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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JANE SHUMAKER
Plaintiff

CATHOLIC DIOCESE OF CLEVELAND, ET AL
Defendant

Case No: CV-14-822397

Judge: BRENDAN J SHEEHAN

JOURNAL ENTRY

OPINION AND JUDGMENT ENTRY. O.S.J.

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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JANE SHUMAKER,		CASE NO. CV 15 822397
Plaintiff,	)	
	)	JUDGE BRENDAN J. SHEEHAN
v.	)	
	)	
CATHOLIC DIOCESE OF CLEVELAND, *et al.*,	)	**OPINION AND JUDGMENT ENTRY**
Defendants.	)	

I. FACTS AND ISSUES PRESENTED.

This matter is before the Court on Plaintiff's Motion for Partial Summary Judgment and Defendants' Motion for Summary Judgment. The issues have been fully briefed and argued to the Court. The facts, as presented to the Court, are largely undisputed.

Defendant St. Anthony of Padua Parish ("St. Anthony") is a Roman Catholic Church within Defendant Roman Catholic Diocese of Cleveland ("Diocese"). St. Anthony operates an elementary school in conjunction with its parish as part of the Diocesan system of parochial schools. Although each school within the Diocese operates as a separate unit, the Diocese employs a Superintendent that oversees curriculum and other general matters. The Diocese prepares form contracts and distributes them for use to each of the parish schools. The Diocese also funds, at least in part, scholarships to diocesan schools including St. Anthony's.

Teachers at St. Anthony's fall into three categories: those with substantial religious training such as seminarians or Sisters, Catholic lay teacher and non-Catholic teachers. Plaintiff Jane Shumaker was employed by St. Anthony's as a 6th grade lay teacher from 1997 through

2010 when she was terminated because she was pregnant and unmarried. For each year of employment, Plaintiff executed a contract drafted by Defendants entitled "Elementary Lay Teacher Agreement" or "Catholic Elementary Teacher Agreement". All teachers, regardless of their personal faith, executed the same employment contract. Ms. Shumaker's duties as a 6th grade teacher included teaching primarily secular subjects such as math, reading, and science. Additionally, Ms. Shumaker taught religion for approximately 10-20 minutes per day, four days per week. The amount of time spent teaching religion appears to have varied considerably with substantial testimony that the secular subjects often used additional time. Ms. Shumaker's religious instruction involved general study of the Old Testament. Ms. Shumaker did not prepare or lead rituals such as Catholic Mass and did not prepare students for Catholic sacraments such as First Communion or Confirmation. Her participation in rituals was limited to attending Mass with her students, similar to all teachers at the school including non-Catholic teachers. Ms. Shumaker's extra duties at the school were all secular such organizing recognition dinners for staff members and for Principal's Day and organizing school dances for the students. There is no evidence that Ms. Shumaker led or conducted any ceremonies or rituals or prepared anything relating to religious holidays.

St. Anthony maintains that it only allowed practicing Catholics to teach religion. To this end, applicants were asked to identify their parish. Ms. Shumaker identified a parish on her application but asserts that she is not a practicing Catholic. She testified that, although she identifies a home parish as the parish she was raised in and is still connected to, she lapsed from active church participation when her parents divorced and were no longer welcomed by the Church. No evidence was presented that the Defendants sought to confirm Ms. Shumaker's participation with the Catholic Church beyond the designation of a parish on school forms.

In January, 2010, Ms. Shumaker notified her principal that she was pregnant. There is conflicting testimony on the subsequent representations and actions but it is undisputed that Ms. Shumaker was terminated and, further, was not permitted to purchase family health insurance to provide health care to her child.

The issues before this Court are: 1) is the Diocese an "employer" for purposes of Ms. Shumaker's claims;[1] 2) are Ms. Shumaker's claims barred by the "ministerial exception" and 3) are Ms. Shumaker's claims otherwise barred by the First Amendment?

II. LAW AND ANALYSIS.

A. Standard for Summary Judgment.

Under Civ.R. 56, summary judgment is appropriate when (1) no genuine issue as to any material fact exists, (2) the party moving for summary judgment is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can only reach one conclusion which is adverse to the non-moving party. *Holliman v. Allstate Ins. Co.*, 86 Ohio St.3d 414, 715 N.E.2d 532 (1999); *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1997). When a motion for summary judgment is properly made and supported, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial and may not merely rest on allegations or denials in the pleadings. *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996). The nonmoving party must produce evidence on any issue for which that party bears the burden of production at trial. *Wing v. Anchor Media, Ltd.*, 59 Ohio St.3d 108, 111, 570 N.E.2d 1095 (1991). Further, to survive summary judgment, a plaintiff must produce more than a scintilla of evidence in support of his position. *Markle v. Cement Transit Co., Inc*, 8th Dist. No. 70175, 1997 WL 578940, 2

[1] Plaintiff also sought summary judgment on Defendant St. Anthony's affirmative defense of spoliation. St. Anthony has withdrawn its defense. Accordingly, issues concerning the spoliation defense are moot.

(1997), *citing Redd v. Springfield Twp. School District*, 91 Ohio App.3d 88, 92, 631 N.E.2d 1076 (9th Dist. 1993).

Plaintiff's claims arise under R.C. Ch. 4112. As the Ohio Supreme Court noted: "R.C. 4112.08 mandates that "this chapter [4112] shall be construed liberally for the accomplishment of its purposes * * *." This court has noted in numerous cases the existence of a strong public policy against discrimination. A majority of this court have, time and time again, found that there is no place in this state for any sort of discrimination no matter its size, shape, or form or in what clothes it might masquerade. This, of course, includes discrimination in the workplace." *Genaro v. Cent. Transp.*, 84 Ohio St. 3d 293, 296, 703 N.E.2d 782, 785, 1999-Ohio-353.

B. The Diocese as Employer.

Ms. Shumaker seeks summary judgment on the sole issue of whether the Diocese is an "employer" pursuant to R.C. Ch. 4112 for purposes of her claims. The Diocese opposes her motion on the grounds that her contract of employment was with St. Anthony's, not the Diocese. The employment contract at issue specifies that the parties to the contract are Ms. Shumaker and St. Anthony's, not the Diocese; however, the contract language is not dispositive of issue.

R.C. 4112.01(A)(3) defines and "employer" as: "Employer" includes the state, any political subdivision of the state, any person employing four or more persons within the state, and any person acting directly or indirectly in the interest of an employer."

The Supreme Court of Ohio has found that federal case law is generally applicable when interpreting issues arising under R.C. Chapter 4112. *Plumbers & Steamfitters Joint Apprenticeship Committee v. Ohio Civil Rights Commission*, 66 Ohio St.2d 192, 421 N.E.2d 128. (1981). The following factors have been established as relevant to determining the existence of an employer-employee relationship: "In determining whether a hired party is an employee under

the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party." *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318, 117 L. Ed. 2d 581, 112 S. Ct. 1344 (1992).

In this case, Plaintiff seeks to have both St. Anthony's and the Diocese identified as employers. The concept of joint employment is set forth in *Swallows v. Barnes & Noble Book Stores, Inc.*, 128 F.3d 990, 993, fn.4 (1997), citing *NLRB v. Browning-Ferris Ind. of Pennsylvania, Inc.*, 691 F.2d 1117, 1123(3d Cir. 1982): "The basis of the [joint employer] finding is simply that one employer while contracting in good faith with an otherwise independent company, has retained for itself sufficient control of the terms and conditions of employment of the employees who are employed by the other employer. Thus, the 'joint employer' concept recognizes that the business entities involved are in fact separate but that they share or co-determine those matters governing the essential terms and conditions of employment."

The record demonstrates that the Diocese exerted substantial control over St. Anthony's from its Superintendent of Schools directing curriculum and teacher standards to Bishop Richard Lennon's decision in 2010 to reconfigure St. Anthony's and North Akron Catholic School.

Under the Bishop's direction, St. Anthony's was changed from a grade K-8 school to a grade K-5 school.

Additionally, it appears from the evidence before the Court that health insurance benefits and pension benefits for lay teachers at St. Anthony's, including Ms. Shumaker, were all provided through plans under the control and direction of the Diocese.

It is clear from the evidence presented that the Diocese exerted sufficient direction and control over St. Anthony's and provided substantial employment compensation and benefits to Ms. Shumaker to qualify as an employer.

C. The Ministerial Exception.

1. Generally.

The Diocese and St. Anthony both assert that Ms. Shumaker's claims are barred by the ministerial exception to employment discrimination claims against religious organizations.

The First Amendment provides, in part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Both the Establishment Clause and the Free Exercise Clause bar the government from interfering with the decision of a religious group to fire one of its ministers. The bar on interfering with a religious institution's internal governance was expressed by appellate courts as a "ministerial exception" to enforcing federal antidiscrimination laws. Generally, when courts found that employees had a central role in the spiritual or pastoral mission of the church, they were classified as ministerial employees for purposes of the exception. See, e.g., *Scharon v. St. Luke's Episcopal Presbyterian Hospitals*, 929 F.2d 360 (8th Cir. 1991)(hospital chaplain); *Weissman*, 839 F. Supp. 680 (E.D.Mo. 1993)(temple administrator); *Minker v. Baltimore Annual Conference of United Methodist Church,* 894 F.2d 1354, 1355 (D.C. Cir. 1990) (minister); *Cochran v. St. Louis Preparatory,*

Seminary, 717 F. Supp. 1413 (E.D.Mo. 1989)(seminary faculty member); *Powell v. Stafford*, 859 F. Supp. 1343, (D. Colo. 1994)(theology teacher).

In contrast, when the employee's role was primarily secular, with little to no involvement in central rituals of the church, the exception was not applicable. See, e.g., *Redhead v. Conference of Seventh Day Adventists*, 440 F. Supp. 2d 211, 221-222 (E.D.N.Y. 2006) (teacher at a Seventh Day Adventist elementary school not a ministerial employee because her teaching duties were primarily secular and her daily religious duties "were limited to only one hour of Bible instruction per day"); *Guinan v. Roman Catholic Archdiocese of Indianapolis*, 42 F. Supp. 2d 849, 854 (S. D. Ind. 1998) (fifth grade teacher who taught at least one class in religion per term and organized Mass once a month at a religious elementary school was not a ministerial employee); *DeMarco v. Holy Cross High Sch.*, 4 F.3d 166, 172 (2d Cir. 1993) (applying the ADEA to a math teacher at a religious high school would not result in excessive entanglement under the Establishment Clause); *Dole v. Shenandoah Baptist Church*, 899 F.2d 1389, 1392, 1397 (4th Cir. 1990) (teachers at a religious school who integrated biblical material into traditional academic subjects should be considered lay teachers for purposes of the ministerial exception); *EEOC v. Fremont Christian Sch.*, 781 F.2d 1362, 1370 (9th Cir. 1986) (teachers at a church owned and operated school do not fulfill the function of a ministerial employee).

The ministerial exception grounded in the Religion Clauses was recognized and adopted by the Supreme Court in 2012 when it stated:

> The members of a religious group put their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape

> its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.

Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 132 S. Ct. 694, 706, 181 L. Ed. 2d 650, 663 (2012).

Hosanna-Tabor concerned the discharge of a "called teacher", Cheryl Perich, at a Lutheran school. The school at issue classified teachers into two categories: "called" and "lay." "Called" teachers were regarded as having been called to their vocation by God through a congregation. They were required to satisfy substantial academic requirements, obtain the endorsement of their local Synod district, and pass an oral examination by a faculty committee. Once called, a teacher received the formal title "Minister of Religion, Commissioned." "Lay" or "contract" teachers are not required to be trained by the church or even to be Lutheran and, in the facts presented, they were appointed by the school board, without a vote of the congregation, to one-year renewable terms. Although all teachers at the school, both lay and called, generally performed the same duties, lay teachers were hired only when called teachers were unavailable.

The Court analyzed the operative facts of Ms. Perich's employment in detail, determining that four factors identified her as a ministerial employee. First, she was held out by the school and church as a minister. Hosanna-Tabor issued her a "diploma of vocation" entitling her a "Minister of Religion, Commissioned." She was subject to periodic review of her "skills of ministry" and "ministerial responsibilities" by the congregation.

Second, Ms. Perich's title as a minister reflected a six year process of completing significant religious training and a formal commissioning process. To obtain the title of minister, Ms. Perich was required to complete eight college-level courses in subjects including biblical interpretation, church doctrine, and the ministry of the Lutheran teacher. She was also required

to petition her local Synod district for endorsement by submitting her academic transcripts, letters of recommendation, personal statement, and written answers to various ministry- related questions and to pass an oral examination by a faculty committee at a Lutheran college.

Third, Ms. Perich held herself out as a minister of the Church including by claiming a special housing allowance on her taxes that was available only to employees earning their compensation "'in the exercise of the ministry." *Id.* at 707, 181 L. Ed. 2d at 665.

Lastly, Ms. Perich's job duties were significantly ministerial in substance, if not in time. Ms. Perich taught religion for only 45 minutes of each work day with the rest of her teaching day devoted to teaching secular subjects. Once a week, she took her students to a school-wide chapel service, and twice a year she took lead the chapel service, chose the liturgy, selected the hymns, and delivered a short message based on verses from the Bible. During her last year of teaching, she also led her class in a brief devotional exercise each morning.

Although most of Perich's duties were performed by both called and lay teachers, the Supreme Court stated that: "The amount of time an employee spends on particular activities is relevant in assessing that employee's status, but that factor cannot be considered in isolation, without regard to the nature of the religious functions performed and the other considerations discussed above." *Id.* at 709, 181 L. Ed. 2d at 666.

The Supreme Court concluded: "In light of these considerations--the formal title given Perich by the Church, the substance reflected in that title, her own use of that title, and the important religious functions she performed for the Church--we conclude that Perich was a minister covered by the ministerial exception." *Id.* at 707-708, 181 L. Ed. 2d at 665-666.

The Sixth Circuit later applied the ministerial exception to state law claims in *Conlon v. Intervarsity Christian Fellowship/USA*, 777 F.3d 829 (6th Cir. 2015) where it examined whether

a "Spiritual Formation Specialist" or "spiritual director" of a religious camp qualified for the exception. The *Conlon* court applied the *Hosanna-Tabor* factors to the specific facts presented. First, it found that the formal titles of "Spiritual Formation Specialist" or "spiritual director" sufficiently conveyed a religious, rather than secular, meaning to the position. As to the second factor, the substance reflected in the title, the court found that a certification in "spiritual direction" absent details sufficient to compare it to the rigorous, formal commissioning process in *Hosanna-Tabor* did not clearly set the role apart from laypersons.

With regard to Conlon's use of the ministerial title, the Court found that she lacked "the sort of public role of interacting with the community as an ambassador of the faith that rises to the level of Perich's leadership role within her church, school, and community". *Id.* at 835. Finally, the court found that Conlon's duties assisting others to cultivate "intimacy with God and growth in Christ-like character through personal and corporate spiritual disciplines" was a ministerial function.

Thus, the court found that Conlon satisfied only the first and fourth *Hosanna-Tabor* factors. It then reasoned:

> Two of the four Hosanna-Tabor factors are clearly present in Conlon's former position. The Court expressly declined to rule upon whether the exception would apply in the absence of one or more of those factors. *Hosanna-Tabor*, 132 S. Ct. at 708. Justice Thomas's concurring opinion in Hosanna-Tabor looks solely to a broad reading of the first factor, positing that whenever a religious employer identifies an individual as a minister, courts should "defer to a religious organization's good-faith understanding of who qualifies as its minister." *Id.* at 710 (Thomas, J., concurring). Justice Alito—joined by Justice Kagan—instead posits that the ministerial exception "should apply to any 'employee' who [1] leads a religious organization, [2] conducts worship services or important religious ceremonies or rituals, or serves as a [3] messenger or [4] teacher of its faith." Id. at 712 (Alito, J., concurring). That is essentially a restatement of the fourth factor. We need not decide in this case whether either of those factors

> alone suffices to invoke the ministerial exception, but we do hold that where both factors—formal title and religious function—are present, the ministerial exception clearly applies.

Id.

Subsequent cases in the 6th District and Ohio state courts have conducted similar fact-intensive inquiries to apply the *Hosanna-Tabor* factors. See, e.g. *Rogers v. Salvation Army*, 2015 U.S. Dist. LEXIS 61112, *17 (E.D. Mich. May 11, 2015)(ministerial exception applied to "spiritual counselor" who was an ordained pastor for over ten years and who lead chapel service and prayed with her clients on a daily basis to fulfill "prime responsibility [was] to help [clients] . . . to develop a relationship with God, through Jesus Christ, and then grow in that personal relationship"); *Fisher v. Archdiocese of Cincinnati*, 6 N.E.3d 1254, 1260-1261, 2014-Ohio-944, P30-P31(1st Dist.)(ministerial exception applied to cemetery director, who underwent multi-year, doctrine-specific training at a Jesuit Catholic University to better perform her job, and who was responsible for coordinating services in the chapel, working with grieving families, coordinating services with various parishes, and attending grave-site services in a liturgical setting replete with religious statuary, photographs of the Pope and Archbishop, and a dispensary for Rosaries).

Of particular note is *Dias v. Archdiocese of Cincinnati*, S.D. Ohio No. 1:11-CV-00251, 2012 U.S. Dist. LEXIS 43240, *2-5 (Mar. 29, 2012) in which the Sixth Circuit examined claims raised by an unmarried Catholic school teacher who was discharged for being pregnant through artificial insemination. The *Dias* court conducted the following analysis of the *Hosanna-Tabor* factors:

> Plaintiff here contends none of the facts applicable to Perich are applicable to her. Defendants here did not hold Plaintiff out as a minister, they did not give her any sort of religious title or

> commission, and the congregations of the Defendant churches took no role in reviewing her "skills in ministry" or her "ministerial responsibilities," because she had none (Id.). Plaintiff argues Defendants never charged her with teaching the faith, participating in religious services, or leading devotional exercises, and she never held herself out as a minister, nor did she ever undergo religious training (Id.). In fact, as a non-Catholic, Defendants would not permit her to teach basic Catholic doctrine (Id.).
> Defendants respond that in their view Plaintiff was a minister based on her "role as a Catholic role model," and her "teaching and interacting with impressionable students". Plaintiff contends in her reply that no court has held a teacher at a parochial school is a ministerial employee solely by virtue of his or her position as a teacher. Quoting the Northern District of Indiana, Plaintiff contends "the sectarian nature of [a] school's educational activities does not, standing alone, make a teacher a 'minister' for purposes of exempting that person from the FLSA's definition of 'employee.' To hold otherwise would create an exception capable of swallowing up the rule." *Equal Employment Opportunity Commission v. First Baptist Church,* No. S91-179M, 1992 U.S. Dist. LEXIS 14479, *38-9 (N.D. Ind. June 8, 1992). Moreover, Plaintiff cites a host of authorities showing the analysis of whether a teacher is a minister involves more than the teacher's affiliation with a religious school.

Dias, 2012 U.S. Dist. LEXIS 43240, *14-15, (internal citations omitted)

Case law precedent is clear: this Court must carefully analyze the factual details and circumstances of the employment relationship at issue according to the four factors identified in *Hosanna-Tabor* to determine whether the ministerial exception applies to Ms. Shumaker.

2. Application of *Hosanna-Tabor Factors*

a) Employee Title

The evidence is undisputed that Ms. Shumaker's official title was "lay teacher" or "sixth grade teacher". The contracts signed by the parties identified her as an "Elementary Lay Teacher" or a "Catholic Elementary Teacher". The Certificates of Coverage for health insurance identify her as a "lay employee" rather than a "permanent deacon". The Diocesan Pension

Booklet identifies "covered employees" as those "classified as a 'lay employee' of a Participating Employer".

To the extent Defendants intimate that Ms. Shumaker's title implies ministerial status, the Court notes that, unlike many less structured religions, the Roman Catholic Church has a long history of detailed hierarchy with distinguishing titles from Pope, Cardinals, Bishops, and Priests to Brothers, Sisters, Deacons, and Eucharistic ministers. Defendant Diocese's website identifies "those in ministry in the Diocese of Cleveland as of 31 August 2015" as 482 priests and 214 permanent deacons." http://clevelandclergyandreligious.com/statistics.php.

Neither St. Anthony's nor the Diocese identified Ms. Shumaker as a minister.

b) Substance Reflecting in the Title

Ms. Shumaker was hired by St. Anthony's and reviewed in the same manner as other lay teachers. She was not commissioned by the Diocese or the parish when she assumed her role nor was she periodically reviewed by the Diocese or the parish on her performance of ministerial duties.

There is some evidence that Ms. Shumaker had religion specific instruction. During 4 of Ms. Shumaker's 13 years of teaching, she was required to take course work related to teaching religion. The course work totaled 38 hours of instruction. Plaintiff has stated that the course work was offered by the Diocese and was at a very basic level. Defendant did not offer contradictory evidence and, in fact, stated that the Court was constitutionally forbidden from examining the nature of the course work taken by Ms. Shumaker.

Although Defendants argue that the minimal instruction constitutes sufficient study to qualify Ms. Shumaker as a minister, the Court disagrees. St. Anthony's employed at least two teachers who unquestionably had extensive religious training: Fr. Joe Kury and Sister Katherine

Wysynski. Both of those individuals had completed rigorous, formal education and training to serve in ministerial roles with the Church, not unlike Perich in *Hosanna*-Tabor but quite unlike the limited instruction Ms. Shumaker had.

Additionally, substantial evidence was presented that Ms. Shumaker was not an actively practicing Catholic and that others were aware that she was no longer a devout member of the Church. It is axiomatic that a church does not choose a non-adherent as a leader to direct the faith. If, as Defendants maintain, the Church intended to train Ms. Shumaker for a true leadership role in the Church, some threshold standards would certainly be in place.

In light of the evidence presented, the Court finds that the substance of Ms. Shumaker's position did not clearly differentiate her from other lay teachers.

c) Public Use of Title

There is no evidence that Ms. Shumaker ever used or was referred to as anything other than "teacher" or "sixth grade teacher". No evidence was presented that Ms. Shumaker or either of the defendants held her out publicly in any other capacity. Accordingly, this factor weighs against finding her role was ministerial.

d) Religious Functions

Ms. Shumaker instructed her classes in general study of the Old Testament for approximately 10-20 minutes per day, four days per week. There is no evidence that Ms. Shumaker led or conducted any ceremonies or rituals or prepared anything relating to religious holidays. Her participation in rituals was limited to attending Mass with her students, similar to all teachers at the school including non-Catholic teachers. Ms. Shumaker's extra duties at the

school were all secular. Ms. Shumaker agreed to abide by general standards of conduct applicable to all lay teachers, Catholic and non-Catholic alike.

The overwhelming majority of Ms. Shumaker's time and responsibilities were secular. While the amount of time cannot be considered in isolation to derive a purely mathematical calculation of ministerial function, it is relevant to the Court's determination. In *Hosanna-Tabor*, Ms. Perich similarly performed primarily secular functions during the course of a day. However, the nature of the religious functions she performed reflected her role in conveying the Church's message and carrying out its mission in "leading others toward Christian maturity" and "teaching faithfully the Word of God, the Sacred Scriptures, in its truth and purity."

Ms. Shumaker's religious functions, to the contrary, are minimal in both time and purpose. While she taught a few minutes of basic religion four times per week, she did not lead or direct any rituals nor is there evidence that she incorporated religious studies into the students' days in any other manner. Taken as a whole, Ms. Shumaker's religious functions fall short of historic application of the ministerial exception. See, *Redhead v. Conference of Seventh Day Adventists*, supra (primarily secular and her daily religious duties "were limited to only one hour of Bible instruction per day" insufficient); *Guinan v. Roman Catholic Archdiocese of Indianapolis*, supra (fifth grade teacher who taught at least one class in religion per term and organized Mass once a month at a religious elementary school was not a ministerial employee).

e) Summary of Hosanna-Tabor Factors

The Court specifically acknowledges that the term "minister" is not required to invoke the ministerial exception; however, the concept of "minister" is meaningful and lies at the heart of the exception. Case law has uniformly found individuals to be ministers when their roles, viewing all of the factors above, is distinguished from other members of a religious group and

demonstrates a leadership position involved in shaping the faith or conducting religious rituals. Expanding the term "minister" to encompass anyone associated with a church presents a twofold problem: first, the "ministerial exception" would become so broad as to swallow the rule and, second, it denigrates the training and devotion exemplified by true religious leaders.

The evidence presented thus far to the Court demonstrates that the first and third *Hosanna-Tabor* factors are not present at all in the case at bar. Ms. Shumaker was referred to as a lay teacher in every instance both by herself and others.

Evidence is presented that Ms. Shumaker received minimal training to qualify to teach religion but the substance of the training is insufficient to distinguish her from other church members and is plainly distinguishable from teachers who had extensive formal religious training. Finally, Ms. Shumaker performed *de minimus* religious functions as part of her job as a lay teacher.

Based on the foregoing, the Court finds, under the facts and circumstances presented, that Ms. Shumaker does not qualify as a "minister" for purposes of the ministerial exception.

D. Additional Constitutional Considerations.

In addition to the ministerial exception, Defendants maintain that the First Amendment to the United States Constitution and Article 1, Section 7 of the Ohio Constitution provide independent bases to bar Plaintiff's claims. Defendants contend that these provisions bar the current action as an infringement or control of their rights of conscience that would impermissibly entangle the Court into Church principles. Clearly, the courts cannot determine doctrinal issues.

The impossibility and impropriety of such efforts are easily illustrated by reference to recent proclamations of Roman Catholic doctrine. On April 11, 2015, Pope Francis, the leader

on Earth of the Roman Catholic Church stated: "Mercy is the very foundation of the Church's life. All of her pastoral activity should be caught up in the tenderness she makes present to believers; nothing in her preaching and in her witness to the world can be lacking in mercy. The Church's very credibility is seen in how she shows merciful and compassionate love. The Church "has an endless desire to show mercy". Perhaps we have long since forgotten how to show and live the way of mercy. The temptation, on the one hand, to focus exclusively on justice made us forget that this is only the first, albeit necessary and indispensable step. But the Church needs to go beyond and strive for a higher and more important goal." Misericordiae Vultus - Bull of indiction of the Extraordinary Jubilee of Mercy, http://w2.vatican.va/content /francesco/en/apost_letters/documents/papa-francesco_bolla_20150411_misericordiae-vultus.html.

In counterpoint, this action concerns a teacher who disclosed her pregnancy, was discharged from her employment, and denied health care coverage for the child. Harmonizing these apparently inapposite positions falls squarely to the leadership of the Roman Catholic Church and underscores the kinds of ecclesiastical decisions that courts must avoid.

However, this Court need not and cannot decide whether compassion and forgiveness or punishment and condemnation are the proper response to a pregnancy outside of marriage within the Catholic faith. This Court can only determine whether antidiscrimination laws are applicable to lay employees of the Church. The Court finds that the ministerial exception serves to differentiate those matters that are truly doctrinal from those that are not. The analysis undertaken protects religious organizations from impermissible interference into matters of faith while ensuring that citizens remain protected by laws of general application.

III. CONCLUSION.

Construing the evidence most strongly in favor of the nonmoving parties, the Court finds that Plaintiff's Motion for Partial Summary Judgment on the issue of whether Defendant Diocese is an "employer" is well taken and **GRANTED**; and, as a matter of law based upon the evidence before the Court, Defendants' Motion for Summary Judgment is **DENIED**.

IT IS SO ORDERED.

Brendan J. Sheehan

JUDGE BRENDAN J. SHEEHAN

Dated: 10.8.15

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed to the following this 5th day of October, 2015.

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