TEAM 1220P

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF STETSON
GULFPORT DIVISION

ADRIANNA Q. WILSON,

Plaintiff,

v. CASE NO.: 0:10-cv-007LC-BVD

LIGHT UP MY LIFE UNIVERSALIST ACADEMY, a Foreign Corporation,

Defendant.

PLAINTIFF'S BRIEF IN OPPOSITION OF DEFENDANT'S MOTION TO DISMISS AND IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

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STATEMENT OF JURISDICTION

Adrianna Q. Wilson, the plaintiff, presents a federal question of discrimination pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., as amended by the Civil rights Act of 1991 for sex discrimination. This Court has jurisdiction over plaintiff's claims Pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), as well as supplemental jurisdiction pursuant to 28 U.S.C. § 1367. Venue is proper in this Court under 1.02(c) of the Local Rules of the Central District of Stetson. This Court therefore has jurisdiction over these matters.

QUESTIONS PRESENTED

I. Whether The Plaintiff Can State A Plausible Claim That Is Not Barred By The Ministerial Exception Of The First Amendment.

II. Whether The Plaintiff Can Compel Discovery Of Relevant Unprivileged Materials Pursuant To The Rules Of Federal Civil Procedure

STATEMENT OF FACTS

The subject of this case arises from a dispute between Ms. Adrianna Q. Wilson, a woman who was denied employment as an Administrator, a non-ministerial position, at Light Up My Life Universalist Academy (hereinafter the "Academy"). The Administrator position became vacant on or about April 30, 2011. (Stipulation of Facts ¶ 2, Aug. 10, 2012)[1]. The Academy began to actively seek applicants to fill the opening for Administrator in May of 2011, and Plaintiff applied for the position of Administrator on or about June 1, 2011. (Stipulation of Facts ¶¶ 6-7). Prior Administrators at the Academy have been women as well as men. (Stipulation of Facts ¶ 4). Plaintiff interviewed with the Academy Hiring Committee for the Administrator position around June 25, 2011, following a conversation with the Chairperson of the Academy at a local Wal-Mart. (Stipulation of Facts ¶¶ 8-9).

Among the personnel supervised by the Administrator at the Academy is the ministerial position of Chaplin. (Stipulation of Facts ¶¶ 3, 5). One of the members of the Hiring Committee that conducted the Plaintiff's interview was the Academy's Chaplin, Mr. Allan Bowersox. (Stipulation of Facts ¶ 11). Mr. Bowersox refused to support Ms. Wilson's application, stating publicly his "firmly held belief that a man should not be under subjection to a woman in a religious

[1] The Stipulation of Facts are attached to this brief in Exhibit A

setting." (Stipulation of Facts ¶ 12). The Plaintiff was not offered the position of Administrator, but rather a male individual was offered and accepted that position on or about July 31, 2011. (Stipulation of Facts ¶ 13).

Plaintiff filed her Complaint for violations of Title VII of the Civil Rights Act of 1964 and the Stetson Civil Rights Act for intentional discrimination on the basis of her sex on or about January 30, 2012. (Compl. ¶¶ 16-25, Jan. 30, 2012). The Academy filed its Answer on or about February 17, 2012. (Stipulation of Facts ¶ 16). The Academy's answer included an affirmative defense claiming that the "Academy's actions were fully protected by the Ministerial Exception guaranteed by the First Amendment of the United States Constitution." (Def.'s Answer ¶ 29, Feb. 17, 2012). The Academy filed its Motion to Dismiss on or about May 22, 2012 on the basis that the ministerial exception barred any Title VII suit. (Stipulation of Facts ¶ 17). Plaintiff served the Academy with a Request to Produce on or about June 13, 2012. (Pl.'s Req. to Produc. Doc.'s 1-2, Jun. 13, 2012)[2]. The Academy filed its Motion to Quash on or about July 10, 2012, alleging that the demand for the documents requested violated its First Amendment rights. (Def.'s Mot. to Quash ¶ 4, Jul. 10, 2012). Ms. Wilson filed her Motion to Compel Production on or about July 25, 2012, grounded in the reasoning that Academy's assertion of the Ministerial Exception as an affirmative defense waived any

[2] Plaintiff's Request to Produce Documents served on the Academy is attached to this brief in Exhibit 2.

possible privilege protecting it from discovery that may prove that the basis of the claim is pretext. (Pl.'s Mot. to Compel ¶ 5, Jul. 25, 2012).

SUMMARY OF THE ARGUMENT

Ms. Wilson opposes the Academy's assertion of the ministerial exception as a means to bar her Title VII claim for sexual discrimination. Ms. Wilson has asserted a plausible claim with facts that are more than mere speculation to survive a motion to dismiss. Ms. Wilson is able to establish a prima facie case for sexual discrimination based on the fact that (1) she is a member of a protected class (sex), (2) was damaged by the denial of a position due to her sex, (3) she met the qualifications required to be given the position and (4) the position was given to a man with inferior qualifications.

The Academy believes that because it is a religious organization it can plead the ministerial exception as an affirmative defense to preclude itself from liability. The ministerial exception protects religious organizations from being second guessed by the court for their hiring decisions of ministerial staff, much like the business judgment rule in corporate disputes. The first section of the argument will establish that the Administrator position that Ms. Wilson applied for was not a ministerial position after considering the totality of the circumstances and construing all reasonable inferences in her favor as the non-moving party.

If this court finds that the Academy is not protected by the ministerial exception, it must then grant Ms. Wilson's Motion to Compel discovery, because the documents requested are discoverable under Rule 26(b), and the Academy

cannot prove that the documents are privileged. The Academy's stipulated First Amendment privilege fails because the inquiry does not intrude into the validity of the Academy's religious beliefs. Further, the Academy has waived the possibility of any First Amendment privilege by asserting the ministerial exception as an affirmative defense and cannot bar discovery of materials essential to the heart of that defense. Ms. Wilson must be permitted to discover information because it is relevant to her claim for pretext and the public interest in the fair adjudication of claims favors this court in granting the Motion to Compel.

The Academy is not above the law in its employment decisions when those decisions fall within the scope of Title VII scrutiny. The Academy cannot revoke this Court's broad discretion in compelling relevant discovery of materials by claiming a First Amendment privilege merely on the basis of its nature as a religious organization. This brief will establish that the Academy does not hold a privilege under the First Amendment to prevent the inquiry Ms. Wilson requests, that the assertion of the ministerial exception waives that privilege were it to exist, and that granting Ms. Wilson's Motion to Compel would lead to a fair and just result in line with public interest and the purposes of the Federal Rules of Civil Procedure.

ARGUMENT AND CITATIONS TO AUTHORITY

I. THE COURT MUST DENY THE DEFENDANT'S MOTION TO DISMISS BECAUSE THE PLAINTIFF'S CLAIM IS NOT BARRED BY THE FIRST AMENDMENT.

To survive a motion to dismiss a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). A claim has plausibility when the plaintiff alleges factual content that would allow the court to deduce a reasonable inference that the defendant is liable for the alleged misconduct. Id. "[A] 12(b)(6)[3] motion to dismiss cannot be granted as a matter of law unless it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). When a court considers a motion to dismiss it will construe all factual allegations to be true and all reasonable inferences in favor of the non-moving party. Bryant v. Avado Brands, Inc., 187 F.3d 1271, 1273 n.1 (11th Cir. 1999); Grossman v. Nationsbank, N.A., 225 F.3d 1228, 1231 (11th Cir. 2000).

Defendant has attempted to absolve itself from liability by asserting the ministerial exception protected under the First Amendment as an affirmative defense. U.S. Const. amend. I. The ministerial exception provides that courts will not interfere with church employment relationships as it relates to ministers.

[3] Fed. R. Civ. P. 12(b)(6).

Rweyemamu v. Cote, 520 F.3d 198, 201 (2d Cir. 2008). The ministerial exception is a shield to liability, but is not an absolute barrier to suit. Rojas v. Roman Catholic Diocese of Rochester, 557 F. Supp. 2d 387, 399 (W.D.N.Y. 2008); Bollard v. Cal. Province of the Soc'y of Jesus, 196 F.3d 940, 950 (9th Cir. 1999) (holding that the ministerial exception will not bar suit where "the limited nature of the inquiry, combined with the ability of the district court to control discovery, can prevent a wide-ranging intrusion into sensitive religious matters").

Ms. Wilson's claim for sexual discrimination is similar to the student's sexual harassment claim in Bollard. Id. at 944. The Court must deny the motion to dismiss Ms. Wilson's sexual discrimination claim because it is not barred by the ministerial exception because her position does not fall in the category of "minister" as stipulated in the facts (Stipulation of Facts ¶ 3) and the defendant has no Legitimate Non-Discriminatory Reason ("LNDR") to support their reason for not hiring the plaintiff who was stipulated as qualified.

A. The Court Must Deny The Defendant's Motion To Dismiss Because The Position Of Administrator Is Not Ministerial.

When applying the First Amendment's ministerial exception the courts must first determine if the employee is a minister. There is no rigid formula for determining who qualifies as a minister, it must be determined based upon "all the circumstances of the [plaintiff's] position," however; no one fact alone is determinative. Hosanna-Tabor Evangelical Lutheran Church and Sch. v. EEOC,

132 S. Ct. 694, 707-09 (2012). The totality of the circumstances test is essentially a more encompassing "primary duties" test. In determining whether someone is a minister, "courts should consider the function of an employee, rather than his title of fact of his ordination, nature of the dispute must also be considered." Rweyemamu, 520 F.3d at 208; Rayburn v. Gen. Conference of Seventh-Day Adventists, 772 F.2d 1164, 1168 (4th Cir. 1985) (focusing on the functions of the [position] rather than the title of the [position]). The courts have held that they "will not limit a religious institutions right to chose who will perform particular spiritual functions when the employee's duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision of participation in religious ritual and worship" or the position is "important to the spiritual and pastoral mission of the church." Petruska v. Gannon Univ., 462 F.3d 294, 304 (3d Cir. 2006); Rayburn, 772 F.2d at 1168.

The parties here have stipulated that the Administrator position was not a ministerial position. (Stipulation of Facts ¶ 3); Hosanna-Tabor, 132 S. Ct. at 707 (noting that the while it was not determinative, claimant's title of minister "reflected a significant degree" of ecclesiastical importance). The Court here must give the same significance to the Administrator's lack of ecclesiastical importance. Additionally, previous Administrators have expressed no particular religious beliefs nor [furthered any] beliefs held by the Academy. (Stipulation of Facts ¶ 4).

Courts that have permitted religious institutions to assert the ministerial exception have done so after considering the totality of the circumstances. See Hosanna-Tabor, 132 S. Ct. at 707-09 (finding exception after noting that claimant was held out as minister, claimed ministerial tax allowance, received a vocational degree as a minister, taught religion, and selected hymns); Alicia-Hernandez v. Catholic Bishop of Chi., 320 F.3d 698, 704 (7th Cir. 2003) (allowing exception after concluding that a press secretary was responsible for dissemination of the churches message and was essentially the voice of the church); EEOC v. Catholic Univ. of Am., 83 F.3d 455, 463 (D.C. Cir. 1996) (noting that a Nun was found to be acting as a minister because her duties were found to be religious in nature and were vital to the spiritual and pastoral mission of the church).

The facts of Ms. Wilson's case are markedly different from the cases above that have permitted the ministerial exception as an affirmative defense. In each of the cases above, the complainant was involved in some duty that was viewed as being part of the internal governance or vital to the spiritual and pastoral mission of the church. Hosanna-Tabor, 132 S. Ct. at 709. Ms. Wilson applied for the Administrator position with the Academy that was stipulated as being a non-ministerial position. (Stipulation of Facts ¶ 3). There is additional evidence that the Administrator position is not responsible for expressing any particular religious belief including those held by the Academy. (Stipulation of Facts ¶ 4); Catholic

Univ. of Am., 83 F.3d at 463 (noting that to be ministerial, the [position] must be vital to the spiritual and pastoral mission of the church).

The only fact that could speculatively give some inference to the Administrator position being ministerial is the fact that the Administrator supervises the Chaplin, a ministerial position. (Stipulation of Facts ¶ 6). However, with no other facts to explain her supervisory duties it cannot be determinative of ministerial duty. Additionally, the ministerial exception will not shield a religious employer from a lay employee that provides episodic religious duties from Title VII liability. Patsakis v. Greek Orthodox Archdiocese of Am., 339 F. Supp. 2d 689, 695-97 (W.D. Pa. 2004). Based upon the totality of the circumstances of the Administrator position and all inferences being in favor of Ms. Wilson, this Court cannot find the that position of Administrator qualifies as ministerial.

Further by permitting Ms. Wilson to bring this claim the Court will not be infringing upon the First Amendment's Free Exercise Clause or Establishment Clause. "The Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select [ministerial positions]." Hosanna-Tabor, 132 S. Ct. at 703. Because the Administrator position is not ministerial and permitting Ms. Wilson's Title VII claim to proceed would not violate the Establishment

Clause or the Free Exercise Clause this court must deny the Academy's Motion to Dismiss.

B. The Defendant's Motion To Dismiss Must Be Denied Because The Plaintiff Can State a Plausible Claim For Discrimination Under Title VII.

An employee demonstrates a prima facie case of discrimination by showing that (1) he/she is a member of a protected class; (2) he/she suffered adverse employment action; (3) he/she [met the employer's qualifications for the position] and (4) the position was filled by someone outside her class. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). If the question comes down to pretext, a complainant "must be afforded the opportunity to prove by a preponderance of evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination. Holland v. Wash. Homes, Inc., 487 F.3d 208, 214 (4th Cir. 2007). Here defendants offered no reason but have summarily attempted to hide behind the ministerial exception.

The purpose of Title VII is to equalize employment opportunities, and to encourage employers to focus on qualifications rather than on race, sex or national origin. Price Waterhouse v. Hopkins, 490 U.S. 228, 244 (1989). Ms. Wilson is a member of a protected class because she was discriminated against based upon her sex. (Stipulation of Fact ¶ 12) (Noting that the Chaplin "publicly stated the he felt that a man should not be under subjection of a woman in a religious setting"). As a result of this discrimination she was not offered the position and suffered

pecuniary losses as well emotional distress. (Compl. ¶ 21). Ms. Wilson was more than qualified for the position of Administrator, and was induced to believing that the position would be hers subject to a background check and interview. (Compl. ¶ 9). Following the Academy's denial of the Administrator position to Ms. Wilson, the position was filled with a *man* who had qualifications *inferior* to Ms. Wilson. (Compl. ¶ 12); (Stipulation of Facts ¶ 13) (emphasis added).

"To survive a motion to dismiss for failure to state a claim upon which relief can be granted, factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that the all the allegations in the complaint are true even if doubtful in fact." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Additionally, the claim "must be plausible, not akin to probability, but must assert more than a mere possibility that the defendant acted unlawfully." Iqbal, 556 U.S. at 680. The facts alleged provide more than enough to support a plausible claim and for the foregoing reasons this Court must deny the Defendant's motion to dismiss for failure to state a claim upon which relief can be granted.

II. THE COURT MUST GRANT THE PLAINTIFF'S MOTION TO COMPEL BECAUSE THE DOCUMENTS ARE RELEVANT TO PLAINTIFF'S PRETEXT CLAIM AND THE DEFENDANT CANNOT CLAIM A PRIVILEGE.

Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense. Fed. R. Civ. P. 26(b). Pursuant to Rule

37(a)(2), the court may compel production of requested documents. Hunter's Ridge Golf Co., Inc. v. Georgia-Pac. Corp., 233 F.R.D. 678, 680 (M.D. Fla. 2006).

The overall purpose of discovery under the Federal Rules is to require the disclosure of all relevant information so that the ultimate resolution of disputed issues in any civil action may be based on a full and accurate understanding of the true facts, and therefore embody a fair and just result. Hunter's Ridge Golf Co., 233 F.R.D. at 680. Every litigant has the duty to conform to the rules of procedure. Anderson v. Nixon, 444 F. Supp. 1195, 1199 (D.D.C. 1978). "The party resisting discovery has a 'heavy burden' of showing why discovery should be denied." Roehrs v. Minn. Life Ins. Co., 228 F.R.D. 642, 644 (D. Ariz. 2005). The public interest in fair and impartial administration of justice demands nothing less. Nixon, 444 F. Supp at 1199.

The documents requested by Ms. Wilson are discoverable under the Federal Rules of Civil Procedure because they are relevant to her Title VII discrimination claim. The Court must grant Ms. Wilson's motion to compel unless the Academy can prove that the materials are privileged.

The Academy relies on the First Amendment in order to classify production of discoverable documents requested by the plaintiff as "inquiry into its bona fides" as a religious group. Rankin v. Howard, 527 F. Supp. 976, 977 (D. Ariz. 1981). Rankin is distinguishable from the defendant's case, and thus not a basis

for asserting a First Amendment discovery privilege. 527 F.Supp. at 978 (equating inquiry into the bona fides of a religious group to testing the truth or falsity of its religious beliefs). Unlike the inquiry in Rankin, the materials requested by Ms. Wilson do not inquire into the validity of the Academy's religious dogma. See 527 F. Supp. at 977.

Even if the Academy could assert a First Amendment privilege, the Academy has effectively waived that privilege by presenting the ministerial exception as an affirmative defense. Public policy supports a decision to grant the Motion to Compel in light of the public interest in fair and impartial resolution of cases on the merits.

A. The Court Must Grant The Plaintiff's Motion To Compel, Because The Materials Requested Are Not Privileged Under The First Amendment

Whether the materials requested by Ms. Wilson are privileged will depend on the nature of the inquiry. The Supreme Court has held that the First Amendment bars the testing in court of the truth or falsity of religious beliefs. See United States v. Ballard, 322 U.S. 78, 86 (1944). However, the Academy's attempt to avoid production of discoverable documents by claiming First Amendment privilege on the mere basis of its nature as a religious organization does not remove this court's discretion in directing pretrial procedure. See Jones v. Wolf, 443 U.S. 595, 605 (1979) ("The First Amendment does not require … compulsory deference to religious authority").

To assert discovery protection under the Religion Clauses of the First Amendment, the Academy must show that the process of discovery would result in "procedural entanglement" of church and state. Rayburn, 772 F.2d at 1169; see N.L.R.B. v. Catholic Bishop of Chi., 440 U.S. 490, 502 (1979) (cautioning that the "very process of inquiry leading to findings and conclusions" may impinge on rights guaranteed by the Religion Clauses); cf. Hosanna-Tabor, 132 S. Ct. at 706 (2012) (distinguishing a government's regulation of physical acts from lending of power in controversies over religious authority or dogma).

Churches are not and should not be above law. Rayburn, 727 F.2d at 1169. Their employment decisions may be subject to Title VII scrutiny where the decision does not involve the church's spiritual functions. Id. So long as the plaintiff does not challenge the validity of the religious doctrine, this argument does not raise sufficient entanglement concerns. Redhead v. Conference of Seventh-Day Adventists, 566 F. Supp. 2d 125, 134 (E.D.N.Y. 2008). A conclusion that the religious reason did not in fact motivate the employment action implies nothing about the validity of the religious doctrine or practice. Id. at 330.

Ms. Wilson's inquiry relates to controversy over a discriminatory employment decision made by the Academy, as opposed to controversy over Academy's religious authority or dogma. This type of employment decision is subject to Title VII scrutiny. Demarco v. Holy Cross High Sch., 4. F.3d 166, 172

(2d Cir. 1993) ("Religious institutions that otherwise qualify as "employers" are subject to Title VII provisions relating to discrimination based on race, gender, and national origin."). The documents Ms. Wilson requests refer to the policy and practices of the Academy as pertaining to hiring based on sex, and the inquiry does not need to intrude into the spiritual functions of the Academy. See Bollard, 196 F.3d at 950 (allowing a case to proceed if it involves "a limited inquiry that, combined with the ability of the district court to control discovery, can prevent a wide-ranging intrusion into sensitive religious matters"); Geary v. Visitation of Blessed Virgin Mary Parish Sch., 7 F.3d 324, 330 (3d Cir. 1993) (pretext inquiry which does not traverse questions of validity of religious beliefs or forces a court to choose between competing religious visions does not present a significant risk of entanglement).

B. The Court Must Grant The Plaintiff's Motion to Compel Because The Academy Waived Any Possible Privilege By Asserting The Ministerial Exception.

Even if the Academy could prove that a First Amendment privilege existed, asserting the ministerial exception as an affirmative defense to Ms. Wilson's Title VII claim effectively results in the Academy's waiver of any such privilege for the purposes of discovery. Courts have not allowed parties to use First Amendment privileges simultaneously as a sword and a shield. See Nixon, 444 F. Supp. at 1200. The analogies to other privileges are obvious. See Petruska, 462 F.3d at 302

("assertion of the ministerial exception is akin to the governmental defense of qualified immunity" and not absolute immunity, because it acts as a challenge to the sufficiency of a plaintiff's claim as opposed to a bar to the claim); see, e.g., Hearn v. Rhay, 68 F.R.D. 574, 581 (E.D. Wash. 1975), (a client waives his attorney privilege when he brings suit or raises an affirmative defense that makes his intent and knowledge of the law relevant); see also, Lyons v. Johnson, 415 F.2d 540 (9th Cir. 1969), (a plaintiff may not assert a Fifth Amendment privilege to block discovery necessary to the defense); Roviaro v. United States, 353 U.S. 53, 60-61 (1957), (the Government may not claim the informer's privilege "where the disclosure of an informer's identity would be relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause . . . and disclosure can be compelled even before trial).

The Court in Nixon also dealt with a First Amendment privilege asserted to bar discovery to preserve inviolate information obviously relevant to an adequate defense of his lawsuit. 444 F. Supp. at 1195. Since the Academy is using the ministerial exception as an affirmative defense, Ms. Wilson must be allowed to discover information that is relevant to her interest in disproving that defense, and thus any possibility of a privilege protecting the Academy from discovery has been waived.

C. The Court Must Grant The Motion To Compel Because The Documents Are Relevant To Ms. Wilson's Pretext Claim.

A religious institution may argue that permissible religion-based discrimination formed the true motive for the action challenged by the plaintiff. Geary, 7 F.3d at 329. Nevertheless, an employer's simple assertion of a religious motive does not prevent a reviewing court from asking whether that motive "was in fact pretext" within the meaning of McDonnell Douglas test. Redhead, 566 F. Supp. 2d at 134 (noting a typical "pretext" case is found when an employer argues that its action flowed from a permissible motive rather than from the alleged, unlawful motive.)

A plaintiff may make a showing that her employer intended to discriminate against her by using either direct or indirect evidence. Hamilton v. Southland Christian Sch., Inc., 680 F.3d 1316 (11th Cir. 2012). The pretext inquiry normally focuses upon factual questions such as whether the asserted reason for the challenged action comports with the defendant's policies and rules, whether the rule applied to the plaintiff has been applied uniformly, and whether the putative non-discriminatory purpose was stated only after the alleged discrimination. DeMarco, 4 F.3d at 171.

The documents requested are crucial to building a case for pretext, since they present facts about the Academy's policies and rules in hiring, the application of those rules to both males and females in the organization, and whether the Academy has repeatedly looked to religion as preclusive to hiring a woman. These

documents are relevant to Ms. Wilson's claim, and would lead to a more full and accurate understanding of the facts by this Court. The public interest in fair adjudication of claims and the policies behind the discovery rules favor the Court's decision to grant Ms. Wilson's Motion to Compel.

CONCLUSION

The Academy cannot prevent Ms. Wilson's Title VII suit by asserting the ministerial exception of the First Amendment. After looking at the totality of the circumstances and construing all inferences in favor of Ms. Wilson this Court must deny the Academy's Motion to Dismiss. Even if the supervision of the Chaplin was deemed to be ministerial in nature, mere episodic ministerial duties is not enough to make a lay employee ministerial for purposes of precluding liability. Because the ministerial exception does not apply Ms. Wilson has pled facts that are plausible and more than mere speculation of discrimination to survive the Academy's Motion to Dismiss.

The Academy is not privileged under the First Amendment to revoke this court's discretion in compelling relevant discovery materials pursuant to Rule 37(a)(2), because the materials Ms. Wilson requests do not question the validity of the Academy's religious dogma. Further, the Academy cannot use the First Amendment as both a sword and a shield by declaring the ministerial exception as an affirmative defense and simultaneously asserting a First Amendment privilege to bar discovery of materials necessary for Ms. Wilson to build a case against this defense. To allow such a blanket bar to discovery would place the Academy above the law, and go against the public interest in the fair adjudication of claims based on a full factual understanding of the court. Since Ms. Wilson requests documents

relevant to her claims, and those documents are not privileged, this court must grant the Motion to Compel.

Respectfully Submitted,

/s/ Team 1220P

Appendix

Exhibit A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF STETSON
GULFPORT DIVISION

ADRIANNA Q. WILSON,
Plaintiff,

v.

LIGHT UP MY LIFE UNIVERSALIST ACADEMY, a Foreign Corporation,
Defendant.
_____/

STIPULATIONS OF FACT

COMES NOW Plaintiff, ADRIANNA Q. WILSON and Defendant, LIGHT UP MY LIFE UNIVERSALIST ACADEMY, by and through their undersigned counsel and say: We agree and stipulate the following:

1. The Defendant, Light Up My Life Universalist Academy, is a religious organization at which some, but not all, persons are employed by Defendant in ministerial positions as defined by the U.S. Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission et.al.*, 132 S. Ct. 694 (2012).

2. The position of Administrator at Light Up My Life Universalist Academy became vacant on or about April 30, 2011.

3. The position of Administrator at Light Up My Life Universalist Academy is not a ministerial position.

4. Previous Administrators at Light Up My Life Universalist Academy have been women as well as men and have expressed no particular religious beliefs—including those held by the Defendant.

5. Among the personnel supervised by the Administrator of Light Up My Life Universalist Academy is the Chaplin, which is a ministerial position.

6. Light Up My Life Universalist Academy actively sought applicants to fill the opening for Administrator at its school beginning in May of 2011.

7. Plaintiff applied for the position of Administrator at Light Up My Life Universalist Academy on or about June 1, 2011.

8. A conversation between the Plaintiff and the Chairperson of Light Up My Life Universalist Academy took place at a local Wal-Mart on or about June 10, 2011.

9. Plaintiff interviewed with the Light Up My Life Universalist Academy Hiring Committee for the Administrator's position on or about June 25, 2011.

10. It has been the long-standing policy of Light Up My Life Universalist Academy to require a unanimous recommendation of the Hiring Committee before an applicant is offered a position.

11. One of the members of the Hiring Committee, was Light Up My Life Universalist Academy's Chaplin (see #5 above), a Mr. Allan Bowersox.

12. Mr. Bowersox refused to support Plaintiff Wilson's application stating publicly that he has a firmly held belief that a man should not be under subjection to a woman in a religious setting.

13. The Plaintiff was not offered the position of Administrator at Light Up My Life Universalist Academy, but rather a male individual was offered and accepted that position on or about July 31, 2011.

14. Conditions precedent to filing a federal suit were satisfied or waived on or about December 27, 2011.

15. Plaintiff filed her Complaint on or about January 30, 2012.

16. Defendant, Light Up My Life Universalist Academy, timely filed its Answer on or about February 17, 2012.

17. Defendant, Light Up My Life Universalist Academy, filed its Motion to Dismiss on or about May 22, 2012.

18. Plaintiff served Defendant, Light Up My Life Universalist Academy, with her Request to Produce on or about June 13, 2012.

19. Defendant, Light Up My Life Universalist Academy, filed its Motion to Quash on or about July 10, 2012.

20. Plaintiff filed her Motion to Compel Production on or about July 25, 2012.

21. A Notice of Hearing on Defendant's Motion to Dismiss with Prejudice and Plaintiff's Motion to Compel Production will be heard on or about October 12, 2012.

Respectfully submitted this 10th day of August, 2012.

Brandon Blake

Brandon Blake, Esq.
Counsel for the Plaintiff
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Exhibit B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF STETSON
GULFPORT DIVISION

ADRIANNA Q. WILSON,
Plaintiff,

v.

LIGHT UP MY LIFE UNIVERSALIST ACADEMY, a Foreign Corporation,
Defendant.
_____/

PLAINTIFF'S REQUEST TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

COMES NOW Plaintiff, Adrianna Q. Wilson (Plaintiff), by and through her undersigned counsel, and avers the following:

1. Plaintiff brought suit against Light Up My Life Universalist Academy (Defendant) on or about January 30, 2012, alleging sex discrimination in hiring.

2. Defendant submitted its Answer on or about February 18, 2012.

3. Defendant's Answer included a certain Affirmative Defense claiming *inter alia*, "Defendant's actions were fully protected by the Ministerial Exception guaranteed by the First Amendment of the United States Constitution."

WHEREFORE, Plaintiff demands that Defendant produce the following documents or electronically stored information, and permit their inspection or copying:

a. Any and every organizational chart for the Defendant, Light Up My Life Universalist Academy, located at 2007 Market Street, in Gulfport, Stetson, for the last 10 (ten) years;

b. Any and every iteration in any and every document detailing or alluding to the Defendant's hiring practices, located at 2007 Market Street, in Gulfport, Stetson;

c. The job description for each and every person listed on the organizational charts demanded in (a) above; and,

d. Any and every iteration in any and every document detailing or alluding to the religious beliefs of Light Up My Life Universalist Academy, concerning the role of either gender in hiring or supervising at Light Up My Life Universalist Academy located at 2007 Market Street, in Gulfport, Stetson.

Said documents are to be produced no later than 30 days from the date of this Request to Produce.

Respectfully submitted this _13th _ day of ____June_____, 2012

Brandon Blake_____

Brandon Blake, Esq.
Counsel for the Plaintiff
Stetson Bar No. 0000777
Bowman, Coppock & Assoc., PA
1000 Pasadena Ave. Gulfport, Stetson 99999

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF STETSON
GULFPORT DIVISION

ADRIANNA Q. WILSON,

Plaintiff,

v. CASE NO.: 0:10-cv-007LC-BVD

LIGHT UP MY LIFE UNIVERSALIST ACADEMY, a Foreign Corporation,

Defendant.

PLAINTIFF'S BRIEF IN OPPOSITION OF DEFENDANT'S MOTION TO DISMISS AND IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS
