UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LYNN STARKEY, Plaintiff, v. RONCALLI HIGH SCHOOL, INC., and ROMAN CATHOLIC ARCHDIOCESE OF INDIANAPOLIS, INC. Defendants.	)	Case No. 1:19-cv-03153-RLY-TAB

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO BIFURCATE DISCOVERY AND EXTEND TIME FOR INITIAL DISCOVERY RESPONSES

In *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012), the Supreme Court unanimously recognized the "ministerial exception"—a First Amendment doctrine that bars certain employment disputes between a religious organization and its "ministers." This doctrine protects "religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission"—including within religious schools. *Id.* at 194–96.

Courts have long recognized that the ministerial exception serves not only as a defense on the merits, but also as a limitation on discovery. As the Seventh Circuit recently explained, "the Justices established the rule of *Hosanna-Tabor*" "precisely to avoid . . . judicial entanglement in, and second-guessing of, religious matters"—including by "subjecting religious doctrine to discovery." *Sterlinski v. Catholic Bishop of Chicago*, 934 F.3d 568, 569–72 (7th Cir. 2019). Thus, in cases involving a ministerial exception defense, courts routinely "limit discovery to the applicability of the ministerial exception" "[b]efore launching into potentially intrusive merits

discovery about the firing—the very type of intrusion that the ministerial exception seeks to avoid." *Sterlinski v. Catholic Bishop of Chicago*, No. 16 C 00596, 2017 WL 1550186, at *5 (N.D. Ill. May 1, 2017). In that sense, the ministerial exception is "closely akin" to various forms of "official immunity," which must be resolved before merits-related discovery. *McCarthy v. Fuller*, 714 F.3d 971, 975–76 (7th Cir. 2013).

In accordance with these cases, Defendants request that initial discovery in this case be limited to the ministerial exception and related First Amendment defenses. Defendants also ask this Court to extend the time to respond to Plaintiff's initial discovery requests to 15 days after the resolution of this motion.

On November 7, 2019 at 9:30 am counsel advised Payne-Elliott's counsel of the relief sought. Payne-Elliott's counsel advised that Plaintiff opposes both the motion to bifurcate and requested extension sought in this motion.

BACKGROUND

Defendants are the Roman Catholic Archdiocese of Indianapolis and Roncalli Catholic High School. The mission of the Archdiocese is to live the Gospel by worshiping God in word and sacrament; learning, teaching, and sharing the Catholic faith; and serving human needs.[1] Roncalli is a ministry of the Archdiocese, which exists "as an extension of the family to unite faith and educational excellence through Gospel values, high educational standards, prayer and sacraments."[2]

Plaintiff Lynn Starkey worked for Defendants for over thirty-nine years in various capacities, including as a religion teacher, music teacher, drama teacher, choral director, guidance counselor, and Co-Director of the Guidance Department. Each year, she was employed pursuant to a one-year employment contract that expired at

[1] "Mission Statement of the Archdiocese," Archdiocese of Indianapolis, http://www.archindy.org/mission.html.
[2] "Catholic Schools – The Good News," Archdiocese of Indianapolis, https://www.archindy.org/stewardship/documents/FACTS%20AND%20STATISTICS%20ABOUT%20CATHOLIC%20SCHOOLS.pdf.

the end of the school year. In the latest school year, Ms. Starkey was employed as Co-Director of Guidance at Roncalli. Compl. ¶ 13; Answer ¶ 13. She was also a member of the school's Administrative Council, which was a position of leadership within the school.

As Co-Director of Guidance, Ms. Starkey was designated in her written employment contract as "a minister of the faith." Ministry Description – School Guidance Counselor ¶ II, attached as Exhibit 1; *see* 2018–2019 School Guidance Counselor Ministry Contract – Roncalli High School ¶ 4, attached as Exhibit 2 (incorporating the Ministry Description document into the contract). The very first "Role" identified in the description of her ministry was to "Facilitat[e] Faith Formation" in her students the following ways:

1. Communicat[ing] the Catholic faith to students and families through implementation of the school's guidance curriculum . . . [and] offering direct support to individual students and families in efforts to foster the integration of faith, culture, and life.

2. Pray[ing] with and for students, families, and colleagues and their intentions.

3. Plan[ning] and celebrat[ing] liturgies and prayer services as appropriate. Teach[ing] and celebrat[ing] Catholic traditions and all observances in the Liturgical Year.

4. Model[ing] the example of Jesus, the Master Teacher, in what He taught, how He lived, and how He treated others.

5. Convey[ing] the Church's message and carr[ying] out its mission by modeling a Christ-centered life.

6. Participat[ing] in religious instruction and Catholic formation, including Christian services, offered at the school. . . .

Exhibit 1 ¶ III.A.

Consistent with this contract, Ms. Starkey fulfilled important religious responsibilities for the Archdiocese and Roncalli. She participated in all-school Mass

and other prayer services, often providing the music for Mass. EEOC Affidavit of Roncalli Principal Chuck Weisenbach ("Weisenbach Affidavit") ¶ 8, attached as Exhibit 3. She staffed a religious retreat for Roncalli seniors where she led prayer with students in small groups. Weisenbach Affidavit ¶ 7. As Co-Director of Guidance and as a Member of the school's Administrative Council, Ms. Starkey was specifically responsible for implementing the school's guidance curriculum in a manner that led students toward Christian maturity within Catholic teaching and guided students and families in integrating their faith with their daily life. EEOC Affidavit of Archdiocese Superintendent Gina Fleming ¶ 17, attached as Exhibit 4.

Consistent with her role as "minister of the faith," Ms. Starkey was commissioned as a minister in a ceremony each year, during which she participated in a religious oath and prayer, pledging to unite herself to Jesus and asking God's strength and assistance in evangelizing. Weisenbach Affidavit ¶ 18; *see also* Ministers of the Faith - Commissioning Booklet and Commissioning Guide, attached as Exhibits 5 and 6. Further, Ms. Starkey received training and faith formation experiences led by notable religious leaders and was included in a weekly Administrative Council-wide discussion group of a work on the ministry of Pope Francis. Weisenbach Affidavit ¶ 6.

Her contract further emphasized that "school guidance counselors are vital ministers" who "are expected to be role models and are expressly charged with leading students toward Christian maturity and with teaching the Word of God." Exhibit 1 ¶ V.A. As role models, "the personal conduct of every school guidance counselor, . . . both at school and away from school, must convey and be supportive of the teachings of the Catholic Church." *Id.* And these teachings include "the belief that all persons are called to respect human sexuality and its expression in the Sacrament of Marriage." *Id.* Thus, the contract stated that "[t]he School Guidance Counselor shall be deemed to be in default under this contract in the event of any . . . [r]elationships

that are contrary to a valid marriage as seen through the eyes of the Catholic Church." Exhibit 2 ¶ 6(i).

As noted in the Complaint, Ms. Starkey entered a same-sex civil union in violation of her employment contract and Catholic teaching. Compl. ¶ 39. The school then declined to renew her contract for the following academic year. Compl. ¶ 44. Ms. Starkey has now sued the Archdiocese and Roncalli asserting six claims: (1) unlawful termination under Title VII; (2) retaliation under Title VII; (3) hostile work environment under Title VII; (4) retaliation under Title IX; (5) a tort claim for interference with contract; and (6) a tort claim for interference with an employment relationship. Compl. ¶¶ 48–92. On October 16, 2019, she served wide-ranging discovery requests seeking, for example, all documents "identifying or relating to" any Archdiocesan employee alleged to have violated a "morals clause" in any contract; all "training materials . . . for personnel training on Roman Catholic Church doctrine applicable to employees from November 16, 2008 to present"; all communication relating to Lynn Starkey over the past decade; all documents "relating to" any gender or sexual orientation complaints over the past decade; any discrimination complaints filed on any grounds over the past decade; and the names of "all individuals involved in the decision to implement 'morals clause' language in teacher contracts." First Requests for Production at Requests No. 6–9 and 13 (attached as Exhibit 7); First Set of Interrogatories at Interrogatory No. 15 (attached as Exhibit 8). The Archdiocese is now filing this motion requesting that initial discovery in this case be limited to the ministerial exception and related First Amendment defenses.

ARGUMENT

I. Plaintiff was a "minister" under controlling precedent.

The ministerial exception is rooted in both Religion Clauses and protects religious groups in "choosing who will preach their beliefs, teach their faith, and carry out their mission." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S.

171, 196 (2012). Once a court determines that a person served in a ministerial role, "the authority to select and control who will minister to the faithful . . . is the church's alone." *Id.* at 194-95.

In *Hosanna-Tabor*, the Supreme Court found that a teacher at a religious elementary school qualified as a minister, such that the Court could not consider her employment discrimination and retaliation claims. *Id.* at 179–80, 196. The Court declined to "adopt a rigid formula" to determine the ministerial status of respondent Cheryl Perich and, instead, identified four considerations that supported its conclusion in that case: Perich's (1) "formal title," (2) "the substance reflected in that title," (3) her "use of th[e] title," and (4) the important religious functions reflected in her job duties. *Id.* at 190, 192. Having identified Perich as a minister, dismissal of her claims—irrespective of whether she was terminated "for a religious reason"—was necessary to protect "religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission." *Id.* at 194–96.

Following *Hosanna-Tabor*, federal courts routinely find that the ministerial exception applies to teachers or administrators in religious schools, particularly when the employee has "important religious functions." *Grussgott v. Milwaukee Jewish Day Sch., Inc.*, 882 F.3d 655, 660 (7th Cir. 2018) (citation omitted), *cert. denied*, 139 S. Ct. 456 (2018). In *Grussgott*, for example, the Seventh Circuit held that a Hebrew teacher at a Jewish day school was a minister, because she "taught her students about Jewish holidays, prayer, and the weekly Torah readings" and "practiced the religion alongside her students"—despite her claim that she "approached her teaching from a 'cultural' rather than a religious perspective." *Id.* at 659–61. Other courts have reached similar results. *See, e.g.*, *Fratello v. Archdiocese of New York*, 863 F.3d 190, 206, 209 & n.34 (2d Cir. 2017) (applied to principal at parochial school who "'performed' several 'important religious functions,'" notwithstanding many other "secular administrative duties"); *Yin v. Columbia Int'l Univ.*, 335 F. Supp.3d at 816–

17 (applied to teacher of English as a Second Language with "substantive religious duties reflected within the title *as indicated by the job description*" (emphasis added)); *Ciurleo v. St. Regis Parish*, 214 F. Supp.3d 647, 651–52 (E.D. Mich. 2016) (applied to Catholic school teacher due to "important religious functions that Plaintiff performed"); *see also Temple Emanuel of Newton* v. *Massachusetts Comm'n Against Discrimination*, 975 N.E.2d 433, 443 (Mass. 2012) (applied to teacher at a Jewish school even though "she was not a rabbi, was not called a rabbi, . . . did not hold herself out as a rabbi," and had not been proven to have received "religious training").

Outside the religious-school context, the Seventh Circuit has held that a parish organist was a minister, despite the fact that the organist was not "ordained" and claimed that "his playing was 'robotic.'" *Sterlinski v. Catholic Bishop of Chicago*, 934 F.3d 568, 569–72 (7th Cir. 2019). And the Seventh Circuit has even held that a "press secretary" who composed "media releases" and "articles to be published in the Church media" was a minister because she "served as a liaison between the Church and the community to whom it directed its message." *Alicea-Hernandez v. Catholic Bishop of Chicago*, 320 F.3d 698, 704 (7th Cir. 2003).

Under these precedents, Ms. Starkey qualifies as a minister because she was expressly tasked in her employment contract with "[c]ommunicat[ing] the Catholic faith to students," "[p]ray[ing] with and for students," "[p]lan[ning] and celebrat[ing] liturgies and prayer services," "teach[ing] and celebrat[ing] Catholic traditions and all observances in the Liturgical Year," "[m]odel[ing] the example of Jesus, the Master Teacher, in what He taught, how He lived, and how He treated others," "[c]onvey[ing] the Church's message and carr[ying] out its mission by modeling a Christ-centered life," and "[p]articipat[ing] in religious instruction and Catholic formation." Exhibit 1 ¶ III.A. She was also expressly designated a "minister," commissioned as such, given religious training, and required to perform important religious functions. Thus, her claims are barred under the ministerial exception.

II. The ministerial exception bars each of Plaintiff's claims.

The First Amendment bars "application of [Title VII] to claims concerning the employment relationship between a religious institution and its ministers," in light of religious organizations' interest "in choosing who will preach their beliefs, teach their faith, and carry out their mission." *Hosanna-Tabor*, 565 U.S. at 188, 196. But the ministerial exception also extends beyond Title VII. What matters is not a claim's basis in contract, tort, or nondiscrimination law, but rather its "substance and effect" on the church's freedom to select and control its leadership. *Natal v. Christian & Missionary All.*, 878 F.2d 1575, 1576–78 (1st Cir. 1989) (applying ministerial exception to reject contract and tort claims). "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.*; *Petruska v. Gannon Univ.*, 462 F.3d 299 (3d Cir. 2006) (the ministerial exception bars "*any* claim, the resolution of which would limit a religious institution's right to choose who will perform particular spiritual functions" (emphasis supplied)).

Thus, the Seventh Circuit and other federal appellate courts routinely bar each type of claim asserted by Starkey here—namely, unlawful-termination, retaliation, hostile work environment, and tortious interference. *See, e.g.*, *Hosanna-Tabor*, 565 U.S. at 188, 196 (dismissing retaliation claim and affirming that the exception bars "claims concerning the employment relationship" under Title VII and like laws); *Alicea-Hernandez*, 320 F.3d at 700 (Seventh Circuit dismissing hostile work environment and constructive discharge claims); *Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328, 330 (4th Cir. 1997) (dismissing claims for "breach of contract and various torts" including interference with contract and intentional infliction of emotional distress); *Skrzypczak v. Roman Catholic Diocese Of Tulsa*, 611 F.3d 1238, 1244 (10th Cir. 2010) (dismissing hostile work environment and tort claims, "following the Seventh Circuit's decision" in *Alicea-Hernandez*); *Lee v. Sixth Mount*

Zion Baptist Church, 903 F.3d 113, 122 (3d Cir. 2018) ("[W]e are not aware of any court that has . . . not applied the applied the ministerial exception . . . to a breach of contract claim alleging wrongful termination of a religious leader"); *Penn v. New York Methodist Hospital*, 884 F.3d 416, 422–23, 428 (2d Cir. 2018) (affirming dismissal of employment discrimination and retaliation claims); *see also Ogle v. Church of God*, 153 F. App'x 371, 372–73 (6th Cir. 2005) (dismissing lack of consortium claim by spouse and defamation claims against individual church officers); *Hutchison v. Thomas*, 789 F.2d 392, 393 (6th Cir. 1986) (dismissing claims for "defamation, intentional infliction of emotional distress, and breach of contract").

III. Because the ministerial exception is a defense to discovery as well as trial, initial discovery must be limited.

As with motions for separate trials under Fed. R. Civ. P. 42(b), courts may grant a motion to bifurcate discovery "[f]or convenience, to avoid prejudice, or to expedite and economize." *Charvat v. Plymouth Rock Energy, LLC*, 15-CV-4106 (JMA) (SIL), 2016 WL 207677, at *1 (E.D.N.Y. Jan. 12, 2016) (quoting Fed. R. Civ. P. 42(b)); *see Martinez v. Cook Cty.*, No. 11 C 1794, 2011 WL 4686438, at *1 (N.D. Ill. Oct. 4, 2011). Bifurcation of discovery is "appropriate . . . where the resolution of a single issue may resolve the case and render trial on the other issue[s] unnecessary." *Id.* at *2 (internal quotation marks omitted).

The Seventh Circuit recently held that "it is precisely to avoid . . . judicial entanglement" like "subjecting religious doctrine to discovery . . . that the Justices established the rule of *Hosanna-Tabor*." *Sterlinski*, 934 F.3d at 570. Justices Kagan and Alito specifically noted in *Hosanna-Tabor* that "the mere adjudication of" factual questions about church teaching, including by requiring testimony, "would pose grave problems for religious autonomy." *Hosanna-Tabor*, 565 U.S. at 205–06 (Alito, J., concurring). And long before *Hosanna-Tabor*, courts recognized that the ministerial exception was necessary to avoid subjecting "[c]hurch personnel and records" to

"discovery, . . . [and] the full panoply of legal process designed to probe the mind of the church." *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985).

Bifurcation is standard practice in ministerial exception cases (if any discovery is necessary at all). Courts have repeatedly recognized that the ministerial exception is a "threshold matter" that must be decided before merits-related discovery or trial to "minimize the possibility of constitutional injury." *Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597, 608–09 (Ky. 2014) (citations omitted). Such an approach not only ensures that the rights of the ministerial exception are not lost before they are adjudicated, it avoids unnecessary "legal process pitting church and state as adversaries." *Rayburn*, 772 F.2d at 1171. A limitation on discovery is thus especially warranted here, where a "potentially intrusive merits discovery" would create "the very type of intrusion that the ministerial exception seeks to avoid." *Sterlinski v. Catholic Bishop of Chicago*, No. 16-C-00596, 2017 WL 1550186, at *5 (N.D. Ill. May 1, 2017); *see also Presbyterian Church (U.S.A.) v. Edwards*, 566 S.W.3d 175, 179 (Ky. 2018) (allowing merits discovery before resolving a church's ministerial exception defense "would result in a substantial miscarriage of justice" since the defense "includes protection against the cost of trial and the burdens of broad-reaching discovery" (internal citations omitted)).

To avoid "subjecting religious doctrine to discovery," *Sterlinski*, 934 F.3d at 570, courts considering the applicability of the ministerial exception defense have routinely "limited discovery to determine whether the ministerial exception applies." *Herzog v. St. Peter Lutheran Church*, 884 F. Supp. 2d 668, 671 (N.D. Ill. 2012). This practice is a matter of course. *See, e.g.*, *Fratello*, 863 F.3d at 198 (stating that the district court "appropriately ordered discovery limited to whether [the plaintiff] was a minister"); *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*, 2017 WL 1550186, at *5 ("limit[ing] discovery to the applicability of the ministerial exception" to include "fact discovery about Sterlinski's duties"); *Collette v. Archdiocese of Chicago*, 200 F. Supp. 3d.730, 735 (N.D. Ill. 2016) (determining that where a ministerial exception defense is asserted, "the scope of the issue subject to discovery is narrow," limited to whether the role "was ministerial"); *Lishu Yin v. Columbia Int'l Univ.*, No. 3:15-CV-03656-JMC, 2017 WL 4296428, at * 4 (D.S.C. Sept. 28, 2017) (reviewing and adopting cases that permitted "limited discovery as to the question of whether plaintiffs were ministers" relating to plaintiffs' duties); *Miller v. Intervarsity Christian Fellowship/USA*, No. 09-CV-680-SLC, 2010 WL 2803123, *2 (W.D. Wis. July 14, 2010) (court previously allowed "limited discovery" to resolve dispute as to the nature of position sought); *Stabler v. Congregation Emanu-El of the City of New York*, No. 16 CIV.9601 (RWS), 2017 WL 3268201, at *7 (S.D.N.Y. July 28, 2017) (authorizing discovery "limited to the ministerial exception defense" and specifically whether plaintiff performed religious functions); *Fassl v. Our Lady of Perpetual Help Roman Catholic Church*, No. CIV.A. 05-CV-0404, 2005 WL 2455253, at *1 (E.D. Pa. Oct. 5, 2005) (court authorized "very limited discovery" as to whether job functions were ministerial in nature). Allowing more discovery than necessary to establish the affirmative defense would result in "impermissible entanglement with religion" via "intrusive discovery" into the reasoning behind religious belief and internal decision-making. *Demkovich v. St. Andrew the Apostle Parish*, 343 F. Supp. 3d 772, 786–87 (N.D. Ill. 2018).

Moreover, avoiding unnecessary entanglement is not just a matter of protecting the Archdiocese's rights, but also respecting the "constitutional limits on judicial authority" which, as a "structural" matter, "categorically prohibit[ ]" interfering in disputes over ministerial employment. *See, e.g.*, *Lee*, 903 F.3d at 118 n.4 (citing *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 833 (6th Cir. 2015))

(upholding district court's decision to raise the ministerial exception *sua sponte* to avoid entanglement in church affairs). Respecting this structural bar means that "[a] federal court will not allow itself to get dragged into a religious controversy." *Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036, 1042 (7th Cir. 2006), *abrogated in part by Hosanna-Tabor*, 565 U.S. 171; *see also Skrzypczak*, 611 F.3d at 1245 (unnecessary discovery can "only produce by [its] coercive effect the very opposite of that separation of church and State contemplated by the First Amendment").

Accordingly, the Court should follow the consistent practice in these cases of limiting discovery to the applicability of the ministerial exception defense.

IV. A brief extension of time to reply to the initial discovery requests pending the disposition of this motion is warranted.

The Archdiocese further requests that the deadline to respond to Plaintiff's initial discovery requests be extended to 15 days after the Court's order resolving this motion. This extension would not disrupt the joint case management plan or prejudice Starkey. Starkey's initial requests seek a broad set of documents going back over a decade, relating not only to the employment of Starkey but also to other employment disputes and to the governance of the Archdiocese broadly. Counsel anticipates that even an initial response would require more time for the Archdiocese to review its internal records. Moreover, Plaintiff's broad demand seeks documents that may be the subject of First Amendment privileges, including privileges that arise from church autonomy doctrine and freedom of association. Allowing an extension of time to respond will conserve judicial economy by avoiding any unnecessary privilege disputes that may be avoided by the resolution of the motion to limit initial discovery. Nor will this extension disrupt the joint case management plan or proposed trial date of January 2021, or prejudice Starkey's ability to fully review the responsive materials before conclusion of discovery.

CONCLUSION

For the foregoing reasons, this Court should limit initial discovery to the ministerial exception defense and extend Defendants' deadline to respond to Plaintiff's initial discovery requests to 15 days after the Court's order resolving this motion.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been served upon the following on November 7, 2019 by this Court's electronic filing system: Kathleen A. DeLaney, DeLaney & DeLaney LLC 3646 N. Washington Boulevard Indianapolis, IN 46205.

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