

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

THE TRIAL COURT  
SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO. 1482CV00751

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MATTHEW BARRETT,  
*Plaintiff*

v.

FONTBONNE ACADEMY,  
*Defendant*

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**CONSOLIDATED STATEMENT OF MATERIAL FACTS NOT IN DISPUTE IN  
CONNECTION WITH THE PARTIES' CROSS-MOTIONS FOR SUMMARY  
JUDGMENT**

**I. Plaintiff's Statement of Material Facts with Defendant's Responses**

**A. Fontbonne Academy's Structure, Staffing and Curriculum.**

1. Fontbonne Academy (Fontbonne) is an "independently incorporated, Catholic, college-preparatory school for young women" located in Milton, Massachusetts. Defendant Fontbonne Academy's Answers to Interrogatories (Deft's Interrogatories), Ex. 1, No. 17.<sup>1</sup>

*Not in dispute.*

2. Fontbonne is a sponsored ministry of the Congregation of the Sisters of Saint Joseph of Boston. Deft's Interrogatories, Ex. 1, No. 17.

*Not in dispute.*

3. Fontbonne describes its mission as "the education of young women rooted in gospel values and the teachings of the Catholic Church." Deposition of Mary Ellen Barnes (Barnes Dep.), Ex. 2, p. 22.

*Not in dispute.*

4. Fontbonne does not have a direct legal relationship to the Archdiocese of Boston or the Archbishop. Deft's Interrogatories, Ex. 1, No. 17.

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<sup>1</sup> The exhibits referenced in this Statement of Facts are contained in the parties' Joint Appendix separately filed with the Court.

*Disputed to the extent that paragraph 4 gives an inaccurate representation of Fontbonne's interrogatory answers.*

5. Fontbonne is independently operated and is governed by its Administration and Board of Trustees. Deft's Interrogatories, Ex. 1, No. 17.

*Disputed to the extent that paragraph 4 gives an inaccurate representation of Fontbonne's interrogatory answers.*

6. A majority of the members of Fontbonne's Board of Trustees are not members of or affiliated with the Sisters of Saint Joseph. List of Members of Board of Trustees of Fontbonne Academy, Ex. 3.

*At present, it appears that four members of the Board are Sisters of Saint Joseph. What the plaintiff means by "affiliated with" is unclear.*

7. Fontbonne enrolls students in grades 9-12. Barnes Dep., Ex. 2, p. 32.

*Not in dispute.*

8. Fontbonne does not limit admission or the enrollment of students to members of the Catholic religion. Fontbonne's Response to Request for Admissions (Fontbonne Admissions), Ex. 4, Nos. 1 and 2.

*Not in dispute.*

9. Fontbonne welcomes students of all faiths. Barnes Dep., Ex. 2, p. 32.

*Not in dispute.*

10. In recent years Fontbonne's student body has included Muslims, Jews, Baptists, Buddhists, Hindus and Episcopalians. Barnes Dep., Ex. 2, pp. 35-36.

*That Fontbonne's student body has included students of several different faiths is not in dispute. However, the defendant disputes the statement above to the extent that it does not accurately reflect Ms. Barnes' testimony.*

11. Fontbonne does not limit employment to Catholics. Barnes Dep., Ex. 2, p. 45.

*Not in dispute.*

12. While Fontbonne's Administration, Theology faculty, and the one employee who staffed the Office of Mission and Ministry, are required to be practicing Catholics, no other faculty or staff position (e.g., librarian, arts, guidance, physical education, course subjects, etc.) is required to be filled by a member of the Catholic religion. Barnes Dep., Ex. 2, pp. 47-56.

*That Fontbonne's administration and theology faculty must be Catholic is not in dispute. Nor is the fact that not every position at Fontbonne must be held by*

*Catholics. The defendant otherwise states that Ms. Barnes testimony over the nine pages referenced above speaks for itself.*

13. A history teacher or the food services director, for example, do not have to be Catholic because those staff are "not formally presenting the gospel values or the — and the teachings of the Catholic Church." Barnes Dep., Ex. 2, pp. 65-66.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

14. No religious training is necessary for the position of food services director. Barnes Dep., Ex. 2, p. 68.

*Not in dispute.*

15. Diversity is a core principle of Fontbonne Academy. Barnes Dep., Ex. 2, p. 155.

*Not in dispute.*

16. Diversity of sexual orientation is important to Fontbonne and is part of its commitment to diversity. Barnes Dep., Ex. 2, p. 157.

*Not in dispute.*

17. Fontbonne has and embraces openly lesbian students. Barnes Dep., Ex. 2, p. 157.

*Not in dispute.*

18. Fontbonne emphasizes that it does not discriminate on the basis of sexual orientation. Barnes Dep., Ex. 2, p. 161.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

19. As a college preparatory school, Fontbonne has an "academically rigorous" curriculum that "provides students with information and with the ... thinking skills ... to leave Fontbonne and be successful matriculating [in] college and also outside of [the] college." Barnes Dep., Ex. 2, p. 23.

*Not in dispute.*

20. Fontbonne prepares students to live in a global community. Barnes Dep., Ex. 2, p. 60.

*Not in dispute.*

21. Fontbonne fosters intellectual openness. Barnes Dep., Ex. 2, p. 61.

*Not in dispute.*

22. It would be permissible for any Fontbonne student to express disagreement with the teaching or doctrine of the Catholic Church. Barnes Dep., Ex. 2, p. 61.

*Not in dispute.*

23. Fontbonne's Head of School in July 2013, Mary Ellen Barnes, believed that critical thinking, including about Catholic doctrine, was a "healthy" part of the educational process and a "value for any worthwhile educational institution." Barnes Dep., pp. 62-63.

*Not in dispute.*

24. Critical thinking by a student about Catholic doctrine would not threaten the mission of Fontbonne. Barnes Dep., p. 63.

*Not in dispute.*

25. If a Fontbonne student disagreed with the Catholic Church teaching about same-sex marriage, "[t]he student would be applauded for thinking critically." Barnes Dep., Ex. 2, p. 64.

*Not in dispute.*

26. When asked "whether Fontbonne students are permitted to explore questions or issues relating to homosexuality, sexual orientation, marriage for same-sex couples, or 'gay rights' in classroom discussions, student papers, student presentations," Fontbonne answered:

Fontbonne is a learning community. No particular questions or issues are deemed categorically impermissible.

Deft's Interrogatories, Ex. 1, No. 21.

*Not in dispute.*

27. Helping students to understand the significant changes in American society regarding acceptance of marriage for same-sex couples is part of Fontbonne's mission to help prepare students for life in a global community. Barnes Dep., Ex. 2, p. 154.

*Not in dispute.*

28. Questions regarding changes in marriage for same-sex couples in America come up and are addressed in classes at Fontbonne. Barnes Dep., Ex. 2, p. 154.

*Not in dispute.*

29. A student at Fontbonne would be permitted to write a paper supporting same-sex marriage. Barnes Dep., Ex. 2, p. 139.

*Not in dispute.*

**B. Fontbonne Academy Rescinded its Job Offer to Matt Barrett Because He is Married to a Person of the Same Sex.**

30. Matthew Barrett is a gay man in a long-term committed relationship. He and Edward Suplee were married in Massachusetts on September 29, 2012. They reside together in Dorchester, Massachusetts. Deposition of Matthew Barrett (Barrett Dep.), Ex. 5, pp. 25-26.

*Not in dispute.*

31. When Matt applied for the job of Food Services Director at Fontbonne Academy, he had over twenty years of experience in the food services industry. Resume of Matthew Barrett (Resume), Ex. 6.

*Not in dispute.*

32. Matt, who is 45, has worked hard to build a career in the food services industry. He graduated from Plymouth South Vocational High School in 1989 with a focus in culinary arts and then took some business management classes at Massasoit Community College. Barrett Dep., Ex. 5, p. 8.

*The defendant has no way of knowing whether Mr. Barrett “worked hard.” Moreover, these statements are not material or relevant to any issue in this motion or the defendant’s motion, and should be disregarded..*

33. Matt joined the Pizzeria Uno Corporation in 1989 where he worked his way up from prep cook to a trainer of new employees. In addition, from 1995 to November 2000 Mr. Barrett operated his own limousine service on weekends and evenings driving a used stretch Lincoln Town Car he purchased. Barrett Dep., Ex. 5, pp. 9-12; Resume, Ex. 6.

*These statements are not material or relevant to any issue in this motion or the defendant’s motion and should be disregarded..*

34. After ten years at Pizzeria Uno, Matt moved to Corporate Chefs, Inc., where he worked from 1999-2010. He was the Director of the cafeteria at the Talbots corporate headquarters in Hingham, MA and thereafter held the same position at the John F. Kennedy Federal Building in Boston. Barrett Dep., Ex. 5, pp. 14-17.

*These statements are not material or relevant to any issue in this motion or the defendant’s motion and should be disregarded.*

35. After Corporate Chefs lost the contract for the Kennedy Federal Building, Matt was unemployed until he was hired in 2012 as a cook for the Milton Public Schools. Barrett Dep., Ex. 5, p. 18; Resume, Ex. 6.

*These statements are not material or relevant to any issue in this motion or the defendant’s motion and should be disregarded.*

36. In June 2013 Matt applied for the position of Food Services Director at Fontbonne Academy. The job at Fontbonne was ideal for him. He was looking for full-time employment, as his job in the Milton Public Schools was part-time. In addition, he was looking for a position that had the level of professional responsibility commensurate with his prior experience at Corporate Chefs and that was close to his home in Dorchester, MA. Response of Plaintiff Matthew Barrett to Defendant's Interrogatories (Plt's Interrogatories), Ex. 7, Nos. 7, 12.

*The timing of Mr. Barrett's application is not in dispute. The remaining statements purport to reflect Mr. Barrett's subjective feelings. They are irrelevant and they are not "facts." They should be stricken and disregarded.*

37. At the time of his application Matt knew that Fontbonne was a private Catholic girls' school. Barrett Dep., Ex. 5, pp. 33-34.

*Not in dispute.*

38. Before interviewing for the position, Matt had spoken with Sister Katherine Short. Sister Short is a friend of Matt's mother. Mr. Barrett understood that Sister Short was a nun affiliated with the Sisters of Saint Joseph who does massage on the nuns at Fontbonne Academy. Barrett Dep., Ex. 5, pp. 35, 37-38.

*Neither Mr. Barrett's conversations, if any, with Sr. Katherine Short; nor Sr. Short's relationship to the Barrett family; nor Sr. Short's activities, if any, at Fontbonne, are relevant to any issue in this motion or the defendant's motion. The statements in this paragraph and the portions of Mr. Barrett's testimony relating to conversations with Sr. Katherine Short should be stricken.*

39. Sister Short told Matt that "in this day and age," his marriage to Mr. Suplee would not be an issue for his employment at Fontbonne. "They will love you," she told him. Barrett Dep., Ex. 5, p. 40.

*The cited quotes from Mr. Barrett's deposition testimony constitute inadmissible hearsay. In addition, they are irrelevant to any issue in this motion or the defendant's motion. They should not be considered by this Court and should be stricken from the summary judgment record.*

40. In June 2013 Matt had a first interview at Fontbonne with Sister Maryanne Enright. Barrett Dep., Ex. 5, p. 62.

*Not in dispute.*

41. Sister Enright was enthusiastic about Matt's candidacy. Shortly after the first interview, Sister Enright emailed Matt and asked to set up a time for him to meet Karen Risso, the Fontbonne employee who would be his cafeteria assistant. The meeting took place in approximately the first week of July. Plt's Interrogatories, Ex. 7, No. 7.

*Not in dispute.*

42. Matt had a third interview at Fontbonne on July 9, 2013 and met with Mary Ellen Barnes, the Head of School. Plt's Interrogatories, Ex. 7, No. 7.

*Not in dispute.*

43. Ms. Barnes was the Chief Executive Officer of Fontbonne in July 2013. She had the ultimate responsibility for deciding whether to hire or fire employees at Fontbonne. Barnes Dep., Ex. 2, pp. 12, 100.

*Not in dispute.*

44. Ms. Barnes's impression was that Matt was a "very worthy candidate for the job." He "seemed like a very positive person and [she] had been thinking that he would [be] a good fit at Fontbonne." Matt was Fontbonne's first choice for the position. Barnes Dep., Ex. 2, pp. 95, 114.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

45. During the interview, Ms. Barnes told Matt that every employee of Fontbonne Academy is regarded as a "minister of the mission" and is expected to model the teachings of the Catholic faith. She used the example that he could not be an advocate of abortion rights. Affidavit of Mary Ellen Barnes to Massachusetts Commission Against Discrimination, March 18, 2014, Ex. 8, ¶¶ 4-5; Barnes Dep., Ex. 2, p. 72 (acknowledging accuracy of affidavit).

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

46. Ms. Barnes did not give any example other than abortion or explain anything further about the meaning of the phrase "minister of the mission." Barnes Dep., Ex. 2, p. 75.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

47. Based on his prior discussion with Sister Short and his understanding that marriage was legal for same-sex couples in Massachusetts, it did not occur to Matt that the example of abortion advocacy might also include his lawful marriage to Ed. Barrett Dep., Ex. 5, pp. 74-75.

*Mr. Barrett's subjective beliefs are a contested issue and his credibility as to those beliefs is for the jury to determine.*

48. Barnes offered Matt the position of Food Services Director at Fontbonne Academy on July 9 which he accepted on that date. Barnes Dep., Ex. 2, p. 86; Fontbonne Admissions, Ex. 4, No. 5.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

49. On July 9 Matt filled out an employee new hire form in Barnes's office. Barnes Dep., Ex. 2, p. 86; Employee New Hire Form, Ex. 9.

*Not in dispute.*

50. The form requested the name of an "emergency contact." Barrett filled in the name "Ed Suplee." In the space asking for the relationship of the emergency contact to Barrett, he wrote "husband." Employee New Hire Form, Ex. 9.

*Not in dispute.*

51. After he accepted the offer on July 9, 2013, Matt posted on his Facebook page: "Thank you to all of you who gave me a great reference. Guess who landed an awesome job? This guy!!!!" Barrett Facebook Post, Ex. 10.

*The statements of fact in paragraph 51 are not material or relevant to any issue raised in this motion or the defendant's motion and should be disregarded.*

52. Matt also submitted his resignation to the Milton Public Schools. Barrett Dep., Ex. 5, p. 87.

*The statements of fact in paragraph 52 are not material or relevant to any issue raised in this motion or the defendant's motion and should be disregarded.*

53. Ms. Barnes was a member of the Congregation of the Sisters of Saint Joseph of Boston from 1960 to 1987 and has had training in theology. She has made an effort to keep herself apprised and knowledgeable about "current topics" and the teachings of the Catholic Church. Barnes Dep., Ex. 2, pp. 14-15, 31.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

54. After Ms. Barnes noticed Matt's emergency contact information, she was "completely unsure" and had a "lack of certainty" about whether his marriage precluded employment at Fontbonne, especially because the law regarding same-sex marriage had recently changed in Massachusetts. Barnes Dep., Ex. 2, pp. 90-92.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

55. Ms. Barnes stated that she "wanted to check with someone, get some guidance." She thought "maybe it isn't — maybe it is ok to hire." Barnes Dep., Ex. 2, p. 91.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*



56. Ms. Barnes called Suzanne Kearney, the Executive Director of the Corporation for Sponsored Ministries of the Sisters of Saint Joseph of Boston and "asked for guidance in making [her] decision." Barnes Dep., Ex. 2, p. 100; Deft's Interrogatories, Ex. 1, No. 5.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

57. The Corporation for Sponsored Ministries (CSM) is a resource for the ministries sponsored by the Sisters of Saint Joseph of Boston. Deposition of Suzanne Kearney (Kearney Dep.), Ex. 11, pp. 7, 30-31.

*Ms. Kearney's testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

58. Ms. Kearney has been the Executive Director of CSM for 12 years. She has a masters degree in Theology and a Ph.D. in Early Christianity and the New Testament. Kearney Dep., Ex. 11, pp. 38-39.

*Not in dispute.*

59. Ms. Barnes testified that it was her understanding from her conversation with Ms. Kearney that Ms. Kearney was not sure what the appropriate decision should be. Barnes Dep., Ex. 2, p. 101.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

60. Ms. Kearney spoke with Sister Peggy Sullivan, a canon lawyer who was one of the leaders of the Sisters of Saint Joseph in Boston. Kearney Dep., Ex. 11, p. 61.

*Ms. Kearney's testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony. In addition, her testimony regarding conversations with Sr. Sullivan is inadmissible hearsay and should be disregarded.*

61. Ms. Kearney emailed Ms. Barnes and conveyed her conversation with Sister Sullivan. She reported that "[t]here was no Y/N conclusion. She [Sister Sullivan] called it a dilemma (I'll say)." Email from Suzanne Kearney to Mary Ellen Barnes, dated July 11, 2013, Ex. 12.

*Ms. Kearney's testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony. In addition, her testimony regarding conversations with Sr. Sullivan is inadmissible hearsay and should be disregarded.*

62. Ms. Kearney next spoke to Mary Grassa O'Neill, the Superintendent of Schools of the Archdiocese of Boston. Kearney Dep., Ex. 11, p. 64; Deft's Interrogatories, No. 5.

*Disputed to the extent that this statement mischaracterizes the defendant's interrogatory answers.*

63. Ms. O'Neill told Ms. Kearney that "[w]e do not hire people in a same sex marriage." Kearney Dep., Ex. 11, p. 65.

*Not in dispute.*

64. Ms. Kearney asked Ms. O'Neill: "What if we ignored that?" Kearney Dep., Ex. 11, p. 66.

*Not in dispute.*

65. Ms. Kearney explained: "What I wanted in that was I wanted her to close that door or open it. I tend to explore options in anything that I do." Kearney Dep., Ex. 11, p. 67.

*Ms. Kearney's testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

66. Ms. Kearney reported back to Ms. Barnes that Fontbonne could not hire a spouse in a same-sex marriage. Deft's Interrogatories, Ex. 1, No. 5.

*Disputed to the extent that this statement mischaracterizes the defendant's interrogatory answers, which speak for themselves.*

67. The decision whether to hire Matt was solely up to Fontbonne. Barnes Dep., Ex. 2, p. 107.

*Not in dispute.*

68. Matt received an email on July 11th from Sister Enright indicating that there was a problem with his employment and asking him to return to school. Barnes Dep., Ex. 2, pp. 109-110.

*Not in dispute.*

69. Matt met with Ms. Barnes and Sister Enright on July 12. Barnes told Matt that Fontbonne would not hire him because he was a spouse in a same-sex marriage, which was inconsistent with the teachings of the Catholic Church. Affidavit of Mary Ellen Barnes to MCAD, Ex. 8, ¶ 11; Deft's Interrogatories, Ex. 1, Nos. 5 and 8.

*Disputed to the extent that this statement mischaracterizes the cited affidavit and interrogatory answers, which speak for themselves.*

70. Sometime after July 12, 2013, Matt emailed his former boss at Milton Public Schools and explained: "I thought I sent you an email about the job offer I had accepted at Fontbonne but 2 days later they declined the offer because I am gay. So, I am coming crawling back for my old cook position if it is available." Email from Matthew Barrett to Jackie Morgan, dated July 18, 2013, Ex. 13.

*The statements of fact asserted in paragraph 70 are not material or relevant to any issue in this motion or the defendant's motion and should be disregarded.*

71. Milton Public Schools rehired Matt as a cook. Email from Jackie Morgan to Matthew Barrett, dated July 18, 2013, Ex. 13.

*The statements of fact asserted in paragraph 70 are not material or relevant to any issue in this motion or the defendant's motion and should be disregarded.*

**C. Fontbonne Does Not Apply the Religious Principles Relied Upon to Terminate Mr. Barrett to Other Job Candidates and Employees.**

72. Ms. Barnes asserted that the impact on Fontbonne by hiring a spouse in a same-sex marriage is that "he would not be able to be a role model of Catholic teachings . . . The students would be learning in the classroom the Church's view marriage is between a man and a woman. And then the role modeling of marriage, same-sex marriage would be contrary to what they were being taught." Barnes Dep., Ex. 2, pp. 116-117; 137-138.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

73. According to Ms. Barnes, the teachings of the Catholic Church as set forth in the Catechism and Canon Law are "very specific doctrinal teachings." Barnes Dep., Ex. 2, p. 130.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

74. Ms. Barnes testified that in making the decision to rescind Matt Barrett's job offer, she relied specifically on the Catechism of the Catholic Church, Art. 7, ¶ 1625 and the Code of Canon Law, Can. 1055, § 1 (1983). See Respondent Fontbonne Academy's Position Statement to Massachusetts Commission Against Discrimination, Ex. 14, p. 2 (citing these Canon Law and Catechism sections); Barnes Dep., Ex. 2, pp. 124-125 (testimony that those two sections were basis for her decision not to hire Matt Barrett).

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

75. Code of Canon Law § 1055, § 1 states:

The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a *sacrament between the baptized*. (emphasis supplied).

See Ex. 15.

*It is not in dispute that the above is a portion of Canon 1055. The defendant does not agree with the plaintiff's apparent view on what should be emphasized.*

76. The Catechism of the Catholic Church, Art. 7, ¶ 1625, attached as Ex. 16, provides:

The parties to a marriage covenant are a *baptized man and woman*, free to contract marriage, who freely express their consent. . . (emphasis supplied).

See Ex. 16.

*It is not in dispute that the above is a portion of the catechism. The defendant does not agree with the plaintiff's apparent view on what should be emphasized.*

77. Ms. Barnes testified that any employee who was doing something inconsistent with the teachings of the church would be fired. Barnes Dep., Ex. 2, p. 117.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

78. In her hiring decisions, Ms. Barnes stated that she would apply the same principles she articulated with respect to Matt Barrett's employment to all employees at Fontbonne. Barnes Dep., Ex. 2, p. 117.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

79. Ms. Barnes testified that her view that employees should conform to the teachings of the Catholic Church requires conformance to all of the teachings of the Church, not just some. Barnes Dep., Ex. 2, p. 130.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

80. Ms. Barnes testified that if a Jewish person in a heterosexual marriage applied to be Food Services Director at Fontbonne Academy and she learned that the applicant was married to another Jewish person, she would hire that person. Barnes Dep., Ex. 2, p. 126.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

81. Ms. Barnes acknowledges that Canon Law § 1055 requires that the two parties to the marriage be baptized. Barnes Dep., Ex. 2, p. 134.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

82. Ms. Barnes acknowledged that two Jewish people of the opposite sex who are married in a civil ceremony are not living consistent with Catholic marriage as set out in Canon Law

§ 1055, but nonetheless she would hire a spouse in a Jewish marriage. Barnes Dep., Ex. 2, p. 134.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

83. Ms. Barnes agreed that a Jewish couple who is civilly married is simply not covered by Catholic teaching. Their marriage simply does not constitute a Catholic marriage, i.e., it is not within the Catholic Sacrament of Matrimony. Barnes Dep., Ex. 2, p. 135.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

84. She explained that the Jewish person married to another Jewish person could work at Fontbonne because a person does not have to be Catholic or in a Catholic marriage for many positions. Barnes Dep., Ex. 2, pp. 135-136.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

85. Similarly, Ms. Barnes testified that the food services director at Fontbonne also does not have to be a person who is in a Catholic marriage. By that Ms. Barnes meant a marriage as set forth in the Catechism and Canon Law. Barnes Dep., Ex. 2, p. 136.

*Ms. Barnes' testimony speaks for itself and the defendant otherwise disputes the plaintiff's characterization of that testimony.*

*The defendant additionally relies on and incorporates the statements of undisputed material fact submitted in connection with its motion for summary judgment.*

## **II. Defendant's Statement of Material Facts with Plaintiff's Responses**

1. Fontbonne Academy ("Fontbonne") is an independently incorporated, Catholic, college preparatory school for young women in the Roman Catholic Archdiocese of Boston.

(Ex. 1 – *Fontbonne Academy's Answers to Plaintiff's Interrogatories, Answer No. 17*; Ex. 17 – *O'Connor Aff., Exhibit A (Archdiocese Directory of Catholic Schools)*)

**Response:** Admitted.

2. Fontbonne is a charitable corporation, organized under Chapter 180 of the Massachusetts General Laws to, among other purposes, "provide an educational experience

integrated with Christian principles which will prepare students to meet their civic, social, and moral responsibilities” and to “further the charitable, educational and social works of the Congregation of the Sisters of St. Joseph of Boston.” (Ex. 17 – *O’Connor Aff. Exhibit B, Fontbonne Academy Articles of Incorporation*)

**Response:** Admitted.

3. Fontbonne Academy’s mission is to provide an education to young women rooted in gospel values and the teachings of the Catholic Church. (Ex. 2 – *Barnes Depo, 22:19-21*)

**Response:** Admitted.

4. Within its religious and educational role, Fontbonne regards every adult member of its learning community, as both a teacher and a minister of the mission, with responsibilities to model Catholic teachings in furtherance of the school’s theological and ethical instruction. (Ex. 8 – *Barnes Aff. ¶ 4*; Ex. 2 – *Barnes Depo., 75:2 – 76:3*; Ex. 11 – *Kearney Depo., 55:15-22*)

**Response:** Admitted.

5. Fontbonne is a Sponsored Ministry of the Congregation of the Sisters of St. Joseph of Boston (“CSJ”), a Catholic order of religious women. (Ex. 1 – *Fontbonne Academy’s Answers to Plaintiff’s Interrogatories, Answer No. 17*; Ex. 8 – *Barnes Aff. ¶ 1*)

**Response:** Admitted.

6. CSJ’s sponsored ministries, including Fontbonne, are organized under the umbrella of the Corporation for the Sponsored Ministries of the Sisters of Saint Joseph of Boston (“the Corporation”). (Ex. 11 – *Kearney Depo., 23:5 – 24:22*)

**Response:** Admitted.

7. The Corporation is the sole member of the corporate entity that operates Fontbonne. As such, it has certain reserved rights, including appointment of Fontbonne’s Board

members, approval of its mission statement, budgetary approval, and approval of strategic plans or changes in ownership. (Ex. 11 – *Kearney Depo.*, 23:5 – 24:22)

**Response:** Admitted.

8. The Catholic faith regards marriage as a state that can exist solely between one man and one woman. The Catholic faith does not recognize same-sex unions as marriages, and is opposed to the status of “marriage” being applied to such unions. (Ex. 2 – *Barnes Depo.* 138:5-12; Ex. 17 – *O’Connor Aff. Exhibit B (Catechism of the Catholic Church); Exhibit C (Code of Canon Law); Exhibit D (Pastoral Letter United States Conference of Catholic Bishops); Exhibit E (Statement of Cardinal O’Malley)*)

**Response:** Admitted (with qualification). Plaintiff admits the statement in the first sentence of paragraph 8, as reflected in Exhibits B and C to the O’Connor Affidavit, describing Catholic marriage. In the second sentence of paragraph 8, Plaintiff admits the statement that “[t]he Catholic faith does not recognize same-sex unions as marriages,” as reflected in Exhibits B and C to the O’Connor Affidavit, describing Catholic marriage. Plaintiff, however, denies that the “Catholic faith” opposes “the status of ‘marriage’ being applied to such [same-sex] unions.” Plaintiff agrees that the Catholic Church opposes civil marriage for same-sex couples as a matter of public policy, as reflected in Exhibits D and E to the O’Connor Affidavit, but there is no basis for the conclusion that the Catholic Church opposes civil marriage for same-sex couples as a matter of Catholic teaching or faith.

9. In June 2013, Matthew Barrett applied for the position of Food Service Director at Fontbonne. (Ex. 18 – *Complaint* ¶ 9)

**Response:** Admitted.

10. Mr. Barrett has been married to Edward Suplee since 2012. (Ex. 18 – *Complaint* ¶ 22)

**Response:** Admitted.

11. Mr. Barrett had a total of three interviews for the Food Service Director position, and was regarded as an attractive candidate based on his demeanor and prior experience. (Ex. 2 – *Barnes Depo.*, 73:10-12, 74:16-20)

**Response:** Admitted.

12. Mr. Barrett’s third interview took place at Fontbonne on July 9, 2013. Mr. Barrett met that day with Sr. Maryann Enright, and with Mary Ellen Barnes, Fontbonne’s Head of School. (Ex. 8 – *Barnes Aff.*, ¶ 2)

**Response:** Admitted.

13. During that interview, Ms. Barnes informed Mr. Barrett of the unique circumstances attendant to working in a Catholic School. Ms. Barnes informed Mr. Barrett that every adult member of Fontbonne’s learning community is regarded as both a teacher and a “minister of the mission.” Ms. Barnes told Mr. Barrett that he would therefore be expected to model Catholic teaching and values, and asked Mr. Barrett if he could “buy into that.” Mr. Barrett responded affirmatively. (Ex. 8 – *Barnes Aff.*, ¶¶ 4-6; Ex. 19 – *Plaintiff’s Admissions*, No. 12; Ex. 5 – *Barrett Depo.*, 71:22 – 74:6, 76:21 – 77:3)

**Response:** Admitted.

14. Also at that meeting, Mr. Barrett was given standard new-hire paperwork to fill out. One of those forms asked for emergency contact information. After Mr. Barrett had left Fontbonne that day, Ms. Barnes reviewed the form and noted that Mr. Barrett had listed Edward



Suplee as his emergency contact, identifying Mr. Suplee as his husband. (Ex. 8 – *Barnes Aff.* ¶ 8)

**Response:** Admitted.

15. In light of the school’s Catholic identity, Ms. Barnes determined that Mr. Barrett could not be hired because Mr. Barrett would be modeling a position regarding marriage that was in conflict with Catholic doctrine and the teaching taking place in Fontbonne’s classrooms. (Ex. 2 – *Barnes Depo.*, 138:5-12)

**Response:** Admitted.

16. At Ms. Barnes’ request, Mr. Barrett returned to Fontbonne on July 12, 2013. He met again with Ms. Barnes, who explained to him that, because he was a spouse in a same-sex marriage, and because such unions are inconsistent with Catholic belief and teaching, the school could not hire him. Mr. Barrett acknowledged that he understood, and stated that he had thought that his marriage might be a problem for his employment. (Ex. 8 – *Barnes Aff.*, ¶¶ 9-11; Ex. 5 – *Barrett Depo.*, 94:11 – 95:8, 96:9-12)

**Response:** Admitted (with qualification). Mr. Barrett did not understand his marriage to be an issue for his employment at the time he applied for and was offered the job. *See* Plaintiff’s Statement of Facts Nos. 38-39, 47. It was only when he was informed that there was an issue with his employment that he thought it might have to do with his marriage. *See* Barrett Dep., Ex. 5, pp. 94: 5-23 and 95: 1-8.

17. Mr. Barrett was raised in the Catholic faith, attended Catholic religious education (“CCD”) classes through approximately eighth grade, and is baptized and confirmed in the Catholic Church. (Ex. 5 – *Barrett Depo.*, 46:5-12, 48:12 – 49:14)

**Response:** Admitted.

18. At the time he applied for employment at Fontbonne, and during the interview process, Mr. Barrett was aware that Fontbonne is a Catholic School and that it is affiliated with the CSJ. (Ex. 19 – *Plaintiff's Admissions, Numbers 4, 5, 8, and 9*)

**Response:** Admitted.

19. At the time he applied for employment at Fontbonne, and during the interview process, Mr. Barrett was aware generally that the Catholic Church is opposed to the idea of same-sex marriage. (Ex. 5 – *Barrett Depo., 39:8-11, 39:20 – 40:9, 57:3 – 58:1*)

**Response:** Admitted.

The Plaintiff,  
***Matthew Barrett,***

By his attorneys,

 9/23/15

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