STATE OF INDIANA)		IN THE MARION SUPERIOR COURT
) SS:		
COUNTY OF MARION)		
		CAUSE NO. 49D01-1907-PL-27728
JOSHUA PAYNE-ELLIOTT,	)	
	)	
Plaintiff,	)	
	)	
ROMAN CATHOLIC ARCHDIOCESE OF INDIANAPOLIS, INC.,	)	
	)	
	)	
Defendant.	)	

ARCHDIOCESE'S REPLY IN SUPPORT OF MOTION TO DISMISS

INTRODUCTION

Plaintiff does not dispute that his lawsuit seeks to punish the Archdiocese of Indianapolis for telling Cathedral High School what rules it needed to follow in order to remain a Catholic school. Nor does he dispute that the Archdiocese's actions were motivated by clear, longstanding Catholic teaching on marriage and sexuality, which Plaintiff knowingly and willfully violated. Instead, Plaintiff says he wants to use the power of this Court to probe whether the Archdiocese is "enforc[ing] [its] rules relating to those teachings *equally* to heterosexuals and homosexuals alike"—such as by asking "whether the Archdiocese has instructed schools to terminate teachers alleged to violate Church teachings" in *other* ways, "such as divorce and re-marriage without annulment, unmarried co-habitation, marriage without the sacrament, or other practices." Opp. 10 (emphasis added). In other words, Plaintiff wants to have a trial about "whether the Archdiocese was truthfully motivated to enforce Church teachings consistently." Opp. 10-11.

It is not hard to see where this will lead. Plaintiff go on a fishing expedition looking for alleged inconsistencies—none of which he has alleged in his Complaint, on information and belief or otherwise. He will then try to offer evidence that he thinks shows that the Archdiocese is being inconsistent in its application of Church teachings—such as evidence that a teacher was living with his girlfriend but was not fired, or that a Protestant teacher denied the authority of the Pope

but was not fired. The Archdiocese will then offer testimony from the Archbishop or another theologian explaining why, as a matter of religious doctrine, these situations are *not* comparable, and Plaintiff's evidence *doesn't* show inconsistent application of Church teachings. This Court—or a jury—will then have to decide which account of religious doctrine to believe. If it believes the Plaintiff's account, the Court will issue a judgment that punishes the Catholic Church for telling a Catholic school that it cannot remain affiliated with the Catholic Church if it continues to employ teachers who live in unrepentant violation of Church teaching.

If this seems like a troubling outcome, that's because it is. And that is why courts have repeatedly held that claims like Plaintiff's—which seek to "penalize" a church over "a matter of internal church policy and administration"—are barred by the First Amendment. *Brazauskas v. Fort Wayne-S. Bend Diocese, Inc.*, 796 N.E.2d 286, 294 (Ind. 2003). Such claims violate the right of churches "to decide for themselves, free from state interference, matters of church government [and] faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). They "clearly and excessively entangle[] [the courts] in religious affairs in violation of the First Amendment." *McEnroy v. St. Meinrad Sch. of Theology*, 713 N.E.2d 334, 337 (Ind. Ct. App. 1999). They violate the freedom of expressive association. And they are inconsistent with the ministerial exception.

The Court can take its pick. Multiple, overlapping First Amendment doctrines bar this lawsuit at the outset, and the case must be dismissed.

ARGUMENT

I. Plaintiff fails to state a claim for intentional interference.

As explained in our initial memorandum (at 8-10), Plaintiff has failed to allege facts supporting a key element of his tortious interference claim—namely, that the Archdiocese's actions were "not justified." Instead, the Complaint contains only a bare assertion of this legal conclusion. Compl. ¶ 30, 36. And Indiana courts have been clear on this matter: "To properly state a cause of action for intentional interference with contractual rights, a plaintiff must state more than a mere assertion that the defendant's conduct was unjustified"; rather "the plaintiff must set forth factual allegations

from which it can reasonably be inferred that the defendant's conduct was unjustified." *Morgan Asset Holding Corp. v. CoBank, ACB*, 736 N.E.2d 1268, 1272 (Ind. Ct. App. 2000); *see also Mourning v. Allison Transmission, Inc.*, 72 N.E.3d 482, 488 (Ind. Ct. App. 2017) ("In order to adequately plead . . . the absence of justification . . . the plaintiff must state more than a mere assertion that the defendant's conduct was unjustified.") (citations omitted).

Plaintiff never directly responds to this argument. Instead, he claims that "recent Indiana Court of Appeals decisions," when considering whether the defendants conduct was "unjustified," have shifted from asking whether the conduct was "malicious" to asking whether it was "fair and reasonable under the circumstances." Opp. 6-7 (quotation omitted) (citing *Winkler v. V.G. Reed & Sons, Inc.*, 638 N.E.2d 1228, 1235 (Ind. 1994)). But that shift doesn't help the Plaintiff here, because Plaintiff hasn't alleged *any* operative facts under *either* standard.

More importantly, the First Amendment problem is the same under either standard. Under *Winkler*, a court must assess (among other things) "the defendant's motive," "the interests sought to be advanced by the defendant," and "the social interests in protecting the freedom of action of the defendant." *Id.* at 1235. Invoking this standard, Plaintiff says he plans to show that the Archdiocese's actions were "unjustified" because it "unfavorably treated homosexual employees, as compared to heterosexual employees who violated similar Church teachings." Opp. 11. But the Complaint pleads *no facts* on this point—on information and belief or otherwise. And asking this Court to weigh whether one violation of "Church teachings" was "similar" to another—and, thus, that the Archdiocese was required to treat different violations of Church teaching similarly—would force "a civil court . . . and perhaps a jury . . . to make judgment about church doctrine," which would "dangerously undermine the religious autonomy that lower court case law has now protected for nearly four decades." *Hosanna-Tabor Evangelical Lutheran Church Sch. v. EEOC*, 565 U.S. 171, 205 (2012) (Alito, J., joined by Kagan, J., concurring).

In short, Plaintiff hasn't pleaded the operative facts of a tortious interference claim under *either* standard—and *both* standards present the same intractable First Amendment problem.

II. The Court lacks jurisdiction over questions of church governance.

As explained in our memorandum (at 10-14), the Supreme Court has repeatedly held that "civil courts exercise no jurisdiction" over matters of "church discipline [or] ecclesiastical government." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733 (1871). Applying this principle, courts have repeatedly barred tort suits like this one that would punish a church for disciplining its members or enforcing rules of church governance. Mem. 11. In fact, Indiana courts have repeatedly applied church autonomy doctrine to bar lawsuits that are indistinguishable from this one. Mem. 12-14.

In response, Plaintiff offers several arguments, none of which have merit. *First*, he questions whether the doctrine of church autonomy "even exists," claiming that "[t]he U.S. Supreme Court does not recognize the doctrine of 'church autonomy.'" Opp. 8 n.2, 12. This is silly. The Supreme Court has repeatedly held that that "the Religion Clauses . . . preserve[] the autonomy and freedom of religious bodies," *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972), which includes the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Hosanna-Tabor*, 565 U.S. at 186 (quoting *Kedroff*, 344 U.S. at 116). Thus, lower courts have repeatedly recognized "[t]he church autonomy doctrine," *Korte v. Sebelius*, 735 F.3d 654, 677 (7th Cir. 2013), and the Indiana Supreme Court has applied "the church autonomy doctrine" on facts indistinguishable from this case. *Brazauskas v. Fort Wayne-S. Bend Diocese, Inc.*, 796 N.E.2d 286, 293 (Ind. 2003) (internal quotation and citation omitted).

Second, Plaintiff claims that the "'church autonomy' defense is best addressed on a motion for summary judgment, rather than a Rule 12(B)(1) motion for lack of subject matter jurisdiction." Opp. 9. But this ignores the many courts that have treated the church autonomy defense as jurisdictional—including Indiana appellate courts. Mem. 11-14; *see, e.g.*, *McEnroy*, 713 N.E.2d at 337 (Ind. Ct. App. 1999); *Dwenger v. Geary*, 14 N.E. 903, 908-09 (Ind. 1888); *C.L. Westbrook, Jr. v. Penley*, 231 S.W.3d 389, 399-400 (Tex. 2007); *Byrd v. DeVeaux*, No. CV DKC 17-3251, 2019 WL 1017602, at *8 (D. Md. Mar. 4, 2019); *O'Connor v. Diocese of Honolulu*, 77 Haw. 383, 390, 885 P.2d 361, 368 (Haw. 1994); *In re Torres*, No. 07-19-00220-CV, 2019 WL 3437758, at *3 (Tex. App. July 30, 2019); s*ee also Serbian E. Orthodox Diocese for U. S. of Am. & Canada v.*

Milivojevich, 426 U.S. 696, 714 (1976). More importantly, whether the Archdiocese's motion is considered under Rule 12(B)(1), 12(B)(6), or 56, the result is the same: the claims are barred under the First Amendment. *Brazauskas*, 796 N.E.2d at 294.

Third, Plaintiff argues that his claims can be "decided by applying neutral principles of law." Opp. 9. In particular, he argues that the Court (or jury) should examine whether the Archdiocese enforces its religious teachings "equally to heterosexuals and homosexuals alike," such as by treating a same-sex marriage the same as "divorce and re-marriage without annulment, unmarried co-habitation, marriage without the sacrament, or other practices." Opp. 10. This, he claims, "does not require the Court to decide questions of Church doctrine." Opp. 11. But of course it does. Every violation of Church teaching is different. And whether two violations of Church teaching are sufficiently "similar" that the Church should treat them "alike" is fundamentally a religious question. Thus, courts have repeatedly held it "would violate the First Amendment" to have a civil court "assess the relative severity of offenses." *Curay-Cramer v. Ursuline Acad. of Wilmington, Delaware*, 450 F.3d 130, 139 (3d Cir. 2006).

Curay-Cramer is illustrative. There, the plaintiff was an English teacher at a Catholic school who was terminated after she signed a public newspaper advertisement opposing the Catholic Church's teaching on abortion. 450 F.3d at 132. She claimed that the Catholic school was discriminating against her based on her sex; in support, she pointed out that the school had not fired male employees who committed "substantially similar offenses," *id.* at 139, such as getting "divorced and remarried," "public[ly] practic[ing] the Jewish religion," and publicly disagreeing with the Church's position on "capital punishment and the war with Iraq." Br. of Appellant at 17, 20, *Curay-Cramer*, 450 F.3d 130 (No. 04-4628), *brief available at* 2005 WL 4906185. The Third Circuit, however, held that her claim was barred because it "would require an analysis of Catholic doctrine." 450 F.3d at 140. "We conclude that if we were to consider whether being Jewish or opposing the war in Iraq is as serious a challenge to Church doctrine as is promoting a woman's right to abortion, we would infringe upon the First Amendment Religion clauses." *Id.* The same logic applies here: Plaintiff asks the Court to consider whether divorce and re-marriage, unmarried

co-habitation, or "other practices" (Opp. 10) are "as serious a challenge to Church doctrine" as is same-sex marriage; such an inquiry is equally barred by the First Amendment. *Id.* And it has been barred by multiple courts. *See, e.g.*, *Hall v. Baptist Memorial*, 215 F.3d 618, 626-27 (6th Cir. 2000) ("If a particular religious community wishes to differentiate between the severity of violating two tenets of its faith, it is not the province of the federal courts to say that such differentiation is discriminatory.").

Finally, Plaintiff tries in vain to distinguish two of the three Indiana appellate decisions that are squarely on point. The first is *McEnroy v. St. Meinrad Sch. of Theology*, 713 N.E.2d 334, in which the Court of Appeals barred a tortious interference claim by a Catholic seminary professor against an Archabbot who ordered the seminary to dismiss her. Plaintiff claims *McEnroy* is distinguishable because it involved a "professor involved in the training of priests" whose employment "was subject to the Archabbot's discretion." Opp. 11. But nothing in the court's legal analysis turned on those facts. The professor could have just as easily taught history, and the relevant church official could have just as easily been an Archbishop, and the problem with the legal claim would have been the same: It would require the court to determine whether the professor's conduct rendered her "seriously deficient" under canon law, and whether the Archbishop "properly exercised his jurisdiction" over the seminary. 713 N.E.2d at 337. That is precisely what the court is being asked to decide here: whether Plaintiff's conduct rendered him "seriously deficient" as a Catholic school teacher under canon law, and whether the Archbishop "properly exercised his jurisdiction" over Cathedral. Thus, the cases are on all fours.

The second case is *Brazauskas*, in which the Indiana Supreme Court barred a tortious interference claim by a former diocesan employee who claimed that a priest and bishop at the diocese prevented her from getting a job at Notre Dame by informing Notre Dame of her past lawsuit against the diocese. 796 N.E.2d 286. Plaintiff claims *Brazauskas* is distinguishable because the plaintiff in that case was previously "employed by" the diocese as "Director of Religious Education and Liturgy," and she sued the diocese "before [s]he got fired." Opp. 12. But nothing in the Court's analysis turned on those facts; indeed, those facts are entirely irrelevant to a tortious

interference claim. Rather, the Court held that the claim was barred because it would "penalize communication and coordination among church officials" on "a matter of internal church policy and administration." *Brazauskas*, 796 N.E.2d at 294. That is precisely what Plaintiff's lawsuit would do here: "penalize communication and coordination" between the Archbishop and Cathedral on "a matter of internal church policy and administration." *Id.* Unable to distinguish *Brazauskas*, Plaintiff repeatedly invokes Justice Sullivan's *dissent*, claiming that the Indiana Supreme Court in *Brazauskas* "did not thoroughly analyze the church autonomy defense." Opp. 12. But no matter how much Plaintiff disagrees with the majority's analysis in *Brazauskas*, it is still binding on this Court.

The third case is *Dwenger v. Geary*, 14 N.E. 903, 908, in which the Indiana Supreme Court held that the Catholic Church has a First Amendment right to establish "rules [for] the government of [its]" institutions, and that civil courts "cannot review or question ordinary acts of church discipline." Plaintiff doesn't even cite *Dwenger*, much less try to distinguish it, and for good reason: Just as in *Dwenger*, Plaintiff asks this Court to review "ordinary acts of church discipline"—namely, the Archdiocese's act of telling Cathedral High School what rules it needed to follow in order to remain Catholic. But as the Indiana Supreme Court said over a century ago, "No power save that of the church can rightfully declare who is Catholic." *Id.*

In short, Plaintiff's claims are barred by the doctrine of church autonomy as applied in *McEnroy*, *Brazauskas*, and *Dwenger*. Plaintiff cannot use the power of this Court to punish an ordinary act of Church discipline.[1]

III. Plaintiff's claims are barred by freedom of association.

Plaintiff's claims are equally barred by the First Amendment freedom of association. As we have explained (Mem. 14-17), the right of expressive association forbids the government from

[1] Plaintiff also offers a string of cases in which he says courts "declined to apply the 'church autonomy' doctrine." Opp. 12-13 (collecting cases). But this is no more persuasive than arguing that a court should reject a free speech claim because some courts have rejected free speech claims. Of course, "church autonomy" is not an absolute right that prevails in every case, but none of Plaintiff's cases are similar to this one.

taking actions that would "significantly affect [an organization's] ability to advocate public or private viewpoints." *Boy Scouts v. Dale*, 530 U.S. 640, 641 (2000). Here, punishing the Archdiocese for telling Cathedral what rules it needed to follow in order to remain Catholic is no more permissible than punishing the Boy Scouts for telling scout leaders what rules they needed to follow in order to remain scouts.

Plaintiff offers four arguments in response. *First*, Plaintiff says that the freedom of association does not apply to "common law tort claims," because tort claims do not involve "governmental action." Opp. 14. This is simply wrong. Courts have repeatedly held that *judicial* enforcement of private tort claims is a form of government action subject to the First Amendment. This is well established under the church autonomy doctrine. See Mem. 2, 11-12 (collecting cases). It is equally well-established under the Free Speech Clause—which is the source of the freedom of association. *See, e.g.*, *Synder v. Phelps*, 562 U.S. 443 (2011) ("The Free Speech Clause of the First Amendment . . . can serve as a defense in state tort suits."). And it has been consistently applied in freedom of association cases, including cases involving claims of tortious interference with business relations. *See, e.g.*, *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 907-08 (1982) (private tortious interference claims barred by "freedom of association"); *Krystkowiak v. W.O. Brisben Companies, Inc.*, 90 P.3d 859, 861 (Colo. 2004) (same).

Second, Plaintiff claims that his lawsuit will not interfere with the association between the Archdiocese and Cathedral, because "Cathedral is 'affiliated with The Brothers of Holy Cross,' not the Archdiocese." Opp. 15 (citation omitted). But Cathedral is affiliated with *both* institutions. Indeed, a key allegation of the Complaint is that the Archdiocese "exercises significant control over Cathedral, including, but not limited to, its recognition of Cathedral as a Catholic school." Compl. ¶ 8; *see* Mem. 3 (explaining the relationship between the entities under canon law). Ultimately, Plaintiff wants this Court to punish the Archdiocese for telling Cathedral what rules it needs to follow in order to remain affiliated with the Archdiocese. Plaintiff can't claw back his own allegations simply because they present serious First Amendment problems.

Third, Plaintiff says the Archdiocese "cannot use the freedom of association defense to bar Payne-Elliott's claims if it has applied its policies inconsistently." Opp. 15. But its sole citation for this is dictum in a case that *upheld* an expressive-association challenge. *Our Lady's Inn v. City of St. Louis*, 349 F. Supp. 3d 805, 822 (E.D. Mo. 2018) (emphasis added). More importantly, the Supreme Court has already closed the "inconsistency" door. In *Boy Scouts of America v. Dale*, the plaintiff claimed that the Boy Scouts could not invoke the right of expressive association because they did not "revoke the membership of *heterosexual* Scout leaders that openly disagree with the Boy Scouts' policy on sexual orientation." 530 U.S. at 655 (emphasis added). But the Supreme Court rejected this inconsistency as "irrelevant," emphasizing that "it is not the role of the courts to reject a group's expressed values because they . . . find them internally inconsistent." *Id.* at 655, 651. So too here. And in any event, Plaintiff's Complaint alleges that the policy against affiliation with schools employing teachers in same-sex relationships *is* consistently applied. *See* Compl. ¶¶ 13-16 (Brebeuf).

Fourth, Plaintiff argues this Court should accept his view that the Archdiocese's message will not "be impeded through an association with any single person" given its "68 schools" and other ministries. Opp. 16. But that gets things backward: courts must "give deference to an association's view of what would impair its expression," especially in the context of religious groups, since "the content and credibility of a religion's message depend vitally upon" its messengers. Mem. 16-17 (quoting *Dale*, 530 U.S. at 653, and *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 201 (2012) (Alito, J., concurring, joined by Kagan, J.)). Thus, the Supreme Court recognized that the Boy Scouts of America had a legitimate free association right, no less than its local chapter, to not affiliate with a single gay scoutmaster, *Dale*, 530 U.S. at 652-53, despite the great "size and enormous prestige" of its million-person adult membership, *id.* at 697

(Stevens, J., dissenting); *see also Our Lady's Inn*, 349 F. Supp. 3d at 821-22 (forced inclusion of unfaithful faculty and staff would undermine archdiocesan school's message).[2]

IV. Plaintiff's claims are barred by the ministerial exception.

Plaintiff's claims are also barred by the ministerial exception, because, as a Catholic teacher, he was tasked with "leading [his] students toward Christian maturity," "teaching the Word of God," encouraging his students' participation in the Catholic sacraments, and modeling and supporting Catholic teaching. Mem. Ex. 1 at 3-4. Plaintiff offers two arguments in response.

First, Plaintiff claims that the ministerial exception does not apply "outside of the employer-employee relationship." Opp. 17 (citing *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 304 F. Supp. 3d 514, 519-20 (N.D. Miss. 2018)). But on that score, his own authority betrays him: In the very case he cites, the judge ultimately dismissed the tort claims on jurisdictional grounds. *McRaney*, No. 1:17-CV-00080, 2019 WL 1810991, at *3. That was because the claims required assessing whether certain actions "were done 'without right or justifiable cause,'" which would mean assessing "whether the [church] had a valid religious reason for its actions"—which "the Court cannot do." *Id.* Further, Plaintiff's argument is in tension with his own filing of an EEOC complaint against the Archdiocese, and his expressed intent "to amend his Complaint" to add employment discrimination claims. Compl. ¶ 4 n.1; Mot. Reconsider Ruling on Protective Order at Ex. 7 and 8 (EEOC filings).

In any event, if one is a minister at a Catholic school, then bringing a lawsuit that would punish a Catholic diocese for giving the school guidance on its hiring practices necessarily "interferes with the internal governance of the [Catholic] church." *See Hosanna-Tabor*, 565 U.S. at 188. This

[2] Plaintiff is also mistaken to say *CLS v. Martinez* "seriously calls into question" the viability of *CLS v. Walker*. Opp. 16. As several courts have recognized, "*Martinez* is not controlling and is of limited instructive value" outside of the context of an "all-comers policy"—which was not at issue in *CLS v. Walker*. *Intervarsity Christian Fellowship v. Bd. of Governors of Wayne State Univ.*, No. 19-10375, 2019 WL 4573800, at *7 (E.D. Mich. Sept. 20, 2019); *see Bus. Leaders in Christ v. Univ. of Iowa*, 360 F. Supp. 3d 885, 898 (S.D. Iowa 2019) (relying on *Walker* and like cases to grant summary judgment on expressive association claim where no all-comers policy was at issue).

is why courts regularly dismiss under the ministerial exception claims against *both* the Catholic-ministry employer *and* the ministry's diocese. *See Fratello v. Archdiocese of New York*, 863 F.3d 190 (2d Cir. 2017) (dismissing lawsuit against both school employer and archdiocese); *Cannata v. Catholic Diocese of Austin*, 700 F.3d 169, 177 (5th Cir. 2012) (same); *Rosati v. Toledo, Ohio Catholic Diocese*, 233 F. Supp. 2d 917, 918 (N.D. Ohio 2002) (same for both wrongful termination and emotional-distress tort claim). In other words, if Plaintiff had sued both Cathedral and the Archdiocese, it would be obvious that the ministerial exception bars both claims. And the scope of the First Amendment doesn't change just because the Plaintiff chose not to sue Cathedral.

Similarly, courts also rely on the ministerial exception to dismiss claims brought by non-employees against an employer, such as lack of consortium claims by a former employee's spouse, or defamation claims directed at third parties when those claims relate to decisions about retaining a minister. *See, e.g., Ogle v. Church of God*, 153 F. App'x 371, 372-73 (dismissing lack of consortium claim by spouse and defamation claims against individual church officers). The relevant consideration is not whether the plaintiff was an employee, but whether a claim will limit a religious group's ability to select ministers for its faith. Courts "look to the substance and effect of a plaintiffs' complaint, not its emblemata." *Natal v. Christian and Missionary Alliance*, 878 F.2d 1575, 1577 (1st Cir. 1989) (granting motion to dismiss). "Howsoever a suit may be labeled, once a court is called upon to probe into a religious body's selection and retention of clergymen, the First Amendment is implicated." *Id.*

Second, Plaintiff claims that the ministerial exception requires a fact-intensive analysis that "should not be decided until the parties have completed discovery." Opp. 18. But while the ministerial exception can *sometimes* require limited discovery, here the ministerial exception applies based on the complaint and documents incorporated by reference in the complaint. Plaintiff's contract renewal, attached as Exhibit A to the Complaint, incorporates the "policies and procedures" of the Cathedral Handbook. Compl. Ex. A at 1. That Handbook tasks Plaintiff with "leading [his] students toward Christian maturity and with teaching the Word of God," encouraging his students' participation in the Catholic sacraments (the center of Catholic worship),

and otherwise supporting and modeling Catholic teaching. Mot. Dismiss Ex. 1 at 3-4. Plaintiff's Complaint also references Cathedral being required by the Archdiocese to incorporate "language used in teacher contracts at Archdiocesan schools." Compl. ¶¶ 13-16. As explained in the Memorandum supporting the Motion to Dismiss, the job duties of someone in Payne-Elliott's role under such "ministry" contracts come with a host of duties, including "religious instruction," prayer with students, the "plan[ning] and celebrat[ing] [of] liturgies and prayer services," and "the integration of moral values in all curriculum areas." Mem. 5 (referring to the job description in Exhibit 2).

If Plaintiff had made concrete factual allegations disputing that these were his duties, and if his claims were not already barred by the right of church autonomy and expressive association, then limited discovery on the applicability of the ministerial exception might be appropriate.[3] But given the duties clearly set forth in the documents incorporated by reference in the Complaint and exhibits, Plaintiff cannot distinguish the many cases barring claims by employees who "served a religious function." *Sterlinski v. Catholic Bishop of Chicago*, 934 F.3d 568, 570 (7th Cir. 2019); *see Alicea-Hernandez v. Catholic Bishop of Chicago*, 320 F.3d 698, 704 (7th Cir. 2003) (because press secretary "was integral in shaping the message that the Church presented to the Hispanic community[,] [w]e therefore conclude that Alicea-Hernandez served a ministerial function for the Church"). And even when courts consider the "totality of the circumstances," they tend to find that a role teaching faith "outweigh[s] other considerations." *Grussgott v. Milwaukee Jewish Day Sch., Inc.*, 882 F.3d 655, 661 (7th Cir. 2018), *cert. denied*, 139 S. Ct. 456 (2018); *see, e.g.*, *Fratello*, 863

[3] It is incorrect to assert that *Grussgott* or *Sterlinski* were decided "after the completion of discovery and a fully developed record." Opp. 19. Both cases limited discovery prior to summary judgment to the applicability of the ministerial exception question; neither contemplated full and open discovery on all claims, as Plaintiff seeks here. *See Grussgott v. Milwaukee Jewish Day Sch. Inc.*, 260 F. Supp. 3d 1052, 1053 (E.D. Wis. 2017) ("Plaintiff was permitted to conduct limited discovery" on the ministerial exception defense); *Sterlinski v. Catholic Bishop of Chicago*, 319 F. Supp. 3d 940, 942 (N.D. Ill. 2018) ("the Court authorized limited discovery on the issue of whether Sterlinski was a 'minister' within the meaning of the ministerial exception at the time of his firing").

F.3d at 205 ("'courts should focus' primarily 'on the function[s] performed by persons who work for religious bodies'" like schools (quoting *Hosanna-Tabor*, 565 U.S. at 201 (Alito, J., concurring, joined by Kagan, J.)); *Cannata*, 700 F.3d at 177 (ministerial exception applied based solely on religious functions); *Ciurleo v. St. Regis Parish*, 214 F. Supp. 3d 647, 652 (E.D. Mich. 2016) ("religious function alone can trigger the exception"). These decisions are equally applicable here.

CONCLUSION

The Archdiocese respectfully requests that the Motion to Dismiss be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by this court's electronic filing system this 25th day of September, 2019:

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