STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	
COUNTY OF MARION	)	CAUSE NO. 49D01-1907-PL-27728

JOSHUA PAYNE-ELLIOTT,

Plaintiff,

v.

ROMAN CATHOLIC ARCHDIOCESE OF INDIANAPOLIS, INC.,

Defendant.

DEFENDANT ROMAN CATHOLIC ARCDIOCESE OF INDIANAPOLIS, INC.'S MEMORADUM IN SUPPORT OF MOTION TO DISMISS

This case strikes at the heart of the First Amendment's protections for separation of church and state. The Plaintiff, Joshua Payne-Elliott, was a teacher at a Catholic high school ("Cathedral"). In 2017, he entered a same-sex marriage in violation of Catholic Church teaching. The Defendant, the Roman Catholic Archdiocese of Indianapolis, then engaged in "22 months of earnest discussion and extensive dialogue" with Cathedral, Compl. Ex. C. at 1, to discern the most appropriate pastoral response based on canon law and Catholic teaching.

Eventually, the Archdiocese informed Cathedral that if it wished to remain affiliated with the Catholic Church, "it needed to adopt and enforce morals clause language used in teacher contracts at Archdiocesan schools," Compl. ¶ 13—meaning that Cathedral could not continue employing teachers who lived in unrepentant violation of Church teaching. Based on its desire to remain affiliated with the Catholic Church, Cathedral then chose to "follow the direct guidance given to [it] by Archbishop Thompson and separate from the [Plaintiff]." Compl. ¶ 24.

By this lawsuit, the Plaintiff now asks this Court to punish the Archdiocese for telling Cathedral what rules it needed to follow in order to remain a Catholic school. Not surprisingly, such a request is barred by the First Amendment. The Supreme Court has repeatedly held that churches have the right "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). And it has held that courts are barred from becoming "entangled in essentially religious controversies." *Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 709 (1976). That is exactly what Plaintiff's lawsuit would require the court to do here.

Plaintiff's complaint must be dismissed for four independent reasons. *First*, Plaintiff has failed to allege an essential element of his claims for intentional interference with a contractual or employment relationship—namely, that the Archdiocese's actions were "without justification." *Morgan Asset Holding Corp. v. CoBank, ACB*, 736 N.E.2d 1268, 1272 (Ind. Ct. App. 2000). It is no mystery why Plaintiff avoids pleading this element of his claims: because alleging that the Archdiocese's interpretation and application of "Catholic teaching" is without justification raises obvious First Amendment problems. Compl. ¶ 23.

Second, Plaintiff's claims are barred by the doctrine of church autonomy—which provides 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 doctrine, Indiana courts have repeatedly dismissed tortious interference claims that, like the claim here, would trench on matters of church governance. *See McEnroy v. St. Meinrad Sch. of Theology*, 713 N.E.2d 334, 337 (Ind. Ct. App. 1999); *Brazauskas v. Fort Wayne-S. Bend Diocese, Inc.*, 796 N.E.2d 286 (Ind. 2003). Those cases are controlling here.

Third, Plaintiff's claims are barred by the First Amendment freedom of association, which protects the right of religious organizations (and others) to choose to affiliate or disaffiliate with others in order to communicate their views. Just as the Boy Scouts can set the terms of affiliation for scoutmasters, *Boy Scouts v. Dale*, 530 U.S. 640, 659 (2000), and university groups can set the terms of affiliation for their leaders, *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 862 (7th Cir. 2006), the Archdiocese can set the terms of affiliation for its schools.

Fourth, Plaintiff's claims are barred by the First Amendment's ministerial exception, which prohibits government interference with a religious organization's selection of its leaders. Numerous

federal courts, including both the U.S. Supreme Court and Seventh Circuit, have held that the ministerial exception applies to teachers at religious schools. Those decisions are controlling here.

FACTUAL BACKGROUND

A. The relationship between the Archdiocese and Cathedral.

The Roman Catholic Archdiocese of Indianapolis, Inc. ("Archdiocese") is an Indiana nonprofit corporation serving Catholics and the community of central and southern Indiana.[1] The Archdiocese is governed by the Archbishop of Indianapolis ("Archbishop"), currently Archbishop Charles C. Thompson, and is a constituent entity of the broader Roman Catholic Church.[2] Like all such constituent entities, the Archdiocese's activities are governed by the Canon Law of the Catholic Church, which is publicly available on the Vatican's website.[3]

Cathedral Trustees, Inc., doing business as Cathedral High School ("Cathedral"), was founded as a Catholic high school in 1918 under the control of the Archdiocese of Indianapolis. Compl. Ex. C at 1. While it separately incorporated, it retained its affiliation as a constituent entity of the Catholic Church. *See id.* (discussing privileges of affiliation with the Church).

The relationship between the Archdiocese and Cathedral is governed by the Code of Canon Law. 1983 Code c.796–806. The Code recognizes that the Archbishop "has the right to watch over and visit the Catholic schools" within the archdiocese and to issue "prescripts which pertain to the general regulation of Catholic schools." 1983 Code c.806, § 1. These precepts are binding: "no school is to bear the name Catholic school without the consent of competent ecclesiastical authority"—in this case, the Archbishop. *Id.* c.803, § 3. The Archbishop, likewise, must ensure that the education in Catholic schools is "grounded in the principles of Catholic doctrine" and that teachers are "outstanding in correct doctrine and integrity of life." *Id.* c.803, § 3.

---

[1] *Articles of Incorporation of Roman Catholic Archdiocese of Indianapolis, Inc.*, Indiana Secretary of State, https://bsd.sos.in.gov/PublicBusinessSearch/GetBOSNameReservationFilingDocuments?FilingNo=5137575.

[2] *Id.*

[3] *Code of Canon Law*, The Holy See, http://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html.

B. The responsibilities of Cathedral teachers.

The Catholic Church requires teachers at Catholic schools to "bear witness to Christ, the unique Teacher" by "their life as much as their instruction."[4] In accordance with this teaching, the employment contact between Plaintiff and Cathedral, which is discussed and attached in part to the complaint,[5] incorporates the "policies and procedures" contained in the "Cathedral Employee Handbook." Compl. Ex. A at 1. That Handbook, here attached as Exhibit 1, sets forth the religious responsibilities applicable to teachers at Cathedral.

First, the Handbook states that teachers are expected to:

- "Support[ ] the teachings and traditions of the Roman Catholic Church"
- "Serve[ ] as a role model for a Christ-centered lifestyle"
- "Display[ ] a lifelong faith commitment"
- "Influence[ ] others through his/her roles as servant, shepherd, and steward."
- "Embrace[ ] the sacramental life of the school and encourage[ ] students to do the same."

Ex. 1 at 3.

The Handbook also incorporates a morals clause which states that teachers, as leaders in a "ministr[y] of the Catholic Church . . . teaching the Word of God," must be "credible witnesses of the Catholic faith" and "models of Christian values." Ex. 1 at 4. Accordingly, they are required in their "personal conduct" to "convey and be supportive of the teachings of the Catholic Church," as set forth "in the Catechism of the Catholic Church." *Id.* Finally, the Handbook provides that "[d]etermining whether a faculty member is conducting his/herself in accordance with the teachings of the Catholic Church is an internal Church/School matter and is at the discretion of the pastor, administrator, and/or Archbishop." *Id.*

---

[4] Second Vatican Council, *Gravissimum Educationis* (Declaration on Christian Education) (Oct. 28, 1965), *http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_gravissimum-educationis_en.html.*

[5] The complaint attaches only the 2019-20 renewal of Plaintiff's teaching contract, not the original document to which it refers. Compl. Ex. A.

The official job description for Catholic teachers within the Archdiocese, as set forth in February 2016, states that teachers are expected to contribute to the religious formation of their students in the following ways:

- "Prays with and for students, families and colleagues and their intentions. Plans and celebrates liturgies and prayer services"
- "Teaches and celebrates Catholic traditions and all observances in the Liturgical Year."
- "Models Jesus, the Master Teacher, in what He taught, how He lived, and how He treated others."
- "Communicates the Catholic faith to students by direct teaching of Religion and/or, as appropriate, by the integration[ ] of moral values in all curriculum areas."
- "Conveys the Church's message and carries out its mission by modeling a Christ-centered life."
- "Participates in religious instruction and Catholic formation, including Christian services, offered at the school."
- "Participates in spiritual retreats, days of reflection, and spiritual formation programs as directed by the principal and as required by Archdiocesan faith formation expectations"

Ex. 2 at 1–2. This document likewise sets forth the requirement that teachers in Plaintiff's position, as "vital ministers" of the school ministry, "must convey and be supportive of the teachings of the Catholic Church." *Id.* at 3-4.

As incorporated in Cathedral's Handbook, the Catechism of the Catholic Church describes the Church's well-known and millennia-old teaching that marriage is between one man and one woman.[6] The United States Conference of Catholic Bishops, in another document incorporated by Cathedral's Handbook, explains that the Church's teaching on male-female marriage is particularly necessary to provide to children, so that they can have "clear guidance as they grow to sexual maturity."[7] Thus, the 2016 job description for teachers emphasizes that they must, in word and deed,

---

[6] *See* Catechism §§ 2331–2400, http://www.usccb.org/beliefs-and-teachings/what-we-believe/catechism/catechism-of-the-catholic-church/index.cfm. Canon Law likewise limits marriage to one man and one woman. 1983 Code c.1055 § 1.

[7] *Marriage: Love and Life in the Divine Plan*, United States Conference of Catholic Bishops (2009), at 23, http://www.usccb.org/issues-and-action/marriage-and-family/marriage/love-and-life/upload/pastoral-letter-marriage-love-and-life-in-the-divine-plan.pdf.

"convey and be supportive of . . . the belief that all persons are called to respecting human sexuality and its expression in the Sacrament of Marriage as a sign of God's love and fidelity to His Church." Ex. 2 at 3–4.

The Archdiocese likewise directs its schools to provide teachers with a 'Teaching Ministry Contract" that includes as grounds for default (1) "any personal conduct or lifestyle at variance with the policies of the Archdiocese or the moral or religious teachings of the Roman Catholic Church," and (2) any "[r]elationships that are contrary to a valid marriage as seen through the eyes of the Catholic Church" Ex. 3 at 2 (2018–19 Ministry Contract).

C. The Archbishop's Guidance to Cathedral

As described in the complaint and exhibits, when the Archdiocese learned that Plaintiff was "living in contradiction to Catholic teaching on marriage," it engaged in "22 months of earnest discussion and extensive dialogue" with Cathedral. Compl. Ex. C at 1. Consistent with the Archbishop's responsibility "to oversee faith and morals as related to Catholic identity," Compl. Ex. B, the Archbishop explained to Cathedral that if it wished to remain affiliated with the Catholic Church, "it needed to adopt and enforce morals clause language used in teacher contracts at Archdiocesan schools." Compl. ¶ 13. Cathedral subsequently indicated that, because "our Catholic faith is at the core of who we are and what we teach at Cathedral, . . . Cathedral must follow the direct guidance given to us by Archbishop Thompson and separate from the [Plaintiff]." Compl. Ex. C at 1.

STANDARD OF REVIEW

"A motion to dismiss for lack of subject matter jurisdiction presents a threshold question concerning the court's power to act." *McEnroy v. St. Meinrad Sch. of Theology*, 713 N.E.2d 334, 337 (Ind. Ct. App. 1999). For that reason, the court "may consider . . . any affidavits or other evidence submitted" and "weigh the evidence to determine the existence of the requisite jurisdictional facts." *Perry v. Stitzer Buick GMC, Inc.*, 637 N.E.2d 1282, 1286–87 (Ind. 1994).

A motion to dismiss for failure to state a claim tests "whether the allegations in the complaint establish any set of circumstances under which a plaintiff would be entitled to relief." *Shi v. Yi,* 921

N.E.2d 31, 37 (Ind. Ct. App. 2010). Accordingly, the Court assumes well-pleaded material facts are true unless they "are contradicted by other allegations or exhibits attached to or incorporated in the pleading." *Morgan Asset Holding Corp. v. CoBank, ACB*, 736 N.E.2d 1268, 1271 (Ind. Ct. App. 2000). *Id.* It also does not assume as true "conclusory, nonfactual assertions or legal conclusions." *Shi,* 921 N.E.2d at 37.

While motions to dismiss for failure to state a claim are generally judged on the pleadings, judicially noticeable facts are not considered "matters outside the pleading." *Moss v. Horizon Bank, N.A.*, 120 N.E.3d 560, 563 (Ind. Ct. App. 2019). Judicially noticeable facts include those facts "not subject to reasonable dispute," either because they are "generally known" or "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Sanders v. State*, 782 N.E.2d 1036, 1038 (Ind. Ct. App. 2003). Further, "documents attached to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to his [or her] claim." *Bd. of Comm'rs of Delaware Cty. v. Evans*, 979 N.E.2d 1042, 1046 (Ind. Ct. App. 2012) (citation omitted).

ARGUMENT

Plaintiff's claim must be dismissed for four independent reasons:

(1) Plaintiff has failed to allege facts sufficient to make out a claim for intentional interference with a contractual or employment relationship. (Trial Rule 12(B)(6))

(2) Under the doctrine of church autonomy, this Court lacks jurisdiction over questions of church governance. (Trial Rule 12(B)(1))

(3) Plaintiff's claims are barred by the First Amendment freedom of association. (Trial Rule 12(B)(6))

(4) Plaintiff's claims are barred by the ministerial exception. (Trial Rule 12(B)(6))

Resolution of this case at the motion to dismiss stage is particularly important to vindicate the important First Amendment principles at stake. The Supreme Court has noted in numerous contexts that "the very process of inquiry" into internal church affairs and doctrines can "impinge on rights guaranteed by the religion clauses." *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979); *see also Milivojevich*, 426 U.S. at 717–18 (a court's "detailed review of the evidence" regarding

internal church procedures was itself "impermissible" under the First Amendment); *cf. McCarthy v. Fuller*, 714 F.3d 971, 976 (7th Cir. 2013) ("a secular court resolving a religious issue" causes "irreparable" harm even if the judgment does not tangibly affect the church). Thus, courts have likened the First Amendment's protection against judicial interference in internal religious affairs as "closely akin" to a type of "official immunity," because the immunity it provides is not simply immunity from an adverse judgment, but immunity from intrusive inquiries by secular courts into religious affairs. *McCarthy v. Fuller*, 714 F.3d 971, 975–76 (7th Cir. 2013) (accepting interlocutory appeal of church autonomy defense). Such a defense is treated as a "threshold matter" that should be decided early in the litigation and is "subject to prompt appellate review." *Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597, 608–09 & n.45 (Ky. 2014).

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

Plaintiff's complaint contains two counts—one for intentional interference with a contractual relationship, Compl. ¶¶ 25–31, and one for intentional interference with an employment relationship, Compl. ¶¶ 32–37. Under Indiana law, these two counts involve the same elements and are effectively interchangeable. *See, e.g.*, *Dietz v. Finlay Fine Jewelry Corp.*, 754 N.E.2d 958, 970 (Ind. Ct. App. 2001) (using terms interchangeably).

To state a claim for intentional interference, Plaintiff must allege five elements: "(i) existence of a valid and enforceable contract; (ii) defendant's knowledge of the existence of the contract; (iii) defendant's intentional inducement of breach of the contract; (iv) the absence of justification; and (v) damages resulting from defendant's wrongful inducement of the breach." *Winkler v. V.G. Reed & Sons, Inc.*, 638 N.E.2d 1228, 1235 (Ind. 1994). The fourth element—absence of justification—requires that "the breach must be *malicious and exclusively directed to the injury and damage of another*." *Morgan Asset Holding Corp.,* 736 N.E.2d at 1272 (emphasis added) (dismissing tortious interference claim where plaintiff failed to allege "conduct by [defendant] that was intended for the sole purpose of causing injury and damage to [plaintiff]"); *Manufacturer Direct LLC v. DirectBuy, Inc.,* No. 2:05-cv-451, 2006 WL 2095247, at *7 (N.D. Ind. July 26, 2006) (same). Importantly, this element is not satisfied if there is a "*legitimate reason* for the defendant's

actions." *Morgan Asset Holding Corp.,* 736 N.E.2d at 1272 (emphasis added); *see Konecranes, Inc. v. Davis,* No. 1:12-cv-01700, 2013 WL 1566326, at *2–3 (S.D. Ind. Apr. 12, 2013) (dismissing tortious interference claim where plaintiff's allegations acknowledged that defendant "was motivated at least in part by a legitimate business interest").

Plaintiff's complaint fails to allege that the Archdiocese acted with the sole purpose of causing him injury and damage. Compl. Ex. C. at 1. Its bare assertion that his firing was "not justified," Compl. ¶ 30, 36, is a "legal conclusion[]" that doesn't meet the basic pleading standard. *Shi,* 921 N.E.2d at 37. Instead, "[t]o 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." *Morgan Asset Holding Corp.*, 736 N.E.2d at 1272 (quoting *HPI Health Care Services, Inc. v. Mt. Vernon Hosp., Inc.*, 545 N.E.2d 672, 677 (Ill. 1989)).

Nor is it any mystery why Plaintiff avoids pleading this basic element of an intentional interference claim: because to delve into whether the Archdiocese's actions were justified, "a civil court—and perhaps a jury—would be required to make a 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). This is obvious from the other allegations in the Complaint. Specifically, rather than alleging any malice toward Plaintiff, the complaint alleges that the Archdiocese requested *all* Indianapolis Catholic schools, including Cathedral, to "adopt and enforce morals clause language used in teacher contracts at Archdiocesan schools." Compl. ¶ 13. The complaint also includes Plaintiff's contract, Compl. Ex. A at 1, which incorporates Cathedral's Employee Handbook and makes clear that "[d]etermining whether a faculty member is conducting his/ herself in accordance with the teachings of the Catholic Church is an internal Church/School matter and is at the discretion of the pastor, administrator, and/or Archbishop." Ex. 1 at 3–4.

Ultimately, then, to state a tortious interference claim, Plaintiff would have to allege that the Archbishop's interpretation and enforcement of canon law was "not justified"—and was instead

"malicious and exclusively directed to the injury" of the Plaintiff. *Morgan Asset Holding Corp.,* 736 N.E.2d at 1272. As explained below, Plaintiff has not made that allegation because the First Amendment plainly bars civil courts from entertaining such a claim.

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

For over a century, the Supreme Court has held that "civil courts exercise no jurisdiction" over matters of "church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733 (1871). Rather, the First Amendment guarantees the right of churches "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). Respecting these rights benefits both Church and State—granting churches the space to decide their own religious affairs and protecting the government from entanglement in those affairs.

The Court has applied these principles, often called the church autonomy doctrine, in a variety of contexts. In *Gonzalez v. Roman Catholic Archbishop of Manila*, the Court held that civil courts cannot rule on an individual's qualifications to be appointed a Catholic chaplain. 280 U.S. 1, 16 (1929). In *Kedroff*, the Court struck down a New York law that would have transferred control over a cathedral from one church authority to another. 344 U.S. at 119. And in *Milivojevich*, it barred civil courts from interfering in a church's decision to reorganize itself and remove a bishop. 426 U.S. at 713.

In each case, the Court emphasized that matters of "theological controversy, church discipline, [and] ecclesiastical government" are "matter[s] over which the civil courts exercise no jurisdiction." *Id.* at 713-14 (quoting *Watson*, 80 U.S. (13 Wall.) at 733); *see McCarthy v. Fuller*, 714 F.3d 971, 976 (7th Cir. 2013) ("Religious questions are to be answered by religious bodies."). This rule derives both from the Establishment Clause, which forbids civil courts from becoming "entangled in essentially religious controversies," *Milivojevich*, 426 U.S. at 709, and from the Free Exercise Clause, which protects the right of churches to make "internal church decision[s]." *Hosanna-Tabor*, 565 U.S. at 190.

Courts across the country have applied church autonomy doctrine to bar a wide variety of civil lawsuits that would entangle courts in religious questions or interfere in matters of church governance. These include:

- suits for tortious interference against a church regarding a ministerial contract;[8]
- suits for defamation and other tort claims arising from a church's internal discipline of its members;[9]
- a suit for tortious interference, breach of contract, and other tort claims against a parochial school for expelling a student;[10]
- a suit brought against a diocese under a state's anti-fraud statute for unfair practices in excommunicating a member;[11]
- a suit for intentional infliction of emotional distress and loss of consortium arising out of a minister's termination;[12]
- a false-light invasion of privacy claim against a bishop and church arising from statements about a pastor's financial management;[13]
- and more.[14]

---

[8] *Van Osdol v. Vogt*, 908 P.2d 1122, 1129 (Colo. 1996) (en banc) (declining "to separate arguably impermissible discriminatory grounds for a decision from grounds stemming from the church beliefs" as entangling); *see Seefried v. Hummel*, 148 P.3d 184, 191 (Colo. App. 2005) (intentional interference with business claim impermissibly required inquiry "into the basis for the church's choice of its religious leaders")

[9] *Paul v. Watchtower Bible & Tract Society*, 819 F.2d 875 (9th Cir. 1987) (refusing to interfere with practice of shunning disciplined members); *Westbrook v. Penley*, 231 S.W.3d 389, 393 (Tex. 2007) (refusing to interfere with "three-step disciplinary process" outlined in scripture).

[10] *In re Episcopal Sch. of Dallas, Inc.*, 556 S.W.3d 347, 358 (Tex. App. 2017) ("The Doe's claims all concern a faith-based organization's internal affairs, governance, administration, membership, or disciplinary procedures and are protected religious decisions.").

[11] *O'Connor v. Diocese of Honolulu*, 885 P.2d 361, 368 (Haw. 1994) (court may not analyze, among other things, "schism" or "whether one has misrepresented the Roman Catholic faith").

[12] *Lewis v. Seventh Day Adventists Lake Region Conference*, 978 F.2d 940 (6th Cir. 1992) (determining, *inter alia*, that the claim would involve resolving the relative authority of a religious tribunal).

[13] *Byrd v. DeVeaux*, No. 17-3251, 2019 WL 1017602 at *7 (D. Md. Mar. 4, 2019) (determining that internal investigation related to "internal church discipline" and that secular matters could not be separated "from the overall ecclesiastical nature of the documents").

[14] *See* Victor E. Schwartz & Christopher Appel, *The Church Autonomy Doctrine: Where Tort Law Should Step Aside*, 80 U. Cin. L. Rev. 431, 461–75 (2011) (discussing various circumstances where tort claims raise "palpable conflicts with the church autonomy doctrine" and collecting cases on clergy malpractice, breach of confidentiality, negligent hiring, and other claims).

Consistent with nationwide practice, Indiana courts for over a century have applied the doctrine of church autonomy in multiple contexts that are relevant here.

Most obviously on point is *McEnroy v. St. Meinrad School of Theology*, 713 N.E.2d 334. There, a Catholic seminary professor signed an open letter opposing the Pope's teaching on ordination of women. The Archabbot decided that this rendered the professor "seriously deficient" as a teacher under "the Church's canon law," and he directed the President of the seminary to remove the professor. *Id.* at 336. The professor then sued the Archabbot for intentional interference with contractual relations. The Court of Appeals, however, dismissed the claim for lack of jurisdiction, because it would require the court to determine whether the professor's conduct caused her to be "seriously deficient" as a teacher, and whether the Archabbot "properly exercised his jurisdiction over [the seminary]." *Id.* at 337. In short, it would make the court "clearly and excessively entangled in religious affairs in violation of the First Amendment." *Id.*

The same is true here. Plaintiff's claim would require this Court to determine whether the Archdiocese had a "legitimate reason," *Morgan Asset Holding Corp.*, 736 N.E.2d at 1272, for requiring Cathedral "to adopt and enforce morals clause language" used in all other Archdiocesan schools, Compl. ¶ 13. And that is ultimately a religious question—turning on whether violating the teachings of the Catholic Church renders a teacher "deficient" under "canon law," and whether the Archbishop "properly exercised his jurisdiction over [Cathedral]." *McEnroy*, 713 N.E.2d at 337. In short, as in *McEnroy*, resolving these questions would make this Court "clearly and excessively entangled in religious affairs in violation of the First Amendment." *Id.*; *see also Cardinal Ritter High Sch., Inc. v. Bullock*, 17 N.E.3d 281, 290 (Ind. Ct. App. 2014) (noting that *McEnroy* "deal[t] directly with matters of faith and creed" because it related to "administrative/teaching functions.").

Similarly, in *Brazauskas v. Fort Wayne-S. Bend Diocese, Inc.*, 796 N.E.2d 286 (Ind. 2003), the plaintiff sued a Catholic diocese for tortious interference with a business relationship, alleging that the diocese prevented her from getting a job at Notre Dame by informing Notre Dame of her past accusations against the diocese. The Indiana Supreme Court held that her claims were barred, because applying "tort law to penalize communication and coordination among church officials . . .

on a matter of internal church policy and administration that did not culminate in any illegal act . . . would violate the church autonomy doctrine." 796 N.E.2d at 294. It also found that resolving the claim would contradict Supreme Court precedent that "'[t]he fundamental law declares the interest of the United States that the free exercise of religion be not prohibited and that freedom to communicate information and opinion not be abridged.'" *Id.* (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 307 (1940)). So too here: Plaintiff invokes tort law to penalize the Archdiocese for its communication with Cathedral about the terms of their affiliation under canon law.

Indeed, the allegations in this case are even more entangling than the allegations in *Brazauskas*. Here, a necessary element of Plaintiff's claim would require this Court to determine whether the Archdiocese's interpretation of church law, and the terms under which it chose to affiliate with Cathedral, were "legitimate reason[s]" for the Archdiocese's actions. *Morgan Asset Holding Corp.*, 736 N.E.2d at 1272. More fundamentally, Plaintiff's suit asks this Court to punish a Catholic authority for acting on its understanding of what Catholic teaching requires and declaring it "without justification," *id.*—precisely the matters of theology and church governance "over which the civil courts exercise no jurisdiction." *Milivojevich*, 426 U.S. at 714; *see Myhre v. Seventh-Day Adventist Church Reform Movement Am. Union Int'l Missionary Soc'y*, 719 F. App'x 926, 928 (11th Cir. 2018) (affirming motion to dismiss for lack of subject matter jurisdiction as "[a] dispute involving the application of church doctrine and procedure to discipline one of its members is not appropriate for secular adjudication"), *cert denied*, 139 S. Ct. 175 (2018); *Korte*, 735 F.3d at 677–78 ("civil authorities have no say over matters of religious governance" and "secular judges must defer to ecclesiastical authorities on questions properly within their domain").

Finally, in a parallel context, over a century ago, the Indiana Supreme Court recognized that the Constitution bars civil courts from interfering in questions of church discipline or governance. In *Dwenger v. Geary*, 14 Ind. 903 (Ind. 1888), a man claimed a contractual right to bury his son in a Catholic cemetery, despite the Church declaring the son "forfeited his membership" in the church and rights to such burial by "a failure to observe [church] doctrines." *Id.* at 905. The Indiana Supreme Court concluded that the church had authority to establish "rules [for] the government of [its]

cemetery," and that "[t]he court, having no ecclesiastical jurisdiction, cannot review or question ordinary acts of church discipline" like withdrawing membership in the broader Church. *Id.* at 908.

The same is true here: The Archbishop has authority to establish "rules [for] the government of [Catholic schools]," and the Court has no jurisdiction to "review or question ordinary acts of church discipline"—including the "doctrines, practices, rules, and regulations" that determine what makes a school "Catholic." *Id.* at 905, 908. Yet Plaintiff's complaint, on its face, asks this Court to do just that—to decide that the Archbishop's application of canon law to Cathedral and the Plaintiff was "not justified" and to punish the Archdiocese for establishing rules for what qualifies a school as Catholic. Compl. ¶ 30, 36. The Indiana Supreme Court could not have been any clearer over a century ago: "No power save that of the church can rightfully declare who is a Catholic." *Dwenger*, 14 Ind. at 908.

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

Plaintiff's claims are also barred by the First Amendment right of expressive association. As the Supreme Court has explained, "[a]n individual's freedom to speak [and] to worship . . . 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." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). Thus, the rights of free exercise and free speech include a corresponding right of expressive association: the right "to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Id.*; *accord City Chapel Evangelical Free Inc. v. City of S. Bend ex rel. Dep't of Redevelopment*, 744 N.E.2d 443, 454 (Ind. 2001) (quoting same).

The right of expressive association protects a wide variety of groups. It protects the right of political parties to select their own leaders, *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 229 (1989), members, *New York State Board of Elections v. Lopez Torres*, 552 U.S. 196, 202 (2008), and primary voters, *California Democratic Party v. Jones*, 530 U.S. 567, 574–75 (2000). It protects the affiliation choices of voters themselves. *See Ray v. State Election Bd.,* 422 N.E.2d 714, 723 (Ind. Ct. App. 1981). It protects the right of parade organizers to exclude a group with an unwanted message. *Hurley v. Irish-American Gay, Lesbian & Bisexual Group*, 515

U.S. 557, 581 (1995). It protects the right of "a private club [to] exclude an applicant whose manifest views were at odds with a position taken by the club's existing members." *Id.* at 581. And it protects the right of the Boy Scouts to exclude a scout leader who undermines the Scouts' message on human sexuality. *Boy Scouts v. Dale*, 530 U.S. 640, 659 (2000).

It also protects the right of a religious group to decline to select leaders and members who disagree with its religious views on human sexuality. *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 862 (7th Cir 2006). This includes the right of a Catholic school to select teachers who do not oppose its views on abortion. *Our Lady's Inn v. City of St. Louis*, 349 F. Supp. 3d 805, 821 (E.D. Mo. 2018). If anything, religious groups receive heightened protection for their religious associations, because the First Amendment "gives special solicitude to the rights of religious organizations." *Hosanna-Tabor*, 565 U.S. at 706; *id.* at 713 (Alito, J., joined by Kagan, J., concurring) (noting that the Court's "expressive-association cases" are useful in understanding "those essential rights"); *see also Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1136 (10th Cir. 2013) (en banc) (the "main point" of *Hosanna-Tabor* "was that the Religion Clauses add to the mix when considering freedom of association"), *aff'd*, 573 U.S. 682 (2014).

To determine whether the right of expressive association is implicated, the Court must answer two questions. First, does the organization "engage in some form of expression, whether it be public or private"? *Dale*, 530 U.S. at 648. Second, would the government action at issue "significantly affect the [organization's] ability to advocate public or private viewpoints"? *Id.* at 641, 650. Both questions require an affirmative answer here.

First, the Archdiocese obviously engages in "some form of expression." It has a clear message on the nature of marriage that has remained unchanged for 2,000 years. It operates Catholic schools that are designed to communicate the Catholic faith, including the Church's teaching on marriage, to the next generation. And it communicates with those schools to ensure that they are fulfilling their mission of teaching the Catholic faith. Indeed, the Archdiocese's position is far stronger than the Boy Scouts' position in *Dale*. In *Dale*, the Boy Scouts arguably had no clear message on human sexuality; they disclaimed affiliation with any particular religion's teachings and only required that

all scouts be "morally straight" and "clean," which the dissent argued did not "say[ ] the slightest thing about homosexuality." 530 U.S. at 668 (Stevens, J., dissenting); *see id.* at 650 (majority op.) (agreeing the terms were "by no means self-defining" but deferring to organization's stated interpretation). Moreover, religious groups like the Catholic Church and Cathedral "are the archetype of associations formed for expressive purposes," since their "very existence is dedicated to the collective expression . . . of shared religious ideals." *Hosanna-Tabor*, 565 U.S. at 200 (Alito, J., joined by Kagan, J., concurring); *see also Walker*, 453 F.3d at 862 ("It would be hard to argue—and no one does—that [the Christian Legal Society] is not an expressive association" in light of its commitment to a statement of faith).

Second, punishing the Archdiocese for telling Cathedral what rules it needed to follow in order to remain a Catholic school would "significantly affect the [Archdiocese's] ability to advocate public or private viewpoints." *Dale*, 530 U.S. at 641, 650. In *Dale*, the Court noted that the judiciary must "give deference to an association's view of what would impair its expression." *Id.* at 653. Here, the impairment is twofold. First, punishing the Archdiocese impairs its ability to establish rules for which ministries qualify as Catholic. That is precisely the kind of "interfer[ence] with the internal organization or affairs of the group" forbidden by the right of expressive association. *See Walker*, 453 F.3d at 861 (quoting *Roberts*, 468 U.S. at 623). Second, punishing the Archdiocese would impair its ability to ensure that the individuals who serve as the voice and embodiment of its faith will "teach . . . by example." *Dale*, 530 U.S. at 655. As the Seventh Circuit has said: "It would be difficult for [a religious organization] 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." *Walker*, 453 F.3d at 863; *see also Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 230–31 & n.21 (1989) ("By regulating the identity of [an organization's] leaders," the government can "color the [organization's] message.").

This is doubly true "[w]hen it comes to the expression . . . of religious doctrine," since "there can be no doubt that . . . the content and credibility of a religion's message depend vitally upon" the messenger. *Hosanna-Tabor*, 565 U.S. at 201 (Alito, J., joined by Kagan, J., concurring). Thus, it is

no surprise that a federal court recently upheld the free-association right of Catholic schools in Missouri not to hire teachers who would not "follow, in their personal life and behavior, the recognized moral precepts of the Catholic Church." *Our Lady's Inn*, 349 F. Supp. 3d at 821. Otherwise, the "forced inclusion of teachers or other staff who do not adhere to those values would significantly affect the Archdiocesan Elementary Schools' ability to advocate their viewpoints, though its teachers and staff, to their students." *Id.* at 821–22. The same is true here.

In short, just as political parties, parades, private clubs, and the Boy Scouts can exclude those who interfere with their message (*Lopez Torres*, *Hurley*, *Dale*), the Archdiocese can exclude teachers (and schools) who reject its core religious beliefs.

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

Beyond the rights of church autonomy and expressive association, Plaintiff's claims are also barred by the ministerial exception. The ministerial exception is a First Amendment doctrine that bars certain lawsuits between religious organizations and their "ministers (broadly understood)." *Korte*, 735 F.3d at 677–78. The ministerial exception follows from the broader First Amendment principle that the government may not interfere with churches' "autonomy to share their own missions, conduct their own ministries, and generally govern themselves in accordance with their own doctrine." *Id.* at 677; *cf. Ind. Area Found. of United Methodist Church v. Snyder*, 953 N.E.2d 1174, 1180 (Ind. Ct. App. 2011) ("The right of the Church to choose its ministers without court intervention is protected by the First Amendment.").

The leading case is *Hosanna-Tabor v. EEOC*, 565 U.S. 171 (2012). There, an elementary teacher at a Lutheran school sued the school for employment discrimination. The Supreme Court, however, held that the claim was barred by the ministerial exception. *Id.* at 178. Given the teacher's religious title and her "role in conveying the Church's message and carrying out its mission," the Court unanimously held that she was a "minister." *Id.* at 192. It concluded that "the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission" requires that "[t]he church must be free to choose those who will guide it on its way." *Id.* at 196. Justices Kagan and Alito observed by separate concurrence that "the constitutional guarantee of

religious freedom" necessarily protects religious groups' rights "to choose the personnel who are essential to the performance" of "the critical process of communicating the faith" such as "teacher[s]." *Hosanna-Tabor*, 565 U.S. at 199 (Alito, J., joined by Kagan, J., concurring); *see Catholic Bishop*, 440 U.S. at 501 (noting "the critical and unique role of the teacher in fulfilling the mission of a church-operated school").

Following *Hosanna-Tabor*, numerous federal courts—including the Seventh Circuit—have determined that the ministerial exception applies to teachers serving in religious schools. In *Grussgott v. Milwaukee Jewish Day School, Inc.*, for example, the plaintiff was a Hebrew teacher at a Jewish day school. 882 F.3d 655 (7th Cir. 2018). She claimed that her teaching of Hebrew was "historical, cultural, and secular, rather than religious," and sought to "draw[ ] a distinction between leading prayer, as opposed to 'teaching' and 'practicing' prayer with her students." *Id.* at 659–61. But the Seventh Circuit found the plaintiff's opinion about the purpose of her instruction "does not dictate what activities the school may genuinely consider to be religious," including the teaching of Jewish history. *Id.* at 660. It further found that to distinguish the significance of "leading prayer" from "'practicing' prayer" would "impermissibly entangle[ ] the government with religion." *Id.*

Similarly, in *Fratello v. Archdiocese of New York*, the Second Circuit determined that a parochial school principal was a minister—despite holding the title of "lay principal" and performing "many secular administrative duties"—because "she served many religious functions to advance the School's Roman Catholic mission." 863 F.3d 190, 206, 209 n.34 (2d Cir. 2017). Likewise, in *Yin v. Columbia International University*, the court determined that a teacher of English as a Second Language was "important to the spiritual and pastoral mission of the church," in part because she was expected "to live, teach, and promote a life of godly choices and Christian growth." 335 F. Supp. 3d 803, 816–17 (D.S.C. 2018) (quoting *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1169 (4th Cir. 1985)). As one court has noted in applying the ministerial exception to a Catholic school teacher based on the religious function of the role, "no church, synagogue, mosque, or other religious community would be truly 'free to choose those who will guide it on its way'" unless it has full control over the positions "through which religious communities transmit their

received wisdom and heritage to the next generation of believers." *Ciurleo v. St. Regis Parish*, 214 F. Supp. 3d 647, 651–52 (E.D. Mich. 2016).

Even outside the teaching context, the Fifth Circuit has held that *Hosanna-Tabor* forbids courts "to second-guess church doctrine," including "whom the Catholic Church may consider a lay liturgical minister under canon law." *Cannata v. Catholic Diocese of Austin*, 700 F.3d 169, 179–80 (5th Cir. 2012) (music director). And the Seventh Circuit has held that a parish organist was a minister—and the Court could not "second-guess[]" his religious significance—even when the organist was not "ordained" and claimed that "his playing was 'robotic.'" *Sterlinski v. Catholic Bishop of Chicago*, No. 18-2844, -- F.3d --, 2019 WL 3729495 at *1–3 (7th Cir. Aug. 8, 2019).

Here, the Cathedral Employee Handbook's policies, incorporated into Plaintiff's contract, tasked the 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. Ex. 1 at 3–4. As in *Grussgott* and other cases concluding a teacher served in a ministerial role, Plaintiff's role required him to promote Catholic teaching in word and deed, and lead students into greater participation in prayer and worship (through the sacraments). A determination as to whether Plaintiff could adequately serve those roles despite his disagreement with Church teaching cannot be separated "from the purview of the religious doctrine so as to avoid excessive entanglement." *Snyder*, 953 N.E.2d at 1181.

CONCLUSION

For the reason set forth herein, Plaintiff's complaint must be dismissed to failure to establish subject matter jurisdiction pursuant to Trial Rule 12(B)(1), or in the alternative, dismissed for failure to state a claim pursuant to Trial Rule 12(B)(6).

Respectfully submitted,
MERCER BELANGER, P.C.

/s/ John S. Mercer
John S. (Jay) Mercer
MERCER BELANGER
One Indiana Square, Suite 1500

Indianapolis, IN 46204
Phone: (317) 636-3551
Fax: (317) 636-6680
jsmercer@indylegal.com

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 21st day of August, 2019:

Kathleen A. DeLaney, #18604-49
Christopher S. Stake, #27356-53
DeLaney & DeLaney LLC
3646 North Washington Blvd.
Indianapolis, IN 46205
kathleen@delaneylaw.net
cstake@delaneylaw.net

Respectfully submitted,
MERCER BELANGER, P.C.

/s/ John S. Mercer
John S. (Jay) Mercer
MERCER BELANGER
One Indiana Square, Suite 1500
Indianapolis, IN 46204
Phone: (317) 636-3551
Fax: (317) 636-6680
jsmercer@indylegal.com