NO. 73:

As to the adequacy of secular instruction, this is a responsibility of the public school system's superintendent, to discuss with the private school's administrator. SCHOOL LAW, *supra*, § 37:4.

RESPONSE TO NO. 73:

See, Response Nos. 1, 3 and 5. .

NO. 74:

It was the responsibility of Plaintiff, as principal, to ensure the adequacy of the secular instruction at St. Anthony's under New York State law. *See, Fratello Dec.* at ¶ 3.

RESPONSE TO NO. 74:

Undisputed only to the extent that it was one of Plaintiff's many responsibilities as Principal. Indeed, Plaintiff's "Job Scope" provides, *inter alia*, that a "Principal must of necessity be involved in the every aspect of the school operation [and that] [t]he principal oversees the

areas of religious education, curricula instruction, formulation and communication of school policy ... [.]” *See, Daley Dec., Ex. “A,” at BS# 023924.*

NO. 75:

The Archdiocese Catholic Schools are supervised by the Archdiocese’s Superintendent of Schools (“Superintendent”). The Superintendent is a lay member of the Church and is not an ordained minister. His subordinate administrators include lay regional and district superintendents. *See, Fratello Dec. at ¶ 3.*

RESPONSE TO NO. 75:

See, Response No. 1.

NO. 76:

The Archdiocese’s Catholic Schools principals and assistant principals are denominated “school leaders” by the Archdiocese. *Id.*, and Exhibits 22-24.

RESPONSE TO NO. 76:

Undisputed.

NO. 77:

The Superintendent and Archdiocese do not require that the a school leader possess any advanced training in the Church’s religion. *Id.; Fratello Dec. at ¶ 3.*

RESPONSE TO NO. 77:

Disputed. It is a prerequisite that an Archdiocesan Principal applicant be and/or have achieved *inter alia*: (1) “[a] practicing Catholic . . . with a commitment to the teachings of the Church and to the development of Christian spirit and a community of faith within a school,” and; (2) “[c]omplet[e] [] Levels I and II of the Catechist Certification Program.” *Daley Dec. at Ex. “A.” at BS 023808.* The Catechist Formation [Certification] Program provides theological understandings, spiritual/religious formation and catechetical methodology necessary for those

who are appointed by their pastors and commissioned by their parishes to hand on the faith to adults, youth or children. *Id.*, at n. 4.

NO. 78:

In New York State, the governance of many different religions is set forth in the N.Y.S. Religious Corporations Law (“RCL”).

RESPONSE TO NO. 78:

See, Response Nos. 1, 3 and 5.

NO. 79:

For example, § 70 of the RCL defines “spiritual officers” to include “the pastor or pastors, the ruling elders, and the deacons.”

RESPONSE TO NO. 79:

See, Response No. 78.

NO. 80:

The RCL § 70 definition of “spiritual officer” can easily be interpreted to include someone such as the Rev. Cheryl Perich, the plaintiff in the Hosanna-Tabor case, had Ms. Perich been subject to New York law. *See, Hosanna-Tabor*, 132 S. Ct. at 700

RESPONSE TO NO. 80:

See, Response No. 78.

NO. 81:

A Roman Catholic Church in New York may be incorporated, with the executed and acknowledgement signed by the archbishop or bishop and the vicar-general of the diocese, the rector of the church, and by two laymen selected by such church officials. RCL § 90.

RESPONSE TO NO. 81:

See, Response No. 78.

NO. 82:

Incorporated Roman Catholic churches in New York have as trustees the archbishop or bishop and the vicar-general of the diocese, the rector of the church, and lay members chosen by them. RCL § 91.

RESPONSE TO NO. 82:

See, Response No. 78.

NO. 83:

Regarding church affairs within New York State, whether an incorporated or unincorporated church, the archbishop, bishop and vicar-general of the diocese are the individuals who have authority regarding internal church governance (and under them the parish priest). *See, e.g., Committee to Save St. Brigid's Inc. v. Egan*, 45 A.D.3d 375, 376, 846 N.Y.S.2d 30 (2007), *appeal withdrawn*, 11 N.Y.3d 921, 874 N.Y.S.2d 6 (2009).

RESPONSE TO NO. 83:

See, Response No. 78.

NO. 84:

Plaintiff Fratello was not in any manner part of the governance of St. Anthony's Church (the parish that operated St. Anthony's School). *See, Fratello Dec.* at ¶ 3.

RESPONSE TO NO. 84:

See, Response No. 1.

NO. 85:

Plaintiff's employer was not a religious group with Plaintiff, as an employee, serving as one of the group's ministers. *See, Fratello Dec.* at ¶ 3; cf., *Hosanna-Tabor*, 132 S. Ct. at 699.

RESPONSE TO NO. 85:

Defendants object to Request No. 85 as it calls for legal conclusion. Nevertheless, Defendants object and refer to Defendants' Reply Memorandum of Law, dated July 2, 2015, with regard to the issue of whether the School is a "religious organization" such that the ministerial exception would apply.

NO. 86:

The Archdiocese' Superintendent of Schools classifies employees as "religious" and "lay." Similarly, the Synod in *Hosanna-Tabor* classifies teachers into two categories: "called" and "lay." *Id.*

RESPONSE TO NO. 86:

See, Response Nos. 1, 3 and 5.

NO. 87:

Ordained Roman Catholic ministers are "called" to the ministry, just as Hosanna Tabor's Cheryl Perich was "called" to the ministry. *Id.*

RESPONSE TO NO. 87:

See, Response Nos. 1, 3 and 5.

NO. 88:

Unlike the Rev. Perich in Hosanna-Tabor, Lay Principal Fratello was not "called to [her] vocation by God through a congregation." *Id.*

RESPONSE TO NO. 88:

See, Response Nos. 1, 3 and 5.

NO. 89:

Reverend Cheryl Perich, the plaintiff in *Hosanna-Tabor*, was:

- a. A Church-ordained minister,
- b. Called to her ministry (in contrast to "lay" employees),
- c. With extensive religious credentials,
- d. With extensive theological higher education,
- e. Appointed and commissioned as a minister, and not working under an employment contract,
- f. Perceived by herself and others to be a minister,
- g. An active teacher of religion, the "Word of God," and spirituality,
- h. Part of, and a leader in, her religious congregation,
- i. Completed a "colloquy" program at a college or university;
- j. Obtained the endorsement of the religious authority [the local Synod district in Hosanna-Tabor],
- k. Took and passed an oral examination by a religious faculty committee, and was
- l. A member of and part of her church's internal governance.

RESPONSE TO NO. 89:

See, Response Nos. 1, 3 and 5.

NO. 90:

Plaintiff Fratello did none of this.

RESPONSE TO NO. 90:

See, Response Nos. 1, 3 and 5.

NO. 91:

Plaintiff did not receive from the Archdiocese or the local parish any formal title, such as “Minister of Religion, Commissioned.” *Id*

RESPONSE TO NO. 91:

Disputed. Plaintiff was “Principal” of the School.

NO. 92:

Plaintiff did not receive a formal (or informal) commission or other certification as a catechist. *Id.*

RESPONSE TO NO. 92:

See, Response No. 1.

NO. 93:

Plaintiff was not appointed for an open-ended term, unlike Rev. Perich, the plaintiff in *Hosanna-Tabor*.

RESPONSE TO NO. 93:

See, Response Nos. 1, 3 and 5.

NO. 94:

Plaintiff’s employment contract was different in kind from the appointment of Hosanna-Tabor’s Rev. Perich, whose appointment which could be rescinded only for cause and by a supermajority vote of the congregation. *Id.*

RESPONSE TO NO. 94:

See, Response Nos. 1, 3 and 5.

NO. 95:

Plaintiff Fratello's employment, prior to becoming a principal, was that of a "lay" or "contract" teacher, similar or identical to those lay (non-religious) positions described in *Hosanna-Tabor. Id.*

RESPONSE TO NO. 95:

See, Response No. 1.

NO. 96:

Plaintiff's position as a "lay" and "contract" school administrator (a/k/a principal/ "school leader") was similarly non-religious. *Id.*

RESPONSE TO NO. 96:

Disputed. As Principal of the School, Plaintiff served in a ministerial capacity in that she was the religious leader of the School, responsible for, *inter alia*, religious education, achieving the Catholic purpose and mission of the School and ensuring that the School met its religious goals. *See, e.g., Daley Dec., Ex. "C," at BS 024208; Id., Ex. "A," at BS 023924; Id., at BS 023753; Id., at BS 023803.*

NO. 97:

Plaintiff's position, like that of the lay and contract employees in *Hosanna-Tabor*, was by appointment by the educational supervisory body, without a vote of the religious congregation, to one-year renewable terms. In *Hosanna-Tabor*, the school board appointed lay employees, as did the Defendant Archdiocese's Superintendent of Schools here. *Id., cf., Hosanna-Tabor*, 132 S. Ct. at 699-700.

RESPONSE TO NO. 97:

See, Response Nos. 1, 3 and 5.

NO. 98:

Unlike the situation in *Hosanna-Tabor*, the Archdiocese lay employees are not hired only when “called” employees were unavailable. *Id.*, cf. *Hosanna-Tabor*, 132 S. Ct. at 700.

RESPONSE TO NO. 98:

See, Response Nos. 1, 3 and 5.

NO. 99:

Like *Hosanna-Tabor*’s Rev. Perich, Plaintiff Fratello was first employed as a lay teacher. *Fratello Dec.* ¶ yy *Id.* ¶ yy; *Hosanna-Tabor*, 132 S. Ct. at 700; *JN-AFD*. Unlike *Hosanna-Tabor*’s Rev. Perich, Plaintiff Fratello never sought to become a spiritual minister. *Id.*

RESPONSE TO NO. 99:

See, Response Nos. 1, 3 and 5.

NO. 100:

Unlike Ms. Perich in *Hosanna-Tabor*, Plaintiff:

- never pursued any program of religious instruction or calling to the ministry;
- never sought or completed a colloquy;
- never was asked her to become a called teacher;
- never accepted a religious call;
- never received a “diploma of vocation” or any other document designating her as a commissioned minister. *Id.*, at yy.
- never taught a religion class (and certainly not one four days a week as in *Hosanna-Tabor*);
- did not lead students in prayer and devotional exercises each day (and when she did recite a prayer, it was a rote prayer known to all Catholics, such as the Lord’s Prayer);
- did not attend Church Mass on a weekly basis;
- Never led any Mass or other religious service herself (Ms. Perich led her church’s chapel service about twice a year).

Id., cf. *Hosanna-Tabor*, 132 S. Ct. at 700.

RESPONSE TO NO. 100:

See, Response Nos. 1, 3 and 5.

NO. 101:

There was no “meeting of its congregation” at which Plaintiff was discussed as a religious minister, nor any meeting of any Roman Catholic Church religious body whereby Plaintiff was discussed as a religious minister. There was never any discussion with Plaintiff, or to her knowledge any discussion among Roman Catholic Church officials, regarding her possible removal from an religious ministry. *Id.*

RESPONSE TO NO. 101:

See, Response Nos. 1, 3 and 5.

NO. 102:

Plaintiff Fratello never threatened to assert legal rights prior to the termination of her employment, and even if she had, there is no Roman Catholic Church prohibition against seeking secular redress regarding the employment action of a parochial school. *Id.*

RESPONSE TO NO. 102:

See, Response Nos. 1, 3 and 5.

NO. 103:

The Roman Catholic Church or Archdiocese did not rescind any religious status of Plaintiff Fratello. For example, it did not excommunicate her or impose any other religious sanction. *Id.*

RESPONSE TO NO. 103:

See, Response Nos. 1, 3 and 5.

NO. 104:

Unlike Hosanna-Tabor’s Rev. Perich, Plaintiff Fratello never held herself out to the world as a minister. Neither her subordinates or her superiors at St. Anthony’s School referred to her as a minister, or considered her to be a religious minister. *Id., cf. Hosanna-Tabor, 132 S. Ct. at 701.*

RESPONSE TO NO. 104:

See, Response No. 1. It is undisputed to the extent that Plaintiff was not an ordained minister. Disputed to the extent that Plaintiff, as the religious leader of the School, avers she did not have and carry out ministerial duties. In this regard, Plaintiff was responsible for, *inter alia*,

fostering an educational environment based on the teachings of Jesus, directing religious education, ensuring that prayer and non-secular teachings were infused in the curriculum each school day, achieving the Catholic purpose and mission of the School, coordinating, attending and encouraging participation in religious events and Masses, and ensuring that the School met its religious goals. *See, e.g., Daley Dec., Ex. "C," at BS 024208; Id., Ex. "A," at BS 023924; Id., at BS 023753; Id., at BS 023803; Cassel Dec. at 10; See, Weber Dec. at ¶8; see, gen., Daley Dec.*

NO. 105:

A religious principal (e.g., a deacon or a nun) may have had similar duties to a lay principal. However, Plaintiff is in the reverse position to Hosanna-Tabor's Rev. Perich, in that Plaintiff Fratello is a lay employee. *Cf., Hosanna-Tabor*, 132 S. Ct. at 701-02.

RESPONSE TO NO. 105:

See, Response Nos. 1, 3 and 5.

NO. 106:

As to Plaintiff Fratello, she was not fired as a minister. Rather, her contract of lay employment was not renewed. There was no "religious group" to choose, or un-choose, Plaintiff as a "minister." *Id.*

RESPONSE TO NO. 106:

See, Response Nos. 1, 3 and 5.

NO. 107:

The Archdiocese asserts that a single individual was Plaintiffs "employer," namely, the parish priest, Fr. Jerry Deponai. *Daley Tr.* at page 49, lines 12-16.

RESPONSE TO NO. 107:

See, Response Nos. 1, 3 and 5.

NO. 108:

A lay principal, including Plaintiff when service as principal, is not an ecclesiastical individual.” *Id. cf., Hosanna-Tabor*, 132 S. Ct. at 703.

RESPONSE TO NO. 108:

See, Response Nos. 1, 3 and 5.

NO. 109:

Plaintiff’s employment termination was not a decision rendered by a Roman Catholic Church bishop, acting in a religious role, nor by the parish priest acting in a religious role, nor was any appeal to any Church ecclesiastical body available and allowed. This was not a situation where, as referenced in *Hosanna-Tabor*:

“questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them.”

Id., citing Watson v. Jones, 80 U.S. 679, 13 Wall. 679, 20 L. Ed. 666 (1872).

RESPONSE TO NO. 109:

See, Response Nos. 1, 3 and 5.

NO. 110:

The Roman Catholic Church clearly distinguishes between its clergy (its “ministry”) and the laity.

RESPONSE TO NO. 110:

See, Response Nos. 1, 3 and 5.

NO. 111:

Unlike *Hosanna-Tabor*’s Rev. Perich, Plaintiff Fratello was not selected to be a member of the Roman Catholic Church clergy. *Id., cf., Hosanna-Tabor*, 132 S. Ct. at 703; see 19 also, *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 107, 73 S. Ct. 143 (1952).

RESPONSE TO NO. 111:

See, Response Nos. 1, 3 and 5.

NO. 112:

The Roman Catholic Church's religious hierarchy does not include lay women service as elementary school principals. *Id. Cf., Hosanna-Tabor*, 132 S. Ct. at 704.

RESPONSE TO NO. 112:

See, Response Nos. 1, 3 and 5.

NO. 113:

Allowing Plaintiff to challenging the wrongful termination of her employment contract as a lay employee does not involve the "free exercise of an ecclesiastical right, the Church's choice of its hierarchy." *Id.*

RESPONSE TO NO. 113:

See, Response Nos. 1, 3 and 5.

NO. 114:

The Roman Catholic Church puts its faith and governance in the hands of its ministers—its male clergy. No church religious authority has offered any evidence to the contrary in this case. *Id., cf., Hosanna-Tabor*, 132 S. Ct. at 706.

RESPONSE TO NO. 114:

See, Response Nos. 1, 3 and 5.

NO. 115:

No religious authority of the Roman Catholic Church has deemed Plaintiff to be a religious minister (or an unwanted religious minister). *Id.*

RESPONSE TO NO. 115:

See, Response Nos. 1, 3 and 5.

NO. 116:

The employment contract of a lay employee—here, Plaintiff as a lay school principal—does not involve a "controvers[y] over religious authority or dogma." *Cf., Hosanna-Tabor*, 132 S. Ct. at 707.

RESPONSE TO NO. 116:

See, Response Nos. 1, 3 and 5.

NO. 117:

Plaintiff was not a head of a religious congregation, nor even a member of the St. Anthony's Parish. Plaintiff belonged (and belongs) to an entirely different parish and congregation. Thus, she had no role in the governance of St. Anthony's Parish, and as set forth above, no role whatsoever in Roman Catholic Church governance. *Id., cf., Hosanna-Tabor*, 132 S. Ct. at 707.

RESPONSE TO NO. 117:

See, Response Nos. 1, 3 and 5.

NO. 118:

Minister Perich claimed a special housing allowance on her taxes that was available only to employees earning their compensation "in the exercise of the ministry." (for a parsonage or housing allowance income tax exclusion)" Plaintiff Fratello did not (and could not). *Id., cf., Hosanna-Tabor*, 132 S. Ct. at 708.

RESPONSE TO NO. 118:

See, Response Nos. 1, 3 and 5.

NO. 119:

Minister Perich indicated that she regarded herself as a minister at Hosanna-Tabor, stating: "I feel that God is leading me to serve in the teaching ministry.... I am anxious to be in the teaching ministry again soon." Plaintiff Fratello never made any such proclamations, and never viewed herself as a minister. *Id., cf., Hosanna-Tabor*, 132 S. Ct. at 708. Specifically, Plaintiff never regarded herself as a minister of the Roman Catholic Church; never held herself out as such; and St. Anthony's School staff, patrons (schoolchildren and/or their parents) and the parishioners of St. Anthony's Church never viewed her as such.'

RESPONSE TO NO. 119:

See, Response Nos. 1, 3 and 5.

NO. 120:

Minister Perich's job duties reflected a role in conveying the Church's message and carrying out its mission. The Hosanna-Tabor church expressly charged her with "lead[ing] others toward Christian maturity" and "teach[ing] faithfully the Word of God, the Sacred Scriptures, in its truth and purity and as set forth in all the symbolical books of the Evangelical Lutheran Church." *Id.*, at 48. Plaintiff Fratello was not assigned any such role, and had no such role. Plaintiff Fratello was professionally and spiritually unqualified to teach religion classes, even if she were so inclined, as teaching religion (theology) requires special training and supervision by a priest. This was training not required by Plaintiff's lay principal job description, and the Parish Priest (and his predecessor, Monsignor Reynolds) required no such religious instruction from the school principal. *Id.*, *cf.*, *Hosanna-Tabor*, 132 S. Ct. at 708.

RESPONSE TO NO. 120:

See, Response Nos. 1, 3 and 5.

NO. 121:

Minister Perich taught her students religion four days a week, and led them in prayer three times a day. Plaintiff Fratello did not teach religion or routinely lead prayer (and she occasionally led a prayer, it was merely as a lay Catholic). *Id.*, *cf.*, *Hosanna-Tabor*, 132 S. Ct. at 708.

RESPONSE TO NO. 121:

See, Response Nos. 1, 3 and 5. It is disputed as to the statement that Plaintiff did not teach religion or routinely lead prayer. In her capacity as Principal, Plaintiff routinely led the School in prayer and taught the students religion. *See, e.g. Weber Dec.*, at ¶ 8, 11, 14; *Connelly Dec.* at ¶15, 20-21; *Weber Dec.*, at ¶20; *Novikoff Dec.*, at Ex. "N," at BS 024509; *Ladolcetta Dec.* at ¶13; *Driscoll Dec.*, at ¶16; *Lewis Dec.* at ¶8- ¶9.

NO. 122:

Minister Perich took her students to a school-wide chapel service, and—about twice a year—she took her turn leading it, choosing the liturgy, selecting the hymns, and delivering a short message based on verses from the Bible. Plaintiff Fratello did none of this. *Id.*, *cf.*, *Hosanna-Tabor*, 132 S. Ct. at 708.

RESPONSE TO NO. 122:

See, Response Nos. 1, 3 and 5. It is disputed in part. In her capacity as Principal, Plaintiff often encouraged and/or mandated attendance to school-wide Mass, implemented and/or coordinated Mass and religious events at the School. *See, e.g., Cassel Dec., at ¶¶14-16; Ladolcetta Dec., at ¶11; Driscoll Dec., at ¶¶13, 18; Lewis Dec., at ¶10, 12, 19, Connelly Dec., at ¶16; Ladolcetta Dec., at ¶14; Driscoll Dec., at ¶17; Novikoff Dec., at Ex. "P."*

NO. 123:

Minister Perich led her students in a brief devotional exercise each morning. Plaintiff Fratello did not. *Id., cf., Hosanna-Tabor*, 132 S. Ct. at 708.

RESPONSE TO NO. 123:

See, Response Nos. 1, 3 and 5. It is disputed as to the statement that Plaintiff did not lead the students in brief devotional exercise. *See, Weber Dec., at ¶8, 11; Id., at ¶9; see, also, Connelly Dec., at ¶15; Ladolcetta Dec., at ¶13; Driscoll Dec., at ¶16; Lewis Dec., at ¶8*

NO. 124:

At the Defendant St. Anthony's School, the people who served as the source of religious instruction were the religion teachers, and the Parish Priest. Plaintiff, as a school administrator, did not. Her job was to hold herself out as a good Christian, and to attend to the job of administering a private elementary school. No Church official ever told her anything to the contrary. *Id., cf., Hosanna-Tabor*, 132 S. Ct. at 708.

RESPONSE TO NO. 124:

Disputed. Plaintiff was responsible for, *inter alia*, directing, guiding, evaluating and leading the religion teachers, serving as a religious leader, fostering an educational environment based on the teachings of Jesus, directing religious education, ensuring that prayer and non-secular teachings were infused in the curriculum each school day, achieving the Catholic purpose and mission of the School, coordinating, attending and encouraging participation in religious events and Masses, and ensuring that the School met its religious goals. *See, e.g., Daley Dec.,*

Ex. "C," at BS 024208; Id., Ex. "A," at BS 023924; Id., at BS 023753; Id., at BS 02380; Cassel Dec. at 10; See, Weber Dec. at ¶8.

NO. 125:

Because non-Catholics, and even non-Christians, attended the school, it would have been inappropriate for Plaintiff to attempt to evangelize, or to proselytize, the Roman Catholic religion on non-Catholic students. No Roman Catholic Church official ever told her to do so. Proselytizing would run against the "anti-discriminaiton policy set forth in the Archdiocese Administrative Manual. *Id., cf., Hosanna-Tabor*, 132 S. Ct. at 708. Exhibit 29.

RESPONSE TO NO. 125:

See, Response Nos. 1, 3 and 5.

NO. 126:

Plaintiff's job was not to "transmit[] the [Roman Catholic] faith to the next generation. This was the Pastor's job. *Id., cf., Hosanna-Tabor*, 132 S. Ct. at 708.

RESPONSE TO NO. 126:

See, Response No. 5. Disputed. Evangelization of the teachings of Jesus Christ and inculcation of children into the Catholic Faith is a primary purpose of the Archdiocesan school system. *See, Daley Dec. at ¶¶ 7, 12-13; see, also, id., at Ex. "A," at BS 023765-023768.* Accordingly, the Archdiocese requires its Principals, *inter alia*, to "[be] committed to the mission of evangelization [and] involve the staff in formulating plans that enable the school to meet it religious goals." *Id., at BS 023803.*

NO. 127:

In a Roman Catholic Church-sponsored environment, everyone can be expected to spend some time on spiritual and religious matters. Teachers and Parents alike may teach and say prayers to children. This is simply being a faithful member of a church. It is not make the person part of Church governance. Plaintiff does not believe that she can be transformed into an unwilling "minister" when the only role she accepted was that of a member of the laity. *See, Fratello Dec. at ¶ 3.*

RESPONSE TO NO. 127:

See, Response Nos. 1, 3 and 5.

NO. 128:

Plaintiff was properly required to be a practicing Roman Catholic to be hired for the job.

RESPONSE TO NO. 128:

Undisputed.

NO. 129:

Title VII allows employers to use religion, sex or national origin as a bona fide occupational qualification ("BFOQ") whenever "reasonably necessary to the normal operation of that particular business or enterprise."

RESPONSE TO NO. 129:

See, Response Nos. 1, 3 and 5.

NO. 130:

Plaintiff was required to be Catholic for her employment as a lay principal, as this was (at least arguably) "reasonably necessary to the normal operation of that particular business or enterprise."

RESPONSE TO NO. 130:

See, Response Nos. 1, 3 and 5.

NO. 131:

She was not required to be a minister or quasi-minister to meet the needs of the School. She needed only to be a good Catholic. *See, Fratello Dec. at ¶ 3.*

RESPONSE TO NO. 131:

Disputed. Plaintiff, as Principal of the School, was required to be much more than "only a good Catholic." *See, e.g., Daley Dec., at ¶ ¶ 4, 12, BS 023936-023942; 023943-023946; 023947-023951; Id., at BS 024270, 024281-3; Novikoff Dec., at Ex. "E," at BS 024173; Cassel*

Dec. at ¶¶ 10-13; Novikoff Dec., at Ex. "J", "K"; Ladolcetta Dec., at Ex. "A"; McGuirk Dec., at Ex. "A"; Driscoll Dec., at Ex. "A".

Dated: July 2, 2015

RIVKIN RADLER LLP

By: /s/

Kenneth A. Novikoff (KAN 0350)

Barry I. Levy (BL 2190)

Jacqueline Siegel (JS 7572)

926 RXR Plaza

Uniondale, New York 11556-0926

(516) 357-3000

ken.novikoff@rivkin.com

*Counsel for Defendants, Archdiocese of New York
i/s/h/a/ Roman Catholic Archdiocese of New York,
St. Anthony's Shrine Church, and St. Anthony's
School*

TO: MICHAEL D. DIEDERICH, JR. (MD 2097)
Attorneys for Plaintiff
361 Route 210
Stony Point, NY 10980
(845) 942-0795
Mike@DiederichLaw.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOANNE FRATELLO

Plaintiff,

REPLY DECLARATION OF
PLAINTIFF JOANNE FRATELLO

-against-

12 Civ. 7359 (CS)(CMS)

ROMAN CATHOLIC ARCHDIOCESE
OF NEW YORK, *et al.*,

ECF CASE

Defendant.

Joanne Fratello states under penalty of perjury as follows:

1. I am the Plaintiff herein and submit this reply declaration in support of my motion to strike Defendants' *Hosanna-Tabor* ministerial immunity defense.

Materials previously incorporated by reference

2. I reiterate my prior incorporation by reference of various materials, which we did so that Your Honor need not be burdened with reading my statements of fact twice—both in my declaration and again in the Rule 56.1 statement.

3. In reply to Defendants' opposition to my motion for summary judgment, I reiterate and incorporate here again my Rule 56.1 Statement ¶¶ 1 – 18. In this, I was not led by Defendants to even suspect that I was in any way being deemed a “minister” at the school. My “lay” contract indicated that it was “the complete agreement” between the parties. It nowhere indicates that I had agreed to become a “minister” or to perform “ministerial duties.”

4. As indicated in my Rule 56.1 Statement ¶¶ 19 -24, the “qualifications” for my job were that of a professional educator, not that of a pastor, minister, priest or other religious figure. It was only required that I be a “Practicing Catholic.” As a practicing Catholic, I could certainly help our students in all areas of their development, just as should the students' parents.

5. As I pointed out in my Rule 56.1 Statement ¶¶ 25, 32, 42 & 58, the school has a multi-denominational student body not restricted to Roman Catholics. Moreover, as can be seen from a website sponsored by the N.Y.S. Catholic Conference (comprised of all N.Y.S. bishops):¹

“Education

The Catholic Church has been educating children in New York State for more than 200 years, providing a quality, values-based education and hope for a brighter future to children regardless of income, race, ethnicity or religious beliefs.

- 531 elementary schools
- 123 high schools
- 17,391 teachers
- 215,768 pre-K, elementary, and secondary students
- 420,000 Catholic public school students enrolled in parish catechetical programs.” (*emphasis added*)

6. The Defendants assert that “evangelization ... is the primary purpose of the Archdiocese school system.” Yet the above statement of New York’s Roman Catholic bishops, including Defendant’s Cardinal Dolan, states nothing of the sort. Rather, the bishops’ statement implies directly to the contrary—that the Catholic Schools offer a “values-based education ... regardless of ... religious beliefs.” It was never, ever, suggested to me, as a teacher or as a school principal, that I seek to proselytize the faith, or to “evangelize,” or in any way attempt to convert non-Catholics to Catholicism.

7. As I pointed out in my Rule 56.1 Statement ¶¶ 35, the purpose of St. Anthony’s School was “educational, for purposes of IRC § 501(c)(3), which purpose Defendants do not appear to controvert.

¹ See Roman Catholic Church website found at: <http://www.nyscatholic.org/what-is-the-new-york-state-catholic-conference/new-yorks-catholic-church-how-we-serve/> .

Religious ministry and children's education are different professions

8. Nor do Defendants controvert that the Defendant Archdiocese's website distinguishes between the "pastoral" and the "educational." *See*, Plaintiff's Rule 56.1 Statement ¶¶ 41.

9. I agree with my attorney that the ordained Roman Catholic Church clergy (the ministry) is fairly characterized as a "learned profession." Ministers certainly should have a strong educational background and training in all things religious, including theology. I had no training, other than the basics of Catholicism that I learned as a child in elementary school.

10. I agree that medicine, law and education are also learned professions. I am an educational professional. I have extensive training in education. That is the profession I was hired for (of course, as a practicing Catholic). I have no training in religion, other than what I received when I was a child.² I was not hired to be a minister, and I find this assertion by the Defendants utterly absurd and extraordinarily disingenuous.

11. Even if I took the Catechist instruction, that totaled approximately 30 hours of instruction, and self-certification upon completion. Classifying anyone as a "minister" after a mere 30 hours of instruction would be akin, it seems to me, as considering a person a professional musician after taking a 3 credit hour music appreciation class, or a physician after taking a first aid class, or an engineer after taking a class in masonry, or a lawyer after taking one paralegal class, or a teacher after taking one education class (and each class self-certified, without any testing or examination).³ The ordained minister in *Hosanna-Tabor* had extensive

² I received the sacrament of confirmation in 7th grade, and received CCD religious instruction one evening a week prior to that, attending public elementary school.

³ Or broadening this to any profession, it would be akin to 30 hours of driver's education qualifying the person as a professional driver, or 30 hours of tennis lessons qualifying the person as a professional athlete.

training, at an advanced level, and was closely supervised and examined. She wanted to become and became a member of the “learned profession”—the religious ministry. I am nothing at all like her. I am an educator.

No competent religious representative of the Catholic Church

12. Only lay employees—for the most part employees of the Defendants—assert that I am a minister. As far as I can see, these people have no competence to speak for the Roman Catholic Church on this subject. None purports to be an authority in Roman Catholic Church doctrine or canon law.

13. If I can be considered a “minister” (ridiculous as that notion is to me), then it seems to me (and as argued by my attorney), that the floodgates are open for any and all religious-affiliated entities (not only parochial schools, but also not-for-profit corporations and also for-profit *Hobby Lobby*-style corporations) to orchestrate the creation of “ministries” within the entities, and allow lay management to designate the head of advertising for Hobby Lobby, or the head of HR at a bible-manufacturing company, or the head of nursing at the religiously-affiliated hospital, to become “ministers,” and as such, to lose the protection of State and federal civil rights law.

14. I also feel that I will be deprived of my civil rights—and in particular my right to be protected by anti-discrimination laws—because of the exercise of my religion. Because I am Catholic, I was able to obtain employment as an educator in the Catholic Schools. But if this Court deems me a “minister,” I will lose the protection of law simply because I chose to be an educator in a private (Catholic) school rather than a public school.

15. It will be particularly unfair for the Court to deem me a “minister” when my own religious belief is that I am not a minister, which belief is corroborated by a canon lawyer (Sister Kate Kuenstler), and where no bishop or other religious authority of the Roman Catholic Church has testified to the contrary.

16. If deemed a minister, I will be deprived of my civil rights because of my association with organized religion. I will be punished for being a Catholic who sought employment in the field of education, in Church-affiliated schools.

17. I do not believe the vast majority of the Roman Catholic Church’s laity, if asked, would view me as a minister. I do not believe that any of the Roman Catholic Church’s clergy would view me as a religious minister. I do not believe that the congregation of the Defendant St. Anthony’s School viewed me as a minister.

18. The Defendants Rule 56.1 response mischaracterizes my employment as a lay principal. In response to my Rule 56.1 ¶ 77, Defendants claim that principals are “appointed by their pastors and commissioned by their parishes to hand on the faith to adults, youth or children.” Defendants confuse a lay principal with the parish priest. I was not “appointed” or “commissioned” and as a lay employee, had no duties regarding “hand[ing] on the faith.” Rather, I was selected as a qualified candidate for the job of principal, and hired as a lay employee for that job.

19. Defendants also assert in their response to my Rule 56.1 ¶ 121 that I “taught the students religion.” This is a gross mischaracterization, as I never taught a religion class, and was not professionally qualified to teach a religion class even if I wanted to. The duties I performed were almost exclusively secular, and absolutely none were pastoral or “ministerial.”

20. It seems to me that the Defendants' lawyers view me as a minister for the sole purpose of obtaining immunity from suit for their clients. If the Court grants the Catholic Schools immunity as to me, as a principal, its next target will be teachers, and then other Church-affiliated entities, and then *Hobby Lobby*-style private corporations.⁴

WHEREFORE, I repeat my request that Defendants' ministerial immunity defense be stricken by the Court.

*Affirmed under penalty of perjury
this 15th day of July, 2015, at Stony Point, New York.*


JOANNE FRATELLO

⁴ My attorney says he could become “born again,” and then devote his law firm to litigation using religious values, whereby he will deem his office managers and associate attorneys as “ministers” (by making prayer and religious-oriented newsletters and advocacy part of their job descriptions, and evaluate them as “religious leaders” in the law firm). He says he will then be able to fire his office manager and his religiously-oriented attorneys with impunity—ministerial immunity.

Perhaps he is being facetious, but the point is well-taken. All sorts of religious groups may seek civil law immunity if the Courts allow this simply by the religious group asserting that the employee is also one of its “ministers.”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOANNE FRATELLO

Plaintiff,

REPLY DECLARATION OF
SISTER KATE KUENSTLER

-against-

12 Civ. 7359 (CS)

ROMAN CATHOLIC ARCHDIOCESE
OF NEW YORK, *et al.*,

ECF CASE

Defendants.

Sister Kate Kuenstler, PHJC, JCD, affirms under penalty of perjury as follows:

1. I am submitting this reply declaration in support of Plaintiff Joanne Fratello's motion for summary judgment.

The Roman Catholic Church

2. The Roman Catholic Church is the largest Christian Church in the world, with over a billion members.¹ From some general-reference internet sources, which I find to be basically accurate, there are 25.6 million Roman Catholics in the United States.² It is also the largest non-government provider of education and medical services in the world.³

3. The Roman Catholic Church has an "episcopal polity," that is, a hierarchical form of church governance (also known as an "ecclesiastical polity") in which the Church's chief local authorities are called bishops.⁴

¹ See article found at: https://en.wikipedia.org/wiki/Catholic_Church. I will reference easily accessible internet resources, such as Wikipedia, for the Court's convenience. As to the facts stated, I find these sources to be basically accurate and consistent with my knowledge of the membership and activities of the Roman Catholic Church.

² See article found at: <http://www.u-s-history.com/pages/h3798.html>. Plaintiff asks that the Court take judicial notice of the general descriptions found within these internet sources.

³ See article found at: https://en.wikipedia.org/wiki/Catholic_Church and accompanying note 17.

⁴ See article found at: https://en.wikipedia.org/wiki/Episcopal_polity.

4. The Defendant Archdiocese of New York is the second-largest diocese in the United States, with 296 parishes that serve around 2.8 million Catholics in addition to hundreds of Catholic schools, hospitals and charities.⁵ In New York State, Catholics represent the largest single religious faith in New York, numbering approximately 7.3 million out of a population of 19.3 million.⁶

No authorized religious spokesperson for the Roman Catholic Church

5. The Defendants have not provided affidavits or sworn testimony from any religious figure or church authority, but instead, only assertions of lay employees of the Catholic Schools. Such individual have no religious status, and none purports to be an authority in religious matters or Roman Catholic canon law. Thus, these individuals are not competent to characterize or assert, that Plaintiff Joanne Fratello is a “minister” of the Roman Catholic Church or that she has “ministerial duties” within the Church.

6. Additionally, such characterization by Defendants’ lay employees runs counter to the “bylaws” of the Roman Catholic Church, namely, the canon law of the Church.

Roman Catholic Church’s affiliated activities

7. The Roman Catholic Church engages in many secular activities. Education of children is one such activity. Health care, charitable and civic activities, and university education are other such activities. The Church often assigns a priest to provide pastoral (religious) guidance or oversight to such activities. However, the lay employees of such activities are never considered “ministers.” Anyone asserting that an employee or manager of such Church-related activities simply has no understanding of the Roman Catholic Church.

⁵ See article found at: https://en.wikipedia.org/wiki/Roman_Catholic_Archdiocese_of_New_York and accompanying notes 2 & 3.

⁶ See article found at: <http://www.nyscatholic.org/what-is-the-new-york-state-catholic-conference/new-yorks-catholic-church-how-we-serve/> .

8. Involved in the case involving Plaintiff Fratello is simply an employment personnel action. Non-renewal of Plaintiff's lay principal employment contract involved no decision regarding the religious internal governance of the Roman Catholic Church or its parish. Rather, it was the removal (I am told due to gender-biased discrimination) of the administrative head of an essentially commercial activity (providing State-mandated education) in a Roman Catholic atmosphere.

9. I am a Roman Catholic nun. As a religious individual, I believe that this Court will be violating Plaintiff's freedom of religion by denying her civil law protection. She is a lay member of an organized church (the Roman Catholic Church). If this Court transforms her into a "religious" figure, it will be doing something that the Roman Catholic Church has not done. In the process, it will be depriving Plaintiff Fratello of the protection of the civil law because of her religion. It seems to me (as an American citizen) that this will deprive her of her civil rights because of her religion, and thus violate the U.S. Constitution's First Amendment. As a matter of Roman Catholic canon law, a lay Catholic should not be deprived of civil law protection because he or she is a Catholic. *See*, Roman Catholic Canon 22.⁷

10. As a Roman Catholic nun, let me reiterate that the Roman Catholic Church is governed by its male ecclesiastical hierarchy—its bishops, including the "bishop of Rome," our Holy Father, the Pope. On religious matters, it is not governed by, for example, lay employees of the Roman Catholic Church's school systems, or by the laity of the church, including its parishes.

11. As I read Defendants' brief, it seems to me that it has non-religious employees of

⁷ *See*, e.g., Code of Canon Law, Canon 22: Civil laws to which the law of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise." This is available at: http://www.vatican.va/archive/ENG1104/_P3.HTM.

the Church are characterizing Plaintiff as a “minister,” where this is contrary to her own belief, and also contrary to official Roman Catholic Church doctrine (e.g., its canon law).

12. In recent times, the Roman Catholic Church has been particularly good among religions at maintaining a distance between Church and secular government. The Pope or his Archdiocese (to my knowledge) did not deem John F. Kennedy a minister of the church, or threaten him with ex-communication if he took a position as a public servant—as President of the United States—that contradicted Church doctrine. It seems to me that educators of children are, in a sense, public servants, as they are required to teach the secular education required by N.Y.S. law, and educate children to become good citizens. If the Court decrees that educators are “ministers,” and thus have no civil law protection, it will be allowing Church control over secular life and thus, in my view, be eliminating the “wall” between Church and State. It will be planting the seeds for the establishment of religion—something that I thought was prohibited by the First Amendment.

13. I have no problem with the concept that being Roman Catholic is a “bona fide occupational qualification” for the job of an elementary school teacher or principal. By analogy, a person needs to be female and Catholic to be a member of my religious order of nuns. On the other hand, if a church bureaucrat were to fire one of my sisters from employment at a Church-related entity because she is Afro-American, or Chinese, or has a physical disability, she should have legal recourse in the civil courts. Religion should not be used as a shield against illegality.

14. I also agree with Plaintiff’s counsel that the ordained Roman Catholic Church ministry is fairly characterized as a “learned profession.” And I agree that medicine, law and education are also learned professions. Plaintiff is an educational professional, and a practicing Catholic, and nothing more.

15. As a nun, and as a Roman Catholic canon lawyer, it is my opinion that so-called “ministerial immunity” is misapplied if used to immunize the Church or its bureaucrats from liability for illegality committed against lay employees of the Church.

Affirmed under penalty of perjury
this 14th day of July 2015.

_____/S/_____
SISTER KATE KUENSTLER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOANNE FRATELLO,

Plaintiff,

- against -

ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK,
ST. ANTHONY’S SHRINE CHURCH, and
ST. ANTHONY’S SCHOOL,

Defendants.
-----X

OPINION AND ORDER

No. 12-CV-7359 (CS)

Appearances:

Michael D. Diederich, Jr.
Stony Point, New York
Counsel for Plaintiff

Kenneth A. Novikoff
Barry I. Levy
Jacqueline Siegel
Rivkin Radler LLP
Uniondale, New York
Counsel for Defendants

Seibel, J.

Before the Court are Defendants’ Motion for summary judgment, (Doc. 90), and Plaintiff’s Cross-Motion to strike Defendants’ ministerial-immunity defense, (Doc. 103). For the reasons set forth below, Defendants’ Motion is GRANTED and Plaintiff’s Motion is DENIED.

I. BACKGROUND

The following facts are based on the parties’ Local Rule 56.1 statements¹ and responses thereto, and supporting materials, and are undisputed except where noted.

¹ “P’s Counter 56.1” refers to Plaintiff’s Response & Counterstatement to Defendants’ Rule 56.1 Statement, (Doc. 108). “Ds’ Counter 56.1” refers to Defendants’ Response and Counter-Statement to Plaintiff’s Rule 56.1 Statement, (Doc. 115). The parties, particularly Plaintiff, included blanket denials, legal arguments and/or hypertechnical or

Plaintiff Joanne Fratello is a former principal of St. Anthony's School (the "School"), a Catholic elementary school located in Nanuet, New York. (*See* Ds' Counter 56.1 ¶ 13; AC ¶¶ 1, 12, 13, 19.)² Defendants are the Archdiocese of New York (the "Archdiocese"), St. Anthony's Shrine Church and the School. (AC ¶¶ 2, 5, 7.) Plaintiff served as principal of the School from 2007 until 2011, when her contract was not renewed for the 2011-2012 school year. (Ds' Counter 56.1 ¶¶ 11, 21, 106.) Plaintiff alleges that the decision to terminate her employment was the result of gender discrimination and retaliation, and she now seeks relief in this Court. (AC ¶¶ 12-16.)

A. Factual Background

The School, which is chartered under the laws of New York, is run by the Archdiocese. (Ds' Counter 56.1 ¶ 31; AC ¶¶ 34-38, 114.) Before addressing the specifics of Plaintiff's employment, it is useful to examine the Archdiocese's and the School's mission statements and manual, as well as the role of its principals in the abstract.

1. The Mission and Manual of the Archdiocese of New York and St. Anthony's School

The website of the Catholic Schools in the Archdiocese of New York proclaims that its mission is "to ensure [its] schools are Christ-centered, academically excellent, and welcoming communities that teach students to be life-long learners and leaders energized by fidelity to

inapplicable objections in their responses to the other party's Local Rule 56.1 Statement. As counsel knows, "[f]ailure to specifically controvert facts contained in the moving party's Local Rule 56.1 Statement, or failure to support any such response with record references allows the Court to deem the facts proffered by the moving party admitted for purposes of a summary judgment motion." *Edmonds v. Seavey*, No. 08-CV-5646, 2009 WL 2949757, at *1 n.2 (S.D.N.Y. Sept. 15, 2009); *see also Montauk Oil Transp. Corp. v. Sonat Marine Inc.*, No. 84-CV-4405, 1986 WL 1805, at *8 (S.D.N.Y. Feb. 3, 1986) ("[R]eliance on legal conclusions – unsupported by specific facts – and general denials does not create a genuine factual dispute under Rule 56."). Plaintiff in particular in her 56.1 response followed the circular practice of disputing a proposition set forth by Defendants without pointing to contrary evidence except her own affidavit, which did not address the issue but rather stated in blanket fashion that all responses to Defendants' 56.1 statement were accurate. This does not, in the Court's view, amount to specifically controverting the proposition. Nevertheless, in an excess of caution, I have not, in deciding these Motions, relied on any facts the parties purport to dispute. Had I held the parties strictly to the requirements of Federal Rule of Civil Procedure 56 and Local Rule 56.1, it would only have strengthened my conclusion.

² "AC" refers to the Amended Complaint, (Doc. 9).

Christ, the Church, and one another.” (Novikoff Decl. Ex. A, at 2-3.)³ The Archdiocese’s website further describes the “Catholic school experience” as follows:

Our Catholic faith is central to what we do, and we proudly teach it. Gospel ideals permeate the substance and structure of our lessons. We share our faith through daily prayer and the regular celebration of Mass as a school community. We foster a spirit of Christian service as an expression of our concern for the needs of others. Character formation and personal spirituality are rooted in the study of Catholic teachings and tradition, as well as sacramental preparation. Our academic programs grounded in basic skills meet the varied needs of each school community by incorporating technology, advanced math, hands-on science, and foreign language coupled with the various forms of art study. We offer a forward-focused curriculum, integrating technology into classroom instruction, preparing our students to compete in an increasingly complex world.

(*Id.*) Similarly, the School’s mission is to “provide a high-quality, educational experience that enhances each child’s spiritual, emotional, intellectual and social growth. Our faculty and staff prepare our students to become future leaders and responsible stewards of God’s creation.” (*See* Ds’ Counter 56.1 ¶ 7.) Religion is a central part of the School curriculum. (*See* P’s Counter 56.1 ¶¶ 92-97.) At the same time, the School is required, by law, to provide its students with an education substantially equivalent to that of public schools. (Ds’ Counter 56.1 ¶ 72.)

The Archdiocese disseminates an Administrative Manual (the “Manual”) that delineates policies and procedures for principals and other administrators. (*See generally* Admin. Manual.)⁴ In a cover letter for the Manual, addressed “Dear friends in the Lord,” Edward Cardinal Egan, Archbishop of New York at the time of the Manual’s issuance, wrote to principals:

As principals in the schools of the Archdiocese of New York, you are providing splendid leadership to your teachers and staff and excellent academic and spiritual formation to your students. This is demanding work, and I am deeply grateful for the wisdom and devotion with which you do it. With each passing year, it

³ “Novikoff Decl.” refers to the Declaration of Kenneth A. Novikoff, (Doc. 91).

⁴ “Admin. Manual” refers to Exhibit A to the Declaration of Mary Jane Daley (“Daley Decl.”), (Doc. 94).

becomes more and more clear to our Catholic faithful and the community at large that we are all greatly in your debt.

This revised *Administrative Manual* is designed to assist you in the administrative tasks you must fulfill in providing the structure needed to carry out the vital work of Catholic education. The updated sections and materials give evidence of the growing demands required to provide the appropriate learning environment, and [sic] environment which enables each of our schools to offer quality academic education infused with the Catholic Faith and values that are so needed by the young people who come to us.

. . . .

Again, I thank you for having accepted the vocation and challenge of leadership in Catholic education. Be assured of my prayers and support for your work which is so crucially important to the Church in New York.

(Admin. Manual at 023753.) Another letter within the Manual is addressed to principals from Michael Ramos, Associate Superintendent of Schools for Professional Recruitment, and states: “The Catholic school is essential to the Church in fulfilling its teaching mission. . . . It is your responsibility as principal to establish a climate which is identifiably Catholic and which nurtures the growth of teachers and students in all dimensions of life.” (*Id.* at 023923.)

The Manual also contains a job description for principals. It states:

The principal is the leader of the school, a unique Catholic educational institution. The principal is responsible for achieving the Catholic mission and purpose of the school as well as the quality of teaching and learning that goes on in the school. S/he is the animator of the community of faith within the school. . . .

The principal must of necessity be involved in every aspect of the school operation. The principal oversees the areas of religious education, curricula instruction, formulation and communication of school policy, supervision of personnel, staff recruitment and development, student recruitment, maintenance of school records, discipline and co-curricular activities.

(*Id.* at 023924.) The Manual goes on to describe a principal’s role in providing “Catholic leadership” as follows:

The principal cooperates with the pastor in recruiting and maintaining a staff committed to the goals of a Catholic school; cooperates with the pastor in his religious ministry to the students; ensures adherence to the curriculum guidelines,

Guidelines for Catechists, 1998; monitors the acquisition of catechetical certification for teachers of religion, directs the implementation of the religious education program, is committed to the mission of evangelization, involves the staff in formulating plans that enable the school to meet its religious goals; provides opportunities for student, faculty, and parent participation in liturgical and paraliturgical services; initiates programs that inculcate an attitude and foster the practice of service to others; motivates the students to take an active part in the life of the parish; promotes in faculty, students, and parents the concept of the school as a community of faith; provides opportunities for the practice of this concept; cooperates with the parish council by attending council meetings and by keeping the council informed of school matters.

(*Id.* at 023803.) The Manual then lists a multitude of day-to-day responsibilities of the principal, touching on “personnel management,” “office management,” “public and community relations,” “budget and fiscal management,” “teacher development,” and “evaluation of students,” among other responsibilities. (*Id.* at 023803-07.)

The Archdiocese’s website presents a summary of the principal’s role in its information to prospective applicants for that post:

The Archdiocese of New York seeks committed Catholics who can inspire and engage faculty, staff, parents and students in the pursuit of spiritual development and academic excellence. These dynamic administrators should demonstrate outstanding educational vision, professionalism, leadership skills, organizational ability and interpersonal strengths to serve as Principals Candidates must set high expectations and foster a culture of continuous improvement in which every member of the school community works collaboratively to ensure the holistic achievement of every student.

(Ds’ Counter 56.1 ¶ 22.)

Principals are evaluated by faculty of the school and the church’s pastor. (P’s Counter 56.1 ¶ 26.) In addition to more secular criteria, a principal is evaluated based on whether he or she “fosters a Christian atmosphere which enables . . . students to achieve their potential,” “reviews school philosophy and goals with the staff in accordance with current Church documents,” and “gives priority to a comprehensive religious education program.” (Admin. Manual at 023936, 023942, 023947.) Additionally, principals are asked to fill out a self-

evaluation form. (P’s Counter 56.1 ¶ 26.) The self-evaluation contains five questions, one of which is, “What are my strengths in the areas of spiritual leadership, instructional leadership, interpersonal relationships and management?” (Admin. Manual at 023942.)

Twenty-three percent of Archdiocese students are not Catholic, and practicing Catholicism is not an explicit job requirement for its teachers, although the Archdiocese may give preference to practicing Catholics. (Ds’ Counter 56.1 ¶¶ 42, 44, 46.) The Archdiocese does, however, require that a candidate for the position of principal present a letter indicating that he or she is a practicing Catholic. (P’s Counter 56.1 ¶ 21.) The Archdiocese also states that principals must complete the Level 1 and Level 2 Catechist Certification Program within three years of attaining that position. (Admin. Manual at 023808.) The Catechist Certification Program is an online course that “provides theological understandings, spiritual/religious formation and catechetical methodology.” (P’s Counter 56.1 ¶ 19.) Plaintiff maintains that this certification requirement was aspirational but not strictly enforced by the Archdiocese. (*Id.* ¶ 18.) Plaintiff also asserts that although she is indeed Catholic, her academic credentials are in education, and she does not have formal training in religion or theology. (*See* Ds’ Counter 56.1 ¶ 4.)

2. Plaintiff’s Employment As Principal of St. Anthony’s School

When Plaintiff applied for the principal position at the School, she was interviewed by the Archdiocese’s Principal Search Committee (the “Committee”). (P’s Counter 56.1 ¶ 49.) According to Cathleen Cassel, the Regional Superintendent for Rockland County for the Archdiocese and a member of the Committee at the time Plaintiff was interviewed, the Committee sought to hire principals with “strong Christian values” who were dedicated to providing teachers and students with “instruction in religious truth and value, maintaining a set

of educational policies which are in conformity with the religious beliefs and moral standards of the Archdiocese and further fostering an educational environment which teaches students how to live in accordance with the teachings of Jesus.” (Cassel Decl. ¶¶ 1, 5, 10.)⁵ Among the questions asked by the Committee were some form of the following: (1) What is your personal relationship with the church? (2) Why do you want to be principal of a Catholic school (as opposed to a secular private school)? (3) What is your relationship with the pastor and the parents at the current school you work in? (4) What do you think is a good religion lesson? (5) What would you do at the school to implement communal prayer? (*Id.* ¶ 11.)

In 2007, Plaintiff signed a one-year “Lay Principal Contract” with the School, (Ds’ Counter 56.1 ¶ 12), subject to renewal annually. The contract provided:

The principal recognizes the religious nature of the Catholic school and agrees that the employer retains the right to dismiss principal for immorality, scandal, disregard or disobedience of the policies or rules of the Ordinary of the Archdiocese of New York, or rejection of the official teaching, doctrine or laws of the Roman Catholic Church

(*Id.* ¶ 16; *see* AC Ex. 14, at 2.) The contract did not specify Plaintiff’s responsibilities as principal. (AC Ex. 14.)

Upon beginning her tenure as principal, Plaintiff implemented a new prayer system within the School in order to get the students “more involved” in prayer. (P’s Counter 56.1 ¶ 66.) Every morning, an eighth grader would meet with Plaintiff, after which Plaintiff would introduce him or her over the loud speaker, and the student would then recite a prayer. (*Id.* ¶ 67.) Plaintiff would then respond to the prayer by stating, “Praise to you Lord Jesus Christ.” (*Id.*; Weber Decl. ¶ 8.)⁶ The student would then read another prayer over the loud speaker, following which Plaintiff would recite the “Our Father” prayer. (P’s Counter 56.1 ¶ 67.) In the afternoon,

⁵ “Cassel Decl.” refers to the Declaration of Cathleen Cassel, (Doc. 93).

⁶ “Weber Decl.” refers to the Declaration of AnnMarie Weber, (Doc. 95).

Plaintiff often recited over the loud speaker a “reflection” containing a spiritual message. (*Id.* ¶ 68.)

Plaintiff’s religious involvement with the student body varied depending on the time of year and corresponding holidays⁷ and religious feasts. In general, Plaintiff would often attend regular mass with the students or special services to celebrate holy days or religious sacraments. (*Id.* ¶¶ 85-89.) On Fridays in October, Plaintiff would honor of the Feast of Our Lady of the Rosary by reciting over the loud speaker a “Decade of the Rosary,” which consists of the “Our Father” prayer, ten “Hail Mary” prayers, and one “Glory Be” prayer. (*Id.* ¶ 69.) Throughout October and May, Plaintiff would recite the “Prayer of the Rosary” over the loud speaker and, at the beginning of her tenure, advised the faculty at a meeting that she would provide rosary beads to any student or faculty member for the purpose of facilitating prayer. (*Id.* ¶¶ 70-71.) In honor of the Feast of St. Anthony, which is held in June, Plaintiff would plan a special ceremony at the School and would attend a Sunday mass attended by students and their parents. (*Id.* ¶ 114.) Thereafter, she would meet with students, their families and faculty, bringing with her a statue of St. Anthony which was prominently placed. (*Id.*) On or around September 11 each year, Plaintiff hosted a September 11 memorial prayer at the school, where she would recite prayers and Bible verses in front of a gathering of faculty and students. (*Id.* ¶ 115.)

Plaintiff also regularly supervised teachers and their curricula. Teachers were required to submit to Plaintiff each week a copy of their lesson plan books. (*Id.* ¶ 91.) She mandated that teachers’ lesson plan books identify the objective of each lesson, the method by which it would be taught, and the “Value” and “Saint” associated with the lesson. (*Id.* ¶ 93.) The Value and Saint were to be based on a chart of Catholic saints and corresponding Catholic values that

⁷ The parties disagree as to Plaintiff’s regular involvement in various Christmas and Advent school activities. (P’s Counter 56.1 ¶¶ 72-81.)

Plaintiff handed out to teachers at the beginning of each school year. (*Id.*) Plaintiff generally expected teachers to relate Christian and Roman Catholic doctrine and teachings to students. (*Id.* ¶ 94.) She would also observe teachers and “sought to ensure that Catholic values were found within the classroom.” (*Id.* ¶ 97.)

In addition to reviewing teachers’ curricula, Plaintiff would lead monthly faculty meetings at the School to discuss upcoming events. (*Id.* ¶ 102.) Each meeting began with a prayer led by Plaintiff. (*Id.* ¶ 103.) She also required that teachers attend a “Standards and Goals” meeting at the beginning of each school year, which she similarly led and began with a prayer. (*Id.* ¶ 104.)

Another of Plaintiff’s responsibilities was overseeing the drafting and dissemination of the St. Anthony’s Monthly Newsletter. (*Id.* ¶ 118.) These newsletters often thanked families for joining her at a school-related mass or invited them to do so. (*Id.* ¶ 121.) The newsletters also often communicated to parents Plaintiff’s joy and enthusiasm in joining with the students in their “spiritual” journey in finding Christ and thanked the parents for their help in facilitating the students’ journey. (*Id.* ¶ 122.) Plaintiff used the monthly newsletter as a vehicle to, among other things, encourage the religious and spiritual learning and growth of the students outside of school and to remind parents of upcoming events of religious significance. (*Id.* ¶ 123.)

At the end of each school year, Plaintiff would deliver religious messages to the graduating class. At the graduation ceremony for the eighth-grade students, Plaintiff would present a speech. (*Id.* ¶¶ 83, 124.) These speeches often included religious language and prayer. For example, the speech to her final graduating class closed with the following:

Let us pray for the class of 2011.

Dear Lord:

Bless these graduates as they go into the world to make it a better place. While they pursue their dreams, gently guide them, lead them, show them your way to success and happiness through service to others as they maximize their own potential. Fill them with joy as they reach their goals. Strengthen them as they deal with life's obstacles and show them that every challenge is a path to character development. Give them the intelligence to make their plans for their futures. Give them the patience and persistence to pursue their ambitions. Most of all, give them caring hearts to look for ways to help people on their life's journey. Encourage them and lift them up now. In Christ's name, we pray. In the name of the Father, the Son, and the Holy Spirit. God bless you.

(Weber Decl. ¶ 12; *id.* Ex. B.) Plaintiff would also include a religious message for the graduating class in the School yearbook. Her words of advice to the Class of 2011 included the following:

I was very confident that your spiritual, educational, and intellectual growth would have been achieved and you have proven that following Jesus's teaching along with the love and guidance from your parents, teachers and the community members that it was possible.

....

As you leave our school family, may the God of peace protect you, equip you, and work with you, through Jesus Christ, to whom be glory forever and ever. Amen.

God Bless you always,

Ms. Fratello

(Novikoff Decl. Ex. Q.)

Plaintiff was evaluated by the teachers at the School and by regional administrators. In March 2008, Monsignor Reynolds, the pastor at St. Anthony's, rated Plaintiff as "Excellent" with regard to many criteria used to evaluate her abilities as a "religious leader" – for example, "fosters a Christian atmosphere which enables staff and students to achieve their potential," "gives priority to a comprehensive religious education program," and "encourage[es] communal worship." (Novikoff Decl. Ex. J.) Similarly, Sister Helen Doychek, then the District Superintendent of Rockland County, also rated Plaintiff as an excellent religious leader of the

school. (*Id.* Ex. K.) She commended Plaintiff for “renewing the Catholic Identity of [the School,]” “setting a good example as a religious leader,” “bringing a renewed sense of Christian spirituality,” “creating an atmosphere rich with a sense of Catholic Community,” and “making religious values, attitudes and behavior the focus of life at the School.” (*Id.*) Many teachers at the School used similar descriptions in evaluating Plaintiff’s abilities as a religious leader. (*See id.* Exs. L-M; Ladolcetta Decl. ¶ 26; McGuirk Decl. ¶ 11; Driscoll Decl. ¶ 24.)⁸

B. Procedural History

Plaintiff alleges that she first complained about the alleged discriminatory conduct to others in the Archdiocese. (AC ¶ 163.) On October 12, 2011, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission, (*see* Doc. 15 Ex. B), which sent Plaintiff a notice of right to sue dated July 5, 2012, (AC Ex. 1). Plaintiff commenced this action within 90 days of the notice.

On March 5, 2013, Plaintiff filed her Amended Complaint, alleging that Defendants engaged in gender discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and section 296 *et seq.* of the New York State Executive Law. Plaintiff also asserted state-law claims for breach of contract and promissory estoppel, and sought a declaratory judgment protecting her free exercise of religion.

On April 26, 2013, Defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. 12.) In a bench ruling, I found that I could not determine whether the ministerial exception applied at the motion to dismiss stage because of the necessarily fact-intensive inquiry that exception necessitates, and because Plaintiff had plausibly alleged that she was not a minister, and had no religious training, duties or functions; that others handled all

⁸ “Ladolcetta Decl.” refers to the Declaration of Karen Ladolcetta, (Doc. 100). “McGuirk Decl.” refers to the Declaration of Carol McGuirk, (Doc. 99). “Driscoll Decl.” refers to the Declaration of Mary Ann Driscoll, (Doc. 96).

religiously related activities; and that she was simply a secular administrator doing what a public-school principal would do. (*See* Doc. 54 Ex. A, at 10.) I therefore directed the parties to engage in limited discovery on the issue. (*Id.* at 10-11.)⁹

On July 16, 2015, the parties filed the Motions now before me, (Docs. 90, 103). Defendants seek summary judgment on all of Plaintiff's claims based on the ministerial exception derived from the First Amendment, (*see* Ds' Mem. 1),¹⁰ while Plaintiff seeks "summary judgment striking Defendants' ministerial immunity defense" on the theory that she was simply a "lay principal" with secular, administrative responsibilities, (*see* P's Opp. 1-2).¹¹

II. LEGAL STANDARD

Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "[T]he dispute about a material fact is 'genuine' . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" if it "might affect the outcome of the suit under the governing law Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* On a motion for summary judgment, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255. The movant bears the initial burden of demonstrating "the absence of a genuine issue of material fact," and, if satisfied, the burden then shifts to the non-movant to present "evidence sufficient to satisfy every element of the claim." *Holcomb v. Iona Coll.*, 521 F.3d 130, 137 (2d Cir. 2008) (citing *Celotex*

⁹ I also dismissed Plaintiff's promissory estoppel claim in that ruling. (*Id.* at 17.)

¹⁰ "Ds' Mem." refers to Defendants' Memorandum of Law in Support of Defendants' Motion for Summary Judgment Dismissing Plaintiff's Claims on the Grounds that They Are Barred by the "Ministerial Exception," (Doc. 101).

¹¹ "P's Opp." refers to Plaintiff's Opposition to Motion for Summary Judgment, and Support of Cross-Motion to Strike Defendants' Ministerial Immunity Defense, (Doc. 107).

Corp. v. Catrett, 477 U.S. 317, 323-24 (1986)). “The mere existence of a scintilla of evidence in support of the [non-movant’s] position will be insufficient; there must be evidence on which the jury could reasonably find for the [non-movant].” *Anderson*, 477 U.S. at 252. Moreover, the non-movant “must do more than simply show that there is some metaphysical doubt as to the material facts,” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986), and he “may not rely on conclusory allegations or unsubstantiated speculation,” *Fujitsu Ltd. v. Fed. Express Corp.*, 247 F.3d 423, 428 (2d Cir. 2001) (internal quotation marks omitted).

“A party asserting that a fact cannot be or is genuinely disputed must support the assertion by . . . citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials” Fed. R. Civ. P. 56(c)(1). Where an affidavit is used to support or oppose the motion, it “must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant . . . is competent to testify on the matters stated.” Fed. R. Civ. P. 56(c)(4); see *Major League Baseball Props., Inc. v. Salvino, Inc.*, 542 F.3d 290, 310 (2d Cir. 2008). In the event that “a party fails . . . to properly address another party’s assertion of fact as required by Rule 56(c), the court may,” among other things, “consider the fact undisputed for purposes of the motion” or “grant summary judgment if the motion and supporting materials – including the facts considered undisputed – show that the movant is entitled to it.” Fed. R. Civ. P. 56(e)(2), (3).

III. DISCUSSION

The narrow question presented by the parties' Motions is whether Plaintiff's circumstances of employment cause her claims to fall within the ministerial exception, which would preclude her from bringing discrimination and retaliation claims against Defendants. The exception is an affirmative defense, *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 709 n.4 (2012), and accordingly Defendants bear the burden of establishing it. "[W]hether the exception attaches . . . is a pure question of law which this [C]ourt must determine for itself." *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 833 (6th Cir. 2015); see *Preece v. Covenant Presbyterian Church*, No. 13-CV-188, 2015 WL 1826231, at *3 (D. Neb. Apr. 22, 2015).

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and other employment discrimination laws ordinarily prohibit employers from discriminating against employees and from retaliating against those employees for lodging a complaint based on such discrimination. But First Amendment questions arise about the application of these antidiscrimination laws where the employer is a religious institution. See generally *Hosanna-Tabor*, 132 S. Ct. 694; *Rweyemamu v. Cote*, 520 F.3d 198 (2d Cir. 2008). The U.S. Supreme Court considered the intersection of Title VII and the First Amendment in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*. That decision and the line of cases that followed govern the instant inquiry, and I examine them below before turning to the facts presented here.

A. Hosanna-Tabor and Subsequent Case Law

In *Hosanna-Tabor*, the U.S. Supreme Court held that “a ‘ministerial exception,’ grounded in the First Amendment, . . . precludes application of [antidiscrimination] legislation to claims concerning the employment relationship between a religious institution and its ministers.” 132 S. Ct. at 705. The Court reasoned:

The members of a religious group put their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group’s right to shape its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.

Id. at 706; *see also Cote*, 520 F.3d at 204-05 (discussing several rationales for why, “[s]ince at least the turn of the century, courts have declined to interfere [] with ecclesiastical hierarchies, church administration, and appointment of clergy”) (second alteration in original) (internal quotation marks omitted).

The Supreme Court further confirmed, as the Second Circuit and “[e]very Court of Appeals to have considered the question” had previously held, that the ministerial exception does not apply only to “the head of a religious congregation.” *Hosanna-Tabor*, 132 S. Ct. at 707; *see also Cote*, 520 F.3d at 206-07 (collecting pre-*Hosanna-Tabor* cases applying exception to organist, music directors, press secretary and staff of Jewish nursing home). The Supreme Court was “reluctant, however, to adopt a rigid formula for deciding when an employee qualifies as a minister.” *Hosanna-Tabor*, 132 S. Ct. at 707. The Court instead thoroughly examined the “circumstances of [the plaintiff’s] employment” and delineated a number of factors on which it relied in concluding that the ministerial exception applied in her case. *Id.* at 707-10.

The Court first examined whether the employee, Cheryl Perich, was “held out” by her employer, a parochial school, as a minister, “with a role distinct from that of most of its members.” *Id.* at 707. Perich was a “called” teacher, meaning she received a “diploma of vocation” that granted her the title “Minister of Religion, Commissioned.” *Id.* She was tasked with performing that office “according to the Word of God and the confessional standards of the Evangelical Lutheran Church as drawn from the Sacred Scriptures.” *Id.* Her “skills of ministry” and “ministerial responsibilities” were periodically reviewed by the congregation. *Id.* The Court found that for these reasons, the church and school “held out” Perich as a minister. *Id.*

The Court next looked to Perich’s title – that of “Minister of Religion, Commissioned.” Aside from the obvious fact that her title included the word “minister,” this title reflected a significant amount of religious training and formal process. She had to complete “eight college-level courses in subjects including biblical interpretation, church doctrine, and the ministry of the Lutheran teacher.” *Id.* Additionally, Perich had to obtain the endorsement of her local church council “by submitting a petition that contained her academic transcripts, letters of recommendation, personal statement, and written answers to various ministry-related questions.” *Id.* Finally, Perich “had to pass an oral examination by a faculty committee at a Lutheran college.” *Id.* All in all, it took Perich six years to fulfill these requirements. “And when she eventually did, she was commissioned as a minister only upon election by the congregation, which recognized God’s call to her to teach.” *Id.* Perich’s title and the extensive formal training behind it weighed in favor of applying the ministerial exception.

Third, the Court considered whether Perich “held herself out as a minister of the Church by accepting the formal call to religious service” or “in other ways.” *Id.* at 707-08. It found that she had. Indicia of this included that Perich took a special housing allowance on her taxes for

those working “in the exercise of the ministry,” and that she filled out a post-employment form describing herself as serving “in the teaching ministry.” *Id.* at 708.

Finally, the Court examined Perich’s job responsibilities. These responsibilities, it found, reflected a role in conveying the Church’s message and carrying out its mission. Hosanna-Tabor expressly charged her with “lead[ing] others toward Christian maturity” and “teach[ing] faithfully the Word of God, the Sacred Scriptures, in its truth and purity and as set forth in all the symbolical books of the Evangelical Lutheran Church.” In fulfilling these responsibilities, Perich taught her students religion four days a week, and led them in prayer three times a day. Once a week, she took her students to a school-wide chapel service, and – about twice a year – she took her turn leading it, choosing the liturgy, selecting the hymns, and delivering a short message based on verses from the Bible. During her last year of teaching, Perich also led her fourth graders in a brief devotional exercise each morning.

Id. (alterations in original) (citation omitted). Thus, because Perich was “a source of religious instruction” and “performed an important role in transmitting the Lutheran faith to the next generation,” her job responsibilities weighed in favor of applying the ministerial exception. *Id.*

In reversing the Sixth Circuit’s decision, the Supreme Court also provided guidance as to where the court below had erred. It explained that the Sixth Circuit did not give enough weight to Perich’s title (including its attendant training and education); “gave too much weight to the fact that lay teachers at the school performed the same religious duties” as Perich; and “placed too much emphasis on Perich’s performance of secular duties.” *Id.*

Since *Hosanna-Tabor* was decided in 2012, the Fifth and Sixth Circuits and a handful of district courts have considered the application of the ministerial exception in a diverse range of employment discrimination cases. *See, e.g., Conlon*, 777 F.3d at 833-35 (holding that exception applied to “spiritual director”); *Cannata v. Catholic Diocese of Austin*, 700 F.3d 169, 176-79 (5th Cir. 2012) (applying exception to parish’s music director); *Rogers v. Salvation Army*, No. 14-CV-12656, 2015 WL 2186007, at *6-7 (E.D. Mich. May 11, 2015) (ministerial exception applied to “spiritual counselor”); *Herx v. Diocese of Fort Wayne-S. Bend Inc.*, 48 F. Supp. 3d 1168, 1177

(N.D. Ind. 2014) (finding “lay teacher” to be outside of ministerial exception); *Davis v. Baltimore Hebrew Congregation*, 985 F. Supp. 2d 701, 711 (D. Md. 2013) (member of janitorial staff of religious institution was not “minister” under exception). Notably, none of these courts have considered whether a parochial-school principal is a “minister” under the exception, although cases decided prior to *Hosanna-Tabor* found that they were. *Braun v. St. Pius X Parish*, 827 F. Supp. 2d 1312, 1318 (N.D. Okla. 2011) (citing *Sabatino v. St. Aloysius Parish*, 672 A.2d 217 (N.J. Super. Ct. App. Div. 1996)).

In any event, in light of the Supreme Court’s explicit rejection of “a rigid formula for deciding when an employee qualifies as a minister,” *Hosanna-Tabor*, 132 S. Ct. at 707, I must consider the specific circumstances of Plaintiff’s employment in concert with the case law discussed above to make this determination.

B. The *Hosanna-Tabor* Considerations As Applied to Plaintiff

As a preliminary matter, parochial schools are considered “religious organizations” for purposes of the ministerial exception. *See, e.g., Herx*, 48 F. Supp. 3d at 1177 (examining application of ministerial exception to parochial school teacher); *Dias v. Archdiocese of Cincinnati*, No. 11-CV-251, 2013 WL 360355, at *4 (S.D. Ohio Jan. 30, 2013) (same); *cf. Conlon*, 777 F.3d at 833-34 (“It is undisputed that InterVarsity *Christian Fellowship* is a Christian organization, whose purpose is to advance the understanding and practice of Christianity in colleges and universities. It is therefore a ‘religious group’ under *Hosanna-Tabor*.”) (emphasis in original); *Penn v. N.Y. Methodist Hosp.*, No. 11-CV-9137, 2016 WL 270456, at *3, 5 (S.D.N.Y. Jan. 20, 2016) (viewing ministerial exception on a “sliding scale,” where the more religious the employer institution is, the less religious the employee’s functions must be to qualify, and finding that hospital is institution to which exception applies). Because

the School is a parochial school, one purpose of which is clearly to advance the understanding and practice of Catholicism, it is a “religious organization” for purposes of the ministerial exception. The sole remaining question is thus whether Plaintiff is a “minister” under the exception.

I first examine whether Plaintiff was “held out” by the Archdiocese and the School as a minister, “with a role distinct from that of most of its members.” *Hosanna-Tabor*, 132 S. Ct. at 707. It is clear from the Archdiocese’s description of a principal’s position that it does hold principals out as ministers. Unlike other school staff, the principal is required to be a practicing Catholic. (P’s Counter 56.1 ¶ 21.) As principal, Plaintiff was tasked with “achieving the Catholic mission and purpose of the school” and being the “animator of the community of faith within the school.” (Admin. Manual at 023924.) Further, the principal is described as a religious liaison between the Archdiocese, the parish, the congregation, the students, and the parents, interacting with all entities and fostering a religious community. (*Id.* at 023803.) And, as in *Hosanna-Tabor*, the record indicates that Plaintiff was evaluated by superiors in the Archdiocese, the Monsignor, and her faculty based on, among other things, her effectiveness as a religious leader. (*See* Novikoff Decl. Exs. J-M; Ladolcetta Decl. ¶ 26; McGuirk Decl. ¶ 11; Driscoll Decl. ¶ 24.) These factors demonstrate that the Archdiocese and the school held Plaintiff out as a minister, weighing in favor of application of the ministerial exception.

I next look to Plaintiff’s title and the requisite education and training associated with that title. The contract that Plaintiff signed in 2007 was for the position of “Lay Principal.” (Ds’ Counter 56.1 ¶ 12.) As noted, in order to attain this position, Plaintiff was required to submit a letter confirming that she was a practicing Catholic. (P’s Counter 56.1 ¶ 21.) Principals are also, at least in theory, required to complete a Level 1 and Level 2 Catechist Certification Program

within three years of attaining that position, (Admin. Manual at 023808), although Plaintiff maintains (and I assume for purposes of these Motions) that this certification requirement was not strictly enforced. (P’s Counter 56.1 ¶ 18.) Plaintiff’s academic credentials are in education, and she does not have formal training in religion or theology. (*See* Ds’ Counter 56.1 ¶ 4.) Plaintiff’s title and training are thus different from some other employees who fell within the ministerial exception. Unlike those cases that involved “called teachers,” a “spiritual director,” or a “spiritual counselor,” for instance, there is nothing inherently religious about the title “Lay Principal.” Compare, e.g., *Hosanna-Tabor*, 132 S. Ct. at 707 (“called teacher”), *Conlon*, 777 F.3d at 834 (“spiritual director”), and *Rogers*, 2015 WL 2186007, at *6 (“spiritual counselor”), with *Herx*, 48 F. Supp. 3d at 1177 (“lay teacher”). And while principals must attest to their Catholic faith and it is at least suggested that they complete Catechist certification, nothing in the record suggests the rigorous level of education, training, and certification attained by plaintiffs such as Perich or other “called” teachers. *See Conlon*, 777 F.3d at 835. This factor in the inquiry therefore weighs against application of the ministerial exception. *See id.*

I next turn to whether Plaintiff “held herself out as a minister of the Church by accepting the formal call to religious service,” *Hosanna-Tabor*, 132 S. Ct. at 707, or “in other ways,” *id.* at 708. The Supreme Court in *Hosanna-Tabor* and the Northern District of Illinois in *Herzog v. St. Peter Lutheran Church* both found that “called teachers” had accepted a formal call to religious service by virtue of their positions and held themselves out as ministers as evidenced by, for example, taking special housing allowances on taxes for those working “in the exercise of the ministry.” *Hosanna-Tabor*, 132 S. Ct. at 708 (internal quotation marks omitted); *see Herzog v. St. Peter Lutheran Church*, 884 F. Supp. 2d 668, 673 (N.D. Ill. 2012). Plaintiff did not accept any such formal call, nor did she claim ministerial status for tax or other formal purposes, so this

factor weighs against the exception. But it does not weigh strongly because Plaintiff undoubtedly knew she would be perceived as a religious leader. The Archdiocese describes acceptance of the principal position as “accept[ing] the vocation and challenge of leadership in Catholic education.” (Admin. Manual at 023753.) Whether Plaintiff ever saw this description of the position or not, she had to verify her Catholic practice and answer questions about her Catholic leadership and vision when applying for the position. (Cassel Decl. ¶ 11.) In accepting this “vocation,” Plaintiff became the head of an undeniably Catholic institution. And the record demonstrates that Plaintiff held herself out to the school community as a religious authority in many ways – for example, by leading prayers for the student body and teachers, conveying religious messages in speeches and writings, and expressing the importance of Catholic prayer and spirituality in newsletters to parents. So while Plaintiff did not claim the formal trappings of a ministerial position, and while she had many secular responsibilities, she knew that in some of her public functions she would be part of “the critical process of communicating the faith,” *Hosanna-Tabor*, 132 S. Ct. at 712 (Alito, J., concurring), and would “personify [the Church’s] beliefs,” *id.* at 706 (majority opinion); *see id.* at 711 (“[I]t would be a mistake if the term ‘minister’ or the concept of ordination were viewed as central Instead, courts should focus on the function performed by persons who work for religious bodies.”) (Alito, J., concurring).

Fourth, I must examine whether Plaintiff’s job responsibilities “reflected a role in conveying the Church’s message and carrying out its mission.” *Id.* at 708 (majority opinion).¹² The record clearly indicates that Plaintiff filled such a role from the beginning of her tenure as principal at the School. Early on, Plaintiff instituted a new system of daily prayer in the morning to get students more involved. (P’s Counter 56.1 ¶ 66.) Plaintiff would lead prayers with the

¹² As discussed, this does not require that an employee stand in front of a congregation and lead mass. *See, e.g., Conlon*, 777 F.3d at 835; *Cannata*, 700 F.3d at 178-79.

school body over the loud speaker. (*Id.* ¶¶ 69-71, 85-89.) She was at the front and center of planning and facilitating special services for the Feast of St. Anthony and the September 11 memorial. (*Id.* ¶¶ 114-15.) Additionally, Plaintiff encouraged and supervised teachers’ integration of Catholic saints and religious values in their lessons and classrooms. (*Id.* ¶¶ 91, 93-94, 97.) Even outside the walls of the School, Plaintiff kept families connected to their students’ religious and spiritual development through the school newsletter. (*Id.* ¶¶ 118-23.) And at the end of each school year, Plaintiff sent eighth-grade students forth with a religion-infused commencement speech and yearbook message. (*Id.* ¶¶ 83, 124; *see* Novikoff Decl. Ex. Q; *see also* Weber Decl. ¶ 12; *id.* Ex. B.) Not only did Plaintiff do all of these things, but she was evaluated on how well she did them. (*See* Novikoff Decl. Exs. J-M; Ladolcetta Decl. ¶ 26; McGuirk Decl. ¶ 11; Driscoll Decl. ¶ 24.) There can be no doubt that Plaintiff’s job responsibilities included “conveying the Church’s message and carrying out its mission.” *Hosanna-Tabor*, 132 S. Ct. at 708. Through her efforts in “fostering a Christian atmosphere” in the School, (Novikoff Decl. Ex. J), “renewing [its] Catholic identity,” (*id.* Ex. K), leading prayers and sharing Catholic values, Plaintiff “serve[d] as a messenger or teacher of [the Church’s] faith.” *Hosanna-Tabor*, 132 S. Ct. at 712 (Alito, J., concurring). Accordingly, this factor weighs strongly in favor of application of the ministerial exception.

Plaintiff’s arguments against applying the ministerial exception are unpersuasive. As *Hosanna-Tabor* and other case law instructs, it does not matter what percentage of time Plaintiff spent on secular or administrative matters as compared to leading prayer or otherwise conveying the message of the Archdiocese and Catholic church, nor does it matter that other “lay” teachers engaged in similar religious activities as Plaintiff. *See id.* at 708-09 (majority opinion); *Preece*, 2015 WL 1826231, at *5; *Herzog*, 884 F. Supp. 2d at 674. The argument that Plaintiff was

acting at the direction of the Archdiocese and the Monsignor is similarly unpersuasive. Were this determinative, none of the plaintiffs in the cases discussed above would fall under the ministerial exception. *See Hosanna-Tabor*, 132 S. Ct. at 708; *Conlon*, 777 F.3d at 835; *Cannata*, 700 F.3d at 178-79; *Rogers*, 2015 WL 2186007, at *6-7; *Preece*, 2015 WL 1826231, at *5; *Herzog*, 884 F. Supp. 2d at 674. And Plaintiff's continued attempt to rely on canon law, (*see* P's Mem. 9-12), is misplaced, as I have previously held. There is no dispute that Plaintiff is not a member of the clergy and that she would not be considered a minister for purposes of Church governance. But the issue here is one of U.S., not canon, law, and "minister" for purposes of the ministerial exception has a far broader meaning than it does for internal Church purposes. Finally, Plaintiff's suggestion that application of the ministerial exception in a case such as this would open the door to a "parade of horrors" has been rejected by the Supreme Court. *See Hosanna-Tabor*, 132 S. Ct. at 710.

Considering the factors discussed in *Hosanna-Tabor* and the totality of Plaintiff's circumstances of employment, I find on balance that the ministerial exception applies. While Plaintiff's title and attendant training and education weigh against application of the exception, and while Plaintiff's not claiming to be a minister weighs slightly against it as well, the other factors discussed above – the distinct ministerial role the Church assigns her and, most significantly, Plaintiff's job responsibilities – carry far more weight. And as the Supreme Court has cautioned, the inquiry is not intended to consist of a "rigid" checklist but is instead a holistic examination of an employee's circumstances. *Id.* at 707-08; *see Cannata*, 700 F.3d at 176 ("Any attempt to calcify the particular considerations that motivated the Court in *Hosanna-Tabor* into a 'rigid formula' would not be appropriate."); *id.* at 177 (application of exception does not depend on finding that Plaintiff satisfies same considerations that motivated finding in *Hosanna-Tabor*);

see also Conlon, 777 F.3d at 835 (applying the ministerial exception even though not all *Hosanna-Tabor* factors were satisfied). While Plaintiff may not regard the religious aspect of her job as nearly as significant as the secular aspects, there can be no real doubt that Plaintiff “furthered the mission of the church and helped convey its message.” *Cannata*, 700 F.3d at 177.

Accordingly, Defendants have carried their burden of establishing on the undisputed facts that Plaintiff falls within the ministerial exception to Title VII, and summary judgment in favor of Defendants is appropriate.

C. Plaintiff’s State-Law Claims

In addition to her federal antidiscrimination and retaliation claims, Plaintiff further alleges violations of New York State Executive Law section 296 *et seq.* and breach of contract. (AC ¶¶ 206-29.) The “traditional ‘values of judicial economy, convenience, fairness, and comity’” weigh in favor of declining to exercise supplemental jurisdiction where all federal-law claims are eliminated before trial. *Kolari v. N.Y.-Presbyterian Hosp.*, 455 F.3d 118, 122 (2d Cir. 2006) (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988)). Having determined that all of the claims over which this Court has original jurisdiction should be dismissed, and having considered the factors set forth in *Cohill*, I decline to exercise supplemental jurisdiction over Plaintiff’s remaining state-law causes of action. *See id.* (citing 28 U.S.C. § 1367(c)(3)).

IV. CONCLUSION

For the reasons stated above, Defendants' Motion for summary judgment is GRANTED and Plaintiff's Cross-Motion to strike Defendants' ministerial-immunity defense is DENIED. The federal claims are dismissed with prejudice and the state claims are dismissed without prejudice. The Clerk of Court is respectfully directed to terminate the pending Motions, (Docs. 90, 103), enter judgment for Defendants, and close the case.

SO ORDERED.

Dated: March 29, 2016
White Plains, New York



CATHY SEIBEL, U.S.D.J.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
JOANNE FRATELLO,

Plaintiff,

-against-

ROMAN CATHOLIC ARCHDIOCESE OF NEW
YORK, ST. ANTHONY'S SHRINE CHURCH,
and ST. ANTHONY'S SCHOOL.

Defendants.

-----X

USDC SDNY

DOCUMENT

ELECTRONICALLY FILED 03/30/2016

12 CIVIL 7359 (CS)

JUDGMENT

Defendants having moved for summary judgment and Plaintiff having filed a cross-motion to strike Defendants' ministerial-immunity defense, and the matter having come before the Honorable Cathy Seibel, United States District Judge, and the Court, on March 29, 2016, having rendered its Opinion and Order granting Defendants' Motion for summary judgment and denying Plaintiff's Cross-Motion to strike Defendants' ministerial-immunity defense and dismissing the federal claims are with prejudice and dismissing the state claims without prejudice; and directing the Clerk of Court to terminate the pending motions, (Docs. 90, 103), enter judgment for Defendants, and close the case, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion and Order dated March 29, 2016, Defendants' Motion for summary judgment is granted and Plaintiff's Cross-Motion to strike Defendants' ministerial-immunity defense is denied. The federal claims are dismissed with prejudice and the state claims are dismissed without prejudice; accordingly, the case is closed.

Dated: New York, New York
March 30, 2016

RUBY J. KRAJICK

Clerk of Court

BY:

K. mango

Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOANNE FRATELLO,

Plaintiff-Appellant,

NOTICE OF APPEAL

12-CV-7359 (CS)

-against-

ROMAN CATHOLIC ARCHDIOCESE OF
NEW YORK, ST. ANTHONY'S SHRINE
CHURCH, and ST. ANTHONY'S SCHOOL,

Defendants-Appellees..

Notice is hereby given that Plaintiff JOANNE FRATELLO hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment of the U.S. District Court of the Southern District of New York (Hon. Cathy Seibel, USDJ); filed in this action on the 30th day of March, 2016, as well as the court's Opinion and Order dated March 29, 2016, and from each and every part thereof.

Dated: Stony Point, New York
April 25, 2016

_____/S/
MICHAEL D. DIEDERICH, JR.
Attorney for Plaintiff-Appellant MD 2097
361 Route 210
Stony Point, NY 10980
(845) 942-0795
Mike@DiederichLaw.com

TO: KENNETH A. NOVIKOFF, ESQ.
Rivkin Radler LLP
Counsel for Defendants
Via ECF