IN THE MARION SUPERIOR COURT, CIVIL DIVISION #1
STATE OF INDIANA, COUNTY OF MARION

JOSHUA PAYNE-ELLIOTT,

Plaintiff,

v.

ROMAN CATHOLIC ARCHDIOCESE OF INDIANAPOLIS, INC.,

Defendant.

Cause No. 49D01–1907–PL–027728

THE UNITED STATES' STATEMENT OF INTEREST

The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517, which authorizes the Attorney General to send his officers "to any State . . . to attend to the interests of the United States in a suit pending . . . in a court of a State."[1]

PRELIMINARY STATEMENT

In 2015, the Supreme Court of the United States held that "same-sex couples may exercise the fundamental right to marry in all States." *Obergefell v. Hodges*, 135 S. Ct. 2584, 2607 (2015). In doing so, the Court took care to "emphasize[] that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned." *Id.* "The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered." *Id.*; *accord Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1727 (2018). The "proper protection" afforded to the Roman Catholic Archdiocese of Indianapolis by the First Amendment requires that this action be dismissed.

The Archdiocese of Indianapolis acts through the Archbishop, who decides which schools within the diocesan boundaries may deem themselves Catholic. The Archdiocese recognizes Cathedral High School, Plaintiff's former employer, as a Catholic school (Compl. ¶ 8), and adheres to a conviction that same-sex marriage "should not be condoned," *Obergefell*, 135 S. Ct. at 2607. (*See* Compl. ¶¶ 14, 16, 21, 23–24.) As alleged by Plaintiff, in May or June

[1] "Courts have interpreted 28 U.S.C. § 517 broadly and have generally denied motions to strike statements of interest." *Gil v. Winn Dixie Stores, Inc.*, 242 F. Supp. 3d 1315, 1317 (S.D. Fla. 2017). "The statute contains no time limitation and does not require the Court's leave." *Karnoski v. Trump*, No. 18–51013, 2018 WL 4501484, at *2 (E.D. Mich. Sept. 20, 2018).

of 2019, the Archdiocese presented Cathedral with a choice: terminate Plaintiff's employment on account of his public, same-sex marriage, or dissociate with the Catholic Church. (*Id.* ¶¶ 13–18, 21–23.) Presented with the same choice, another school in the diocese chose the latter option, and shed its Catholic identity. (*Id.* ¶ 14–15.) After much deliberation, Cathedral chose the former option and terminated Plaintiff's employment. (*Id.* ¶¶ 17–18, 21–22.) Plaintiff now sues the Archdiocese in tort.

The First Amendment to the United States Constitution shields the Archdiocese in at least two independent ways. Initially, the First Amendment precludes this Court, a state actor, from cooperating in Plaintiff's attempt to stifle the Archdiocese's First Amendment right to expressive association. The First Amendment also precludes the Court from entangling itself in a quintessentially ecclesiastical question: whether the Archdiocese properly interpreted and applied Catholic doctrine. The First Amendment commits that question exclusively to the ecclesiastical tribunals of the Church.

The United States has no reason on this record to doubt that Plaintiff was an excellent teacher. Cathedral's heartfelt letter, attached to Plaintiff's complaint, suggests as much. But like this Court, the United States can cast no judgment on whether the Archdiocese's decision is right and proper as a matter of Catholic doctrine or religious faith. This action, accordingly, must be dismissed.

INTEREST OF THE UNITED STATES

The United States has a substantial interest in religious liberty. Religious liberty is a foundational principle of enduring importance in America, enshrined in the United States Constitution and in other sources of federal law. The United States is strongly invested in ensuring that its citizens' religious freedoms are not impinged and, to that end, regularly files

statements of interest and amicus briefs in courts at every level, from trial courts to the Supreme Court of the United States.

The Attorney General has issued comprehensive guidance interpreting religious-liberty protections available under the United States Constitution and federal law. (*See* Memorandum from the Attorney General re: Federal Law Protections for Religious Liberty (Oct. 6, 2017), *available at* https://www.justice.gov/opa/press-release/file/1001891/download.) As relevant here, the Attorney General has explained that religious employers are entitled to employ only persons whose beliefs and conduct are consistent with the employers' religious precepts, and, more broadly, that the United States Constitution bars the government from interfering with the autonomy of a religious organization. (*Id.* at 3 & 6.)

This case presents an important question: whether a religious entity's interpretation and implementation of its own religious teachings can expose it to third-party intentional-tort liability. The First Amendment answers that question in the negative.

BACKGROUND

In 2017, Plaintiff Joshua Payne-Elliott, then a teacher at Cathedral High School, civilly married his now-husband. (Compl. ¶¶ 7, 10.) Cathedral High School is recognized as a Catholic school by the Roman Catholic Archdiocese of Indianapolis, Inc. (*Id.* ¶ 8.) Cathedral was incorporated in 1972 "for the sole purpose of maintaining and operating a Roman Catholic secondary school." (Compl. Ex. C.) Its bylaws "state that the essential Holy Cross character of Cathedral as a Catholic high school shall be at all times maintained and that a mission priority is to be an educator in the faith." (*Id.*)

The Archdiocese is led by its Archbishop, the Most Reverend Charles C. Thompson. (*Id.* ¶ 9.) "It is Archbishop Thompson's responsibility to oversee faith and morals as related to

Catholic identity within the Archdiocese of Indianapolis." (Compl. Ex. C.) *See generally* 1983 *Codex Iuris Canonici* cc.381–402 (authority and obligations of diocesan bishops).

In May or June of 2019, the Archdiocese issued a "directive" to Brebeuf Jesuit Preparatory School, another school within the diocese. (Compl. ¶¶ 14, 16.) In Brebeuf's words, the Archdiocese directed that it "dismiss a highly capable and qualified teacher"—Plaintiff's husband—"due to the teacher being a spouse within a civilly-recognized same-sex marriage." (*Id.* ¶ 14.) Brebeuf declined to obey the Archdiocese's directive. (*Id.*) On behalf of the Archdiocese, the Archbishop issued a decree stating in part that Brebeuf "can no longer use the name Catholic and will no longer be identified or recognized as a Catholic institution by the Archdiocese." (*Id.* ¶ 15 & Compl. Ex. B.)

The Archdiocese issued the same directive to Cathedral. (Compl. ¶ 16.) According to Cathedral's President, "'the Archbishop directed that [Cathedral] can't have someone with a public same-sex marriage here and remain Catholic.'" (*Id.* ¶ 21.) Like Brebeuf, Cathedral could have "'forfeit[ed] [its] Catholic identity'" and continued to employ Plaintiff. (*Id.* ¶ 23 & Compl. Ex. C; *see* Compl. ¶¶ 14–15.) Alternatively, Cathedral could follow the Archbishop's direction. However unpleasant for the school, the choice was Cathedral's to make.

On June 23, 2019, Cathedral's Chairman and its President issued a joint letter to the Cathedral community describing the school's "agonizing decision." (Compl. Ex. C.) The letter made clear that "Cathedral's continued employment of a teacher in a public, same-sex marriage" would result in its forfeiture of its Catholic identity "due to [its] employment of an individual living in contradiction to Catholic teaching on marriage." (*Id.*)

If stripped of its Catholic identity, the letter explained, Cathedral would suffer in a variety of ways, both spiritual and secular: (i) it would "lose the ability to celebrate the Sacraments as

[it has] in the past 100 years with [its] students and community";[2] (ii) it "would lose the privilege of reserving the Blessed Sacrament in [its] chapel's tabernacle"; (iii) it "could no longer refer to Cathedral as a Catholic school"; (iv) its "diocesan priests would no longer be permitted to serve on [its] Board of Directors"; (v) it "would lose [its] affiliation with The Brothers of Holy Cross"; and (vi) it "would lose its 501(c)(3) status thus rendering Cathedral unable to operate as a nonprofit school." (*Id.*)

Ultimately, "after 22 months of earnest discussion and extensive dialogue with the Archdiocese of Indianapolis about Cathedral's continued Catholic identity," Cathedral decided "to remain a Catholic Holy Cross School" and to "follow the direct guidance given to [it] by Archbishop Thompson and separate from the teacher." (*Id.*) Cathedral terminated Plaintiff's employment (Compl. ¶ 17), and Plaintiff now sues the Archdiocese in tort.

ARGUMENT

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I. The First Amendment applies to the states by the Fourteenth Amendment, *e.g.*, *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293, 296 (1961), and thus applies to Indiana and its court system.

The First Amendment bars this action for at least two independent reasons. *First*, Plaintiff's action seeks to penalize an indisputably expressive association—the Archdiocese—for

[2] According to Catholic canon, "[t]he sacraments of the New Testament were instituted by Christ the Lord and entrusted to the Church." 1983 *Codex Iuris Canonici* c.840. "[T]hey are signs and means which express and strengthen the faith, render worship to God, and effect the sanctification of humanity." *Id.* Marriage is one of the seven Sacraments recognized by the Catholic Church.

deciding which schools may identify as Catholic under its associational umbrella. The Archdiocese has determined that a Catholic school operating within its diocesan boundaries may not employ a teacher in a public, same-sex marriage and that allowing such schools to do so would detract from the Catholic teachings on marriage. The Supreme Court has made plain that the First Amendment protects the Archdiocese's right to this form of expressive association, and that right cannot be frustrated by state actors, such as the Court.

Second, Plaintiff seeks to embroil this Court in a dispute over the Archdiocese's application of Catholic law, in violation of the church-autonomy doctrine. Specifically, Plaintiff's claims are rooted in the assertion that the Archdiocese's decision was pretextual in nature. He thus calls upon this Court to divine what Catholic doctrine says about same-sex marriage, and what the Church regards as the religious Sacrament of Marriage. This Court would necessarily have to decide other religious topics, such as whether the Archdiocese's application of Catholic doctrine is properly applied as a religious matter, and whether the Archdiocese's application of Catholic doctrine here was justified by Archbishop Thompson's religious beliefs, or whether its application was pretextual in nature. The church-autonomy doctrine, however, prevents secular courts from second-guessing religious institutions' interpretation and application of religious doctrine.

For both of these independent reasons, this action must be dismissed as a matter of law.

I. THE FIRST AMENDMENT RIGHT TO EXPRESSIVE ASSOCIATION BARS PLAINTIFF'S CLAIMS

A. "[I]mplicit in the right to engage in activities protected by the First Amendment [is] a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). This implicit freedom of expressive association exists because "[a]n individual's

freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed." *Id.* In other words, freedom of association "is crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas." *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 647–48 (2000).

Freedom of association "plainly presupposes a freedom not to associate." *Roberts*, 468 U.S. at 623. "The forced inclusion of an unwanted person in a group infringes the group's freedom of expressive association if the presence of that person affects in a significant way the group's ability to advocate public or private viewpoints." *Boy Scouts*, 530 U.S. at 648. Thus, explaining that "the Constitution looks beyond written or spoken words as mediums of expression," the Supreme Court unanimously held that freedom of association allowed private parade organizers to exclude from the parade "a group imparting a message the organizers do not wish to convey." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp.*, 515 U.S. 557, 559, 566, 569 (1995). The Supreme Court likewise held that the freedom of association allowed the Boy Scouts to revoke the membership of an assistant scoutmaster whose conduct, that organization believed, "would derogate from [its] expressive message." *Boy Scouts*, 530 U.S. at 661.

B. "To determine whether a group is protected by the First Amendment's expressive associational right," a court must first "determine whether the group engages in 'expressive association.'" *Boy Scouts*, 530 U.S. at 648. If a group engages in expressive association, the court must then "determine whether the forced inclusion" of an individual "would significantly affect the [group's] ability to advocate public or private viewpoints." *Id.* at 650.

1. Plaintiff does not dispute that the Archdiocese engages in expressive association. "[A]n association that seeks to transmit . . . a system of values engages in expressive activity." *Boy Scouts*, 530 U.S. at 650. Churches, like other religious entities, are "dedicated to the collective expression and propagation of shared religious ideals." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 200 (2012) (Alito, J., concurring).

The Decree issued by the Archdiocese to the Brebeuf Jesuit Preparatory School, and attached by Plaintiff to his complaint, demonstrates that the Archdiocese both engages in religious expression and seeks to safeguard that religious expression by expelling from its associational umbrella entities that do not conform to its expressive message. (Compl. Ex. B.) In the Decree, the Archbishop explained that "it is [his] canonical responsibility to oversee faith and morals as related to Catholic identity within the Archdiocese of Indianapolis." (*Id.*) After noting that the Brebeuf Jesuit Preparatory School had "chosen not to implement changes in accord with the doctrine and pastoral practice of the Catholic Church," the Archbishop decreed that the school "can no longer use the name Catholic and will no longer be identified or recognized as a Catholic institution by the Archdiocese of Indianapolis." (*Id.*)

Courts must "give deference to an association's assertions regarding the nature of its expression." *Boy Scouts*, 530 U.S. at 653. The Archdiocese states in its motion to dismiss that it views marriage as being "between one man and one woman" and that it believes "that the Church's teaching on male-female marriage is particularly necessary to provide to children." (Archdiocese Mem. at 5.) The Archdiocese's representation to the Court constitutes, as a matter of law, "the nature of [its] expression with respect to" marriage. *Boy Scouts*, 530 U.S. at 651 (accepting the Boy Scouts' statements in its Supreme Court briefs as sufficient "to determine the

nature of the Boy Scouts' expression"). The Archdiocese's position on marriage is, of course, not universally held. *See, e.g.*, *Obergefell*, 135 S. Ct. at 2608. But "it is not the role of the courts to reject a group's expressed values because they disagree with those values." *Boy Scouts*, 530 U.S. at 651.

2. The Archdiocese argues that permitting Catholic schools within its boundaries to employ teachers who have openly entered into same-sex marriages "would 'significantly affect [its] ability to advocate public or private viewpoints'" with respect to its views on marriage. (Archdiocese Mem. at 16–17 (quoting *Boy Scouts*, 530 U.S. at 641, 650).) The Court "must . . . give deference to an association's view of what would impair its expression." *Boy Scouts*, 530 U.S. at 653.

The Archdiocese's position—that its expression of its views on marriage would be significantly impaired—is supported by binding Supreme Court precedent. In *Boy Scouts*, the Supreme Court held that "the presence of" an openly-gay man "as an assistant scoutmaster would . . . interfere with the Boy Scouts' choice not to propound a point of view contrary to its beliefs." 530 U.S. at 654. Similarly here, Plaintiff is in a "public, same-sex marriage." (Compl. Ex. C; *see also* Compl. Ex. A at 4 (noting Plaintiff's "relatively new role as a husband").) "It would be difficult for" the Archdiocese "to sincerely and effectively convey a message of disapproval of certain types of conduct if, at the same time, it must accept members who engage in that conduct." *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 863 (7th Cir. 2006).

To be sure, as Plaintiff was not employed by the Archdiocese, Plaintiff has not directly been excluded from the Archdiocese in the way that the assistant scoutmaster was excluded from the Boy Scouts. Rather, in this case, the assistant scoutmaster is analogous to Cathedral, and *Boy*

Scouts affirms that the First Amendment protects the Archdiocese's constitutional right to expel schools whose presence would interfere with the Archdiocese's expressive message.

Many people may disagree with the Archdiocese's actions. But, as the Supreme Court has explained, "public or judicial disapproval of a tenet of an organization's expression does not justify . . . effort[s] to compel the organization to accept members where such acceptance would derogate from the organization's expressive message." *Boy Scouts*, 530 U.S. at 661.

C. Even though Plaintiff is not a government actor, the First Amendment shields the Archdiocese from Plaintiff's claims, as allowing his claims to proceed would cause a government actor—the Court—to subvert the Archdiocese's constitutional rights.

The Supreme Court long ago held that "the action of state courts and of judicial officers in their official capacities is to be regarded as action of the State," which is why the United States Constitution prohibits courts from enforcing racially restrictive covenants. *Shelley v. Kraemer*, 334 U.S. 1, 14 (1948). Accordingly, "the application of state rules of law in state courts in a manner alleged to restrict First Amendment freedoms constitutes 'state action' under the Fourteenth Amendment." *Cohen v. Cowles Media Co.*, 501 U.S. 663, 668 (1991); *see Barlow v. Sipes*, 744 N.E.2d 1, 9 (Ind. Ct. App. 2001) (same); *accord NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916 n.51 (1982); *cf. Boy Scouts*, 530 U.S. at 645–46 (private action by aggrieved individual under state public-accommodation law barred by First Amendment).

This doctrine applies equally in private-party tort suits. *See, e.g.*, *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988). "The Supreme Court has established that the imposition of tort liability constitutes state action which implicates the First and Fourteenth Amendments." *In re Factor VIII or IX Concentrate Blood Prods. Litig.*, 25 F. Supp. 2d 837, 840 (N.D. Ill. 1998) (citing *N.Y. Times v. Sullivan*, 376 U.S. 254, 265 (1964)). "Imposition of civil liability, such as

the award of money damages, is treated no less stringently than direct regulation on speech." *In re Orthopedic Bone Screw Prods. Liab. Litig.*, 193 F.3d 781, 792 (3d Cir. 1999). And "the presence of activity protected by the First Amendment imposes restraints on the grounds that may give rise to damages liability and on the persons who may be held accountable for those damages." *Claiborne Hardware Co.*, 458 U.S. at 916–17.

This doctrine makes logical sense. By seeking money damages from the Archdiocese, Plaintiff's lawsuit invokes the Court's power in a manner that, if successful, will inhibit the Archdiocese and other expressive associations in Indiana from exercising their constitutional rights. In the landmark case of *New York Times v. Sullivan*, the Supreme Court explained that "[t]he fear of damage awards . . . may be markedly more inhibiting than the fear of prosecution under a criminal statute." 376 U.S. at 277; *see also Snyder v. Phelps*, 562 U.S. 443, 451 (2011) ("The Free Speech Clause of the First Amendment . . . can serve as a defense in state tort suits."). So, too, here.

II. THE CHURCH-AUTONOMY DOCTINE BARS PLAINTIFF'S CLAIMS

A. "The church-autonomy doctrine respects the authority of churches to select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions free from governmental interference." *Korte v. Sebelius*, 735 F.3d 654, 677 (7th Cir. 2013) (internal quotation marks omitted). "This dimension of religious liberty has a foothold in both Religion Clauses, and is perhaps best understood as marking a boundary between two separate polities, the secular and the religious, and acknowledging the prerogatives of each in its own sphere." *Id.* (citation omitted).

"The Supreme Court has long held that the First Amendment requires civil courts to refrain from interfering in matters of church discipline, faith, practice and religious law." *McEnroy v. St. Meinrad Sch. of Theology*, 713 N.E.2d 334, 336–37 (Ind. Ct. App. 1999) (citing

Watson v. Jones, 80 U.S. (13 Wall.) 679, 727 (1871)). "Thus, civil courts are precluded from resolving disputes involving churches if 'resolution of the disputes cannot be made without extensive inquiry . . . into religious law and polity . . . .'" *Id.* (quoting *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709 (1976)). The church-autonomy doctrine affords religious organizations "an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). Indeed, not only are secular courts prohibited from interfering in faith-based disputes, "[w]hen ecclesiastical tribunals decide such disputes . . . the Constitution requires that civil courts accept their decisions as binding upon them." *Hosanna-Tabor Evangelical Lutheran Church & Sch.*, 565 U.S. at 187 (internal quotation marks omitted).

That being said, "the First Amendment does not entirely prohibit courts from opening their doors to religious organizations." *Matthies v. First Presbyterian Church of Greensburg Indiana, Inc.*, 28 N.E.3d 1109, 1113 (Ind. Ct. App. 2015) (internal quotation marks omitted). "A court can apply neutral principles of law to churches without violating the First Amendment." *Id.* "Application of neutral principles of law to a church defendant, however, has occurred only in cases involving church property or in cases where a church defendant's actions *could not have been* religiously motivated." *Id.* at 1113–14 (citing *Brazauskas v. Fort Wayne–S. Bend Diocese, Inc.*, 714 N.E.2d 253 (Ind. Ct. App. 1999)) (emphasis added).

B. This case cannot be resolved applying only neutral principles of law. Plaintiff's own filings demonstrate that Plaintiff will ask this Court to "review and interpret" the Archdiocese's interpretation and application of the Catholic faith, thus resulting in the forbidden "excessive entanglement between church and state." *Id.* at 1113.

Both of Plaintiff's tort claims against the Archdiocese require Plaintiff to demonstrate that the Diocese's actions were not "justified." *See, e.g.*, *Winkler v. V.G. Reed & Sons, Inc.*, 638 N.E.2d 1228, 1235 (Ind. 1994) (intentional interference with contract); *Dietz v. Finlay Fine Jewelry Corp.*, 754 N.E.2d 958, 970 (Ind. Ct. App. 2001) (intentional interference with employment relationship). In determining whether conduct is justified, Indiana courts consider seven factors, including "the nature of the defendant's conduct"; "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 and the contractual interests of the plaintiff." *Winkler*, 638 N.E.2d at 1235 (quoting Restatement (Second) of Torts § 767 (1977)). Although "[t]he weight to be given [to] each consideration may differ from case to case . . . [t]he existence of a legitimate reason for the defendant's actions provides the necessary justification to avoid liability." *Bilimoria Computer Sys., LLC v. Am. Online, Inc.*, 829 N.E.2d 150, 157 (Ind. Ct. App. 2005).

C. At their core, Plaintiff's claims challenge the legitimacy of the Archdiocese's decision. For example, in evaluating the Archdiocese's motive and interests as required by Indiana law, the finder of fact would necessarily need "to review and interpret [the Catholic Church's] constitution, laws, and regulations" in deciding whether Archbishop Thompson properly applied Catholic doctrine, or whether his decision was pretextual in nature. *Matthies*, 28 N.E.3d at 1113. A finder of fact would also necessarily need to review and rule upon entirely religious texts, such as the Code of Canon Law and the Catechism of the Catholic Church. The Sacrament of Marriage alone spans no fewer than 111 canons, and 66 sections of the Catechism of the Catholic Church. *See* 1983 *Codex Iuris Canonici* cc.1055–1165; Catechism of the

Catholic Church §§ 1601–1666. In short, Plaintiff's suit asks this Court to conduct an "extensive inquiry . . . into religious law and polity." *Milivojevich*, 426 U.S. at 709.

This the Court cannot do. Rather, the First Amendment "mandate[s] that civil courts shall not disturb the decisions of the" Archdiocese, and instead "must accept such decisions as binding on them." *Id.* In sum, the United States Constitution forbids the Court from questioning the legitimacy of Archbishop Thompson's interpretation of the Catholic faith. The church-autonomy doctrine accordingly demands that this action be dismissed.

D. The question whether Plaintiff's suit will require an "excessive entanglement between church and state," *Matthies*, 28 N.E.3d at 1113, is *not* hypothetical. In his opposition to the Archdiocese's motion to dismiss, Plaintiff argues that discovery is necessary "to determine whether the Archdiocese has instructed schools to terminate teachers alleged to violate [other] Church teachings, such as divorce and re-marriage without annulment, unmarried co-habitation, marriage without the sacrament, or other practices." (Pl. Opp. To Mot. To Dismiss at 10.) Plaintiff thus asks this Court to: (i) determine what Catholic doctrine says with regard to these and other Catholic teachings; (ii) determine how, under Catholic doctrine, violation of these teachings compares to violation of Catholic teaching on same-sex marriage; and (iii) decide whether the Archdiocese's decision to enforce Catholic teaching in this manner is consistent with the Catholic faith or is pretextual.

The First Amendment forbids secular courts from wading into such "quintessentially religious controversies." *Milivojevich*, 426 U.S. at 720. This Court cannot "substitute[] its interpretation" of Catholicism "for that of the" Archdiocese and Archbishop Thompson. *Id.* at

721. Rather, "the First Amendment commits exclusively" the legitimacy of the Archdiocese's decision as a matter of Catholic law to the judgment of the Archdiocese. *Id.* at 720.[3]

CONCLUSION

The First Amendment demands that this lawsuit be dismissed. Perhaps anticipating lawsuits like this one, the Supreme Court, in cementing Plaintiff's constitutional right to civilly marry the person of his choosing, took care both to emphasize that "[m]any who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises," and to reinforce the longstanding right of religious organizations to freely exercise their faith, which may include "advocat[ing] . . . that, by divine precepts, same-sex marriage should not be condoned." *Obergefell*, 135 S. Ct. at 2602, 2607.

The Archdiocese has done exactly that. The Archdiocese determined that, consistent with its interpretation of Church teachings, a school within its diocesan boundaries cannot identify as Catholic and simultaneously employ a teacher in a public, same-sex marriage. Many may lament the Archdiocese's determination. But the First Amendment forbids this Court from interfering with the Archdiocese's right to expressive association, and from second-guessing the Archdiocese's interpretation and application of Catholic law. For these reasons, this action must be dismissed.

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[3] This lawsuit may also be precluded by the ministerial exception, which "bar[s] the government from interfering with the decision of a religious group to fire one of its ministers." *Hosanna-Tabor Evangelical Lutheran Church*, 565 U.S. at 181; *see also id.* at 190 (noting that "the ministerial exception is not limited to the head of a religious congregation," but declining "to adopt a rigid formula for deciding when an employee qualifies as a minister"). At this stage of the litigation, the United States does not take a position on whether the ministerial exception precludes this lawsuit.

Dated: September 27, 2019

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, and by mailing to them a copy through the United States mail, first class, this 27th day of September, 2019:

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