No. 19-2142

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SANDOR DEMKOVICH,	)
	)
	)
Plaintiff-Appellee,	)
	)
-vs-	)
	)
ST. ANDREW THE APOSTLE PARISH, CALUMET CITY, and THE ARCHDIOCESE OF CHICAGO,	)
	)
	)
Defendants-Appellants.	)

Appeal from the United States District Court
for the Northern District of Illinois,
Eastern Division, Case No. 16-cv-11576
The Honorable Edmond Chang, Judge Presiding

APPELLANTS ST. ANDREW THE APOSTLE PARISH, CALUMET CITY AND THE ARCHDIOCESE OF CHICAGO'S REPLY BRIEF

James C. Geoly
Alexander D. Marks
Attorneys for St. Andrew the Apostle Parish, Calumet City and the Archdiocese of Chicago
Burke, Warren, MacKay & Serritella, P.C.
330 North Wabash Avenue, 21st Floor
Chicago, Illinois 60611
(312) 840-7000
(312) 840-7900 (facsimile)

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

INTRODUCTION

The ministerial exception protects the right of churches to select, supervise, control, and discipline ministerial employees free from government interference. Accordingly, it applies to all employment claims arising out of the ministerial employment relationship. This is because it is the *employment position*, not the claim, that is dispositive in determining whether the exception applies. *Hosanna-Tabor Evangelical Luth. Church and Sch. v. Equal Employment Opportunity Comm'n*, 565 U.S. 171 (2012) (focusing on claims "misses the point of the ministerial exception"). The district court erred when it denied dismissal of Plaintiff's disability discrimination hostile work environment claim, which claim Plaintiff had standing to assert solely by virtue of the Archdiocese's selection and oversight of him in a ministerial employment position. Similar to the district court's misstep, Plaintiff, in his Response brief, exhibits a fundamental misunderstanding of the scope and purpose of the ministerial exception by presenting two arguments, each of which the Supreme Court in *Hosanna-Tabor* rejected.

Plaintiff first argues that the ministerial exception only protects a church from government interference in its ability to "choose" who will minister, and correspondingly, only precludes claims involving hiring and firing. The ministerial exception, however, is not limited to merely hiring and firing, but covers everything in between, including, as here, the Archdiocese's control over Plaintiff's employment. Indeed, the protection of "choice" would be undermined if the ministerial exception only applied to the beginning and end of the ministerial relationship, and not to the middle (where most ecclesiastical oversight occurs). If

that were the case, every minister plaintiff would have the incentive to artfully plead around the exception, as Plaintiff has attempted here, by deconstructing his claim to identify some pre-termination harm.

Second, Plaintiff asserts that the ministerial exception can only apply when explicitly religious doctrinal issues are involved and used as justification for the alleged conduct. While an explicitly doctrinal employment dispute would certainly be precluded by the ministerial exception, the exception does not exist solely to prevent court's from adjudicating explicit questions of religious doctrine. The primary purpose of the ministerial exception is to protect religious organizations from interference with the church-minister relationship, which is at the very core of religious freedom. *Hosanna-Tabor,* 565 U.S. at 194-95 ("[t]he exception … ensures that the authority to select and control who will minister to the faithful—a matter strictly ecclesiastical—is the church's alone"). In this context, matters of church polity are, as a matter of law, matters of religious doctrine. *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696, 713 (1976) ("civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law"). Thus, interference in a church's determination of fitness for ministry involves a usurpation of the church's right to govern its clergy. Indeed, the "very process of inquiry" by a secular court into whether religious justifications exist for the

discipline of a minister violates the first amendment. *N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979).

Importantly, the Archdiocese is not saying that it may never be sued, or that it can never be subject to discovery. Some discovery may be necessary to determine whether an employment position is "ministerial." Moreover, a minister may be able to bring certain non-employment claims that do not arise from the ministerial employment relationship as such. Rather, as the Supreme Court and this Court have held, when an employee is found to hold a ministerial position, and his claim, like Plaintiff's hostile work environment claim, arises solely by virtue of the ministerial employment relationship, the ministerial exception must apply to bar the claim.

Moreover, even if this Court does not hold that the ministerial exception provides a blanket protection against all employment claims arising by virtue of the ministerial employment relationship, it should still find the district court erred in failing to dismiss Plaintiff's disability discrimination hostile work environment claim. The statements Plaintiff alleges are actionable all involve the supervision and discipline of a subordinate minister by a superior minister. Specifically, they relate to his weight, health, and appearance, and therefore, quite literally, his fitness for ministry, for which a church maintains the exclusive right to set standards. Any inquiry into those statements will usurp the church's right to establish those standards and instead entangle a secular court in religious determinations relating to ministerial oversight. Plaintiff, in his Response, ignores

those legal principles. Instead, he again argues that secular court oversight of the claim would not result in an impermissible inquiry because the alleged conduct purportedly does not touch upon the Archdiocese's explicit religious beliefs, nor involve what Plaintiff considers to be supervision of its minister. However, Plaintiff again simply misstates that an explicit religious doctrinal belief is a threshold requirement to invoke the exception, and ignores that *all* church oversight of a minister, including the church's beliefs about what a minister should weigh, how he should appear, and what health he must maintain, are all standards for fitness for ministry. A superior minister's communication of these standards to a subordinate minister is both "supervisory" and doctrinal, in that it reflects the church's beliefs about what and who a minister should be.

Last, for the reasons stated above, because a hostile work environment claim is an outgrowth of the federal anti-discrimination statutes, and arises solely by virtue of the ministerial-employment relationship, the district court correctly dismissed Plaintiff's sexual orientation hostile work environment claim. The district court correctly held that plaintiff's claim explicitly implicated church doctrine, *i.e.*, the church's beliefs about same-sex marriage. While unnecessary to have reached that conclusion because a religious justification is not required for the ministerial exception to apply, under Plaintiff's own test requiring religious rationale, the ministerial exception bars his sexual orientation hostile work environment claim.

ARGUMENT

I. The Ministerial Exception Applies To All Employment Claims Arising By Virtue Of The Ministerial Employment Relationship.

This Supreme Court and this Court have both recognized the ministerial exception protects against government intrusion into the relationship between a religious group and its ministers. *Hosanna-Tabor,* 565 U.S. at 194-95 ("[t]he exception instead ensures that the authority to select and control who will minister to the faithful—a matter strictly ecclesiastical—is the church's alone"); *Alicea-Hernandez v. Catholic Bishop of Chicago*, 320 F.3d 698, 702 (7th Cir. 2003) (the "right to choose ministers without government restriction underlies the well-being of religious community") (internal citation omitted); *Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036, 1038 (7th Cir. 2006) (churches have "fundamental right to "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine") (internal citation omitted). Once the ministerial exception is found to apply, it is "applied without regard to the type of claims being brought," *Alicea-Hernandez*, 320 F.3d at 703, including to federal statutory employment claims like Plaintiff's disability discrimination hostile work environment claim. *McClure v. The Salvation Army*, 460 F.2d 553, 560 (5th Cir. 1972) (applying exception to "provisions of Title VII [arising from] the employment relationship").

The district court erred by circumscribing the scope of the ministerial exception, basing its denial of the Archdiocese's motion to dismiss upon (1) the ministerial exception purportedly requiring a tangible employment action, and (2)

the Archdiocese's supposed failure to present a religious justification for its alleged harassment of Plaintiff's weight. By improperly engrafting elements not required for its application, the district court created out of whole cloth an exception to the ministerial exception. Similarly miscomprehending this doctrine, Plaintiff, in his Response, presents two primary arguments, both of which were explicitly rejected by the Supreme Court in *Hosanna-Tabor*.

a. The Ministerial Exception Does Not Merely Protect Hiring And Firing Decisions.

Plaintiff first argues that there should be no blanket application of the ministerial exception to employment claims arising solely by virtue of the ministerial employment relationship because the exception purportedly only protects "a church from government interference in its ability to choose who will minister… ." [Response, p. 10]. However, the exception does not merely apply to "choice," but also to "control who will minister to the faithful." *Hosanna-Tabor,* 565 U.S. at 194-95; *accord id.* at 201 (Alito, J., joined by Kagan, J., concurring) ("A religious body's control over [ministers] is an essential component of its freedom to speak in its own voice").

Plaintiff ignores that holding from *Hosanna-Tabor* and instead argues that the Supreme Court, in that case, did not adopt any "bright line rule," but rather showed "restraint" by not expressing any "view on whether the exception bars other types of suits." [Response, p. 19]. However, the Supreme Court, in that quoted passage, was not differentiating between different types of employment discrimination claims subject to the exception, but rather between employment

discrimination claims and *other* types of claims that are not dependent upon the employment discrimination statutes. *Id.* at 196. By arguing that the ministerial exception should not apply to a particular a form of employment discrimination claim, which claim he only has standing to bring *solely by virtue of* the Archdiocese's selection and oversight of him *as a minister*, Plaintiff is not counseling restraint, but rather the defeat of the exception's entire purpose – *i.e.*, precluding government interference with the church-minister relationship. *Korte v. Sebelius*, 735 F.3d 654, 678 (7th Cir. 2013) ("civil authorities have no say over matters of religious governance").

Indeed, Plaintiff's argument that the ministerial exception should be shrunk to include only the beginning and end of the ministerial relationship, but not the middle, will only turn the exception into a pleading game, rendering the exception's effect hollow. Here, the district court initially dismissed Plaintiff's entire complaint, holding that he was a minister and his discrimination claims were barred. [Dkt. 15]. Given leave to amend, Plaintiff sought to plead around the exception by deconstructing his claim to highlight pre-termination conduct. He argues his "new" claim "differ[s] drastically" from his old [Response, p. 24], but each is raised under the *same* statutory scheme arising from the *same exact conduct*. Indeed, Plaintiff admits as much. [Response, p. 22 ("the Archdiocese cannot avoid judicial scrutiny merely because Demkovich's [hostile work] claims fall under the *same statutes* as civil actions that do lie within the scope of the ministerial exception" (emph.

added))]. *Hosanna-Tabor* rejects such gamesmanship, noting that focusing on claims "misses the point of the ministerial exception." 565 U.S. at 194.

Plaintiff fails in his attempt to distinguish this Court's holding in *Alicea-Hernandez*, which, consistent with *Hosanna-Tabor*, held that the ministerial exception applies "without regard to the type of claims being brought." 320 F.3d at 703. Plaintiff argues that this Court simply meant that once the exception applies, the reasons for the alleged conduct "become irrelevant," including any "connection with religious beliefs." [Response, p. 27]. While true, and setting aside that reasoning undercuts Plaintiff's second argument, *see* Section I(b), below, Plaintiff ignores the broader context of the opinion. As this Court later summarized, *Alicea-Hernandez* stands for the proposition that a church should "not be constrained in its dealings with [ministers] by employment laws that would interfere with the church's internal management, including antidiscrimination laws." *Tomic*, 442 F.3d at 1040. A hostile work environment harassment claim is merely an outgrowth of the antidiscrimination statutes, relating to the "terms and conditions of employment," *DeClue v. Central Ill. Light Co.*, 223 F.3d 434, 437 (7th Cir. 2000), which conditions Plaintiff concedes invokes the ministerial exception. [Response, p. 28 (the exception applies to issues relating to "church administration, governance, and conditions of employment.")] As this Court noted in *Alicea-Hernandez*, "[w]hile an unfettered church choice may create minimal infidelity to the objectives of Title VII, it provides maximum protection of the First Amendment right to free exercise of religious beliefs." 320 F.3d at 703 (internal citation omitted).

Perhaps best illustrating Plaintiff's misapprehension as to the exception's scope, he argues that "under the Archdiocese's proposed definition of the ministerial exception, a janitor who was sexually harassed by his boss would be barred from filing a Title VII suit if he happened to work for a church, and his minister was either accused of that harassment or responsible for investigating the same." [Response, p. 29]. However, that argument is a strawman. The "janitor," assuming the common understanding of that position, would not be a minister and thus the ministerial exception would have no application.

b. Religious Rationales Need Not Be Involved To Invoke Application Of The Exception.

Repeating the district court's error, Plaintiff next argues that the ministerial exception only applies to ministerial decisions rooted in religious rationales having a "religious purpose," and the Archdiocese has not raised "any possible religious justification" for the alleged harassing conduct. [Dkt. 10, pp. 11, 13]. However, the Supreme Court in *Hosanna-Tabor* again explicitly rejected that argument because no religious justification needs to be offered for the ministerial exception to apply. 565 U.S. at 194; *see also Alicea-Hernandez*, 320 F.3d at 703 ("It is … not our role to determine whether the Church had a secular or religious reason for alleged mistreatment of [a ministerial employee]"); *E.E.O.C. v. Roman Catholic Diocese of Raleigh, N.C.*, 213 F.3d 795, 801 (4th Cir. 2000) ("The church need not, for example, proffer any religious justification for its decision, for the Free Exercise Clause protects the act of a decision rather than a motivation behind it.") (internal citations omitted).

Indeed, the ministerial exception is a constitutionally mandated protection arising from the religious organization's broader right to self-government, and not solely as a means to prevent a court from making explicit doctrinal determinations. This right to self-governance includes ecclesiastical decisions relating to fitness for ministry, as raised here through Plaintiff's superior minister's comments to Plaintiff, a subordinate minister, relating to his weight. Neither *Hosanna-Tabor* (ADA retaliation) nor *Alicea-Hernandez* (gender and national origin discrimination), as examples, involved explicitly religious determinations; rather, the sole determination for each court was whether the employee's position was ministerial – an issue not disputed here – thus resulting in the exception's application.

Plaintiff cites *Rayburn v. General Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985) for the proposition that the exception only protects government scrutiny where the alleged misconduct involves "spiritual functions." [Response, pp. 15-16] However, Plaintiff confuses the threshold determination of whether an employee's position is ministerial (*i.e.*, the subject of the court's "spiritual functions" discussion in *Rayburn*), with the analysis relating to employment decision or discipline. The former analysis determines whether the exception applies. Once that showing is made, the latter determination becomes irrelevant because the exception is then "applied without regard to the type of claims being brought." *Alicea-Hernandez*, 320 F.3d at 703. Indeed, contrary to Plaintiff's insinuations, the court in *Rayburn* barred a Title VII claim, like Plaintiff's antidiscrimination claim, following the determination that plaintiff's

position was ministerial, *irrespective of religious justification*: "[w]hile it is our duty to determine whether the position of associate in pastoral care is important to the spiritual mission of the [] church, we may not then inquire whether the reason for [plaintiff's] rejection had some explicit grounding in theological belief." 772 F.2d 1169.

Plaintiff also cites church autonomy cases for the same alleged principle that the exception may not be invoked when the alleged misconduct is not "rooted in religious belief." [Response, pp. 16-17; citing, *e.g.*, *Ohno v. Yasuma*, 723 F.3d 984 (9th Cir. 2013); *E.E.O.C. v. Mississippi College*, 626 F.2d 477 (5th Cir. 1980); *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648 (10th Cir. 2002); *McCarthy v. Fuller*, 714 F.3d 971 (7th Cir. 2013)]. However, those cases did not involve the ministerial exception, which as stated above, and unlike the issues raised in other church autonomy cases, does not require religious justification be offered to invoke the exception's protection. *Hosanna-Tabor*, 565 U.S. at 194; *Alicea-Hernandez*, 320 F.3d at 703.

Plaintiff's fundamental misunderstanding of this issue leads to similarly misplaced arguments relating to entanglement. He asserts that this case could not create impermissible substantive or procedural entanglement "because the allegations against the Archdiocese have no connection to its religious beliefs." [Response, p. 31]. However, again, no religious beliefs need be involved. Plaintiff citation to *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354, 1359 (D.C. Cir. 1990) [Response, p. 37] yields no aid. In *Minker*, a

minister sued a church for age discrimination and breach of oral contract. The court of appeals affirmed dismissal at the Rule 12(b)(6) stage of the minister's age discrimination claims, including rejecting the minister's claims that his "suit did not involve religious matters." *Id.* at 1357-58. However, the court permitted an alleged oral contract claim (relating to a promised relocation and salary increase) to proceed, finding that "a church is always free to burden its activities voluntarily through contracts, and such contracts are fully enforceable in civil court," and such claim would "not necessarily create an excessive entanglement." *Id.* at 1360. Conversely, here, Plaintiff's claim is an employment-based claim involving a superior minister and his subordinate minister. That claim, unlike a breach of contract claim relating to salary, arises solely from the ministerial employment relationship and directly invokes prohibited excessive entanglement and would involve impermissible discovery. The limited contract claim permitted to proceed in *Minker*, not dependent upon a federal employment statute or requiring any examination of the ministerial employment relationship, is arguably consistent with the Supreme Court's holding *Hosanna-Tabor*. 565 U.S. at 196 ("We express no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract").

Plaintiff falsely posits that the Archdiocese has "already effectively conceded that being involved in a civil suit does not inherently create excessive entanglement with religion by noting that some common-law claims by a minister could proceed." [Response, p. 11]. To the contrary, the Archdiocese has merely acknowledged the

exception's limits, which are not implicated here. Conversely, the district court and Plaintiff have failed to recognize the exception's proper scope, including all employment based claims like the one Plaintiff raises, derived under antidiscrimination statutes by virtue of his employment relationship.

Plaintiff repeats the same flawed "religious justification" argument to assert that this Court should follow, as the district court did, Ninth Circuit authority, (*Bollard v. Cal. Province of The Society of Jesus*, 196 F.3d 940 (9th Cir. 1999) and *Elvig v. Calvin Presby. Church*, 375 F.3d 951 (9th Cir. 2004)), both of which predate *Hosanna-Tabor* and are in tension with rulings of this Court and, among others, the Tenth Circuit. Plaintiff urges this Court to adopt the Ninth Circuit's reasoning that the ministerial exception "does not bar employment discrimination claims when the alleged conduct is unrelated to ecclesiastical matters" and involves "secular questions." [Response, p. 44]. However, again, the Supreme Court in *Hosanna-Tabor* rejected any religious justification requirement. Moreover, importantly, employment discrimination claims involving a minister can *only* arise by virtue of the ministerial relationship, which, by nature, can *only* involve ecclesiastical matters. *Hosanna-Tabor,* 565 U.S. at 194-195 (selection and control of who will minister to the faithful is a matter "strictly ecclesiastical").

The Tenth Circuit's approach in *Skrzypczak v. Roman Cath. Diocese of Tulsa*, 611 F.3d 1238, 1245 (10th Cir. 2010), relying on this Court's decision in *Alicea-Hernandez*, presents the sounder approach, consistent with *Hosanna-Tabor*. In *Skrzypczak,* the Tenth Circuit held that a hostile work environment claim, which is

a form of employment discrimination claim, was barred by the ministerial exception as a matter of law: "[t]he types of investigations a court would be required to conduct in deciding [hostile work environment] claims brought by a minister could only produce by [their] coercive effect the very opposite of that separation of church and State contemplated by the First Amendment." 611 F.3d at 1245 (citing *McClure*, 460 F.2d at 560). It found that allowing inquiry into a hostile work environment claim would "infringe on a church's right to select, manage, and discipline [its] clergy free from government control and scrutiny by influencing it to employ ministers that lower its exposure to liability rather than those that best further [its] religious objective[s]," and while "not implicat[ing] a church's spiritual functions," "involve[d] gross substantive and procedural entanglement with the Church's core functions, its polity, and its autonomy." *Id.* at 1245 (internal citations omitted). Thus, the Tenth Circuit adopted the bright line test set forth "in *Alicea-Hernandez*," finding it "provides greater clarity in the exception's application…." *Skrzypczak*, 611 F.3d at 1245. Permitting the district court to carve out an exception to the ministerial exception would have the opposite effect, resulting in murkiness as to its application and incentivizing cagey pleading.

Importantly, the Archdiocese is not saying that it may never be sued, that it should not be subject to discovery if necessary to determine whether an employment position was "ministerial," or that a minister may never bring certain claims based on common law rights. Rather, it is saying, consistent with precedent, that upon determination that an employee's position is ministerial, any claims arising solely

by virtue of the ministerial employment relationship, including under anti-discrimination laws like a hostile work environment claim occurring during a minister's employment, are barred by the exception regardless of religious justification.

II. The Ministerial Exception Applies To All Doctrinal Issues Arising From The Ministerial Employment Relationship, Including, Here, Fitness For Ministry.

Even if this Court does not hold that the ministerial exception provides a blanket protection against all claims arising by virtue of the ministerial-relationship, it should still find that the district court erred in not dismissing Plaintiff's claim. The alleged statements underpinning Plaintiff's disability hostile work environment claim, addressing Plaintiff's weight, all involve the supervision and discipline of a subordinate minister by a superior minister, relating to Plaintiff's weight, health, appearance and therefore, fitness for ministry. The statements are protected under the ministerial exception, which is designed to keep the courts out of the church-minister relationship, to prevent courts from deciding explicitly religious questions, and to protect religious organizations from government interference in internal ecclesiastical governance. *Hosanna-Tabor,* 565 U.S. at 194-195.

Any secular court inquiry into the Archdiocese's supervision and discipline of one of its ministerial employees will improperly usurp the church's right to set its own standards for ministry and entangle the court in inherently religious questions, impermissibly permitting a secular court to determine what constitutes religiously

significant actions pertaining to the "control" over a subordinate minister. *See, e.g., McCarthy*, 714 F.3d at 976 ("the First Amendment . . . forbids the government to make religious judgments"); *Milivojevich*, 426 U.S. at 708 (secular courts not equipped nor permitted to substitute their judgment for that of a church on the question of what is of religious significance to that church).

Indeed, the alleged facts forming the basis of Plaintiff's hostile work environment claim cannot be scrutinized – in discovery or on the merits – without interfering with the Archdiocese's right to hierarchically control its subordinate ministers, decide the qualifications for ministry, including fitness for ministry, select ministers according to its own religious standards, and generally control the "work environment" of a Catholic parish. *See, e.g., Catholic Bishop of Chicago v. N.L.R.B.*, 559 F.2d 1112 (7th Cir. 1977) (*aff'd N.L.R.B.*, 440 U.S. 490). The district court's failure to perceive that the supervising minister's statements to Plaintiff was an exercise of the church's hierarchical control over a subordinate minister, relating to his fitness for ministry, illustrates why secular courts are not tasked with determining what is hierarchical.

Plaintiff, in his Response, again ignores that legal principle. Instead, he repeats the same flawed argument that secular court review would not result in the "impermissible inquiry" warned against in *Milivojevich*, 426 U.S. 696, "because the alleged conduct did not touch upon religious beliefs nor involve the Archdiocese's supervision of its minister." [Response, p. 39]. Plaintiff again simply misconstrues the purpose of the ministerial exception, including erroneously believing its

application requires a religious rationale, and fails to appreciate the expansive definition of ecclesiastical, which includes control, or "supervision," over fitness for ministry. *Hosanna-Tabor,* 565 U.S. at 194-195.

III. The District Court Properly Dismissed Plaintiff's Sexual Orientation Hostile Work Environment Claim.

The district court dismissed Plaintiff's sexual orientation hostile work environment claim based upon its findings that: (a) the alleged harassing remarks "reflect[ed] the pastor's opposition, in accordance with Catholic doctrine, to same sex marriage"; (b) "there is no reason to question the sincerity of the Archdiocese's belief that the opposition is dictated by Church doctrine"; and (c) any discovery into this claim would impermissibly require the Church to introduce evidence of its religious beliefs. [Dkt. 36, pp. 22-23].

For the reasons stated above, because the hostile work environment claim is an outgrowth of the federal anti-discrimination statutes, and arose solely by virtue of the ministerial-employment relationship, the district court need not have made those findings because the ministerial exception applies *per se* to a minister's employment based claims. Regardless, the district court held that the claim also explicitly implicated upon church doctrine and involved a religious rationale. As Plaintiff, himself, noted, where there are religious views involved, there is a risk of substantive entanglement. [Response, p. 11]. Thus, under Plaintiff's *own* test, the exception applies to his sexual orientation hostile work environment claim.

Plaintiff speciously argues that (1) the "Archdiocese cannot avoid liability for a hostile work environment claim by providing a general religious tenet against gay

marriage," and, in contradictory fashion, (2) the Archdiocese's alleged harassment of Plaintiff based on his same-sex marriage does "not require this Court to decide between competing religious views because the Archdiocese's religious views are not at issue." [Response, p. 33]. That determination is not for Plaintiff to make, nor does this Court have authority to question of the Archdiocese's religious beliefs. "It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." *Hernandez v. C.I.R.*, 490 U.S. 680, 699 (1989); *McCarthy*, 714 F.3d at 975-976 (7th Cir. 2013) (internal citations omitted) ("a secular court may not take sides on issues of religious doctrine … . "); *Grussgott v. Milwaukee Jewish Day School*, 882 F.3d 655, 660 (7th Cir. 2018) (a court should defer to a religious organization's designation of what constitutes religious activity 'where there is no sign of subterfuge').

CONCLUSION

The district court erred in denying the Archdiocese's motion to dismiss Plaintiff's disability discrimination hostile work environment claim, but properly dismissed Plaintiff's sexual orientation hostile work environment claim. This Court should reverse the district court's decision as to the disability discrimination claim and dismiss Plaintiff's complaint in its entirety based on the protections the Archdiocese is afforded by the ministerial exception, which prohibits secular court oversight of its relationship with its ministers.

Respectfully submitted,
St. Andrew the Apostle Parish, Calumet City, and the Archdiocese of Chicago,

By: /s/ Alexander D. Marks
One of their attorneys

James C. Geoly (jgeoly@burkelaw.com)
Alexander D. Marks (amarks@burkelaw.com)
Burke, Warren, MacKay & Serritella, P.C.
330 North Wabash Avenue, 21st Floor
Chicago, Illinois 60611
Telephone: (312) 840-7000
Facsimile: (312) 840-7900

PROOF OF SERVICE

The undersigned, an attorney, states that he caused a copy of the foregoing APPELLANT Brief and Short Appendix to be served upon all counsel of record via the 7th Circuit Court's electronic filing system.

s/ Alexander D. Marks

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS .

1. This brief complies with the length limitation of Circuit Rule 32(c) because it contains 4,439 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the requirements of Fed. R. App. P. 32(a) and Circuit Rule 32(b) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 12-point Century Schoolbook font.

s/Alexander D. Marks
Attorney for Defendants-Appellants
St. Andrew the Apostle Parish, Calumet City, and the Archdiocese of Chicago