COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

THE TRIAL COURT
SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. NOCV 2014-00751

MATTHEW BARRETT,
Plaintiff

v.

FONTBONNE ACADEMY,
Defendant

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Defendant Fontbonne Academy ("Fontbonne") opposes plaintiff Matthew Barrett's Motion for Summary Judgment. For the reasons stated below, Mr. Barrett has failed to that there are no questions of material fact in issue, and has failed to show that he is entitled to judgment as a matter of law. Accordingly, his summary judgment motion should be denied.

I. Summary judgment standard

Summary judgment is only appropriate where "the pleadings, depositions, answers to interrogatories, and responses to requests for admission under Rule 36, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Mass. R. Civ. P. 56(c). In employment discrimination cases, as in all cases, the burden of proof is the plaintiff's, making summary disposition rarely appropriate. *Blare v. Husky Injection Molding Systems Boston, Inc.*, 419 Mass. 437, 439 (1995).

II. The plaintiff has failed to show, as a matter of law, that he was subjected to unlawful discrimination on the basis of his sex or his sexual orientation.

A. The question of whether Fontbonne engaged in unlawful discrimination is fundamentally a question of fact.

The Massachusetts Anti-Discrimination Statute prohibits an employer from refusing to hire an individual based on, among other things, that individual's sex or sexual orientation. M.G.L. ch. 151B, § 4(1) ("It shall be an unlawful practice ... [f]or an employer, by himself or by his agent, because of the ... sex [or] ... sexual orientation ... of any individual to refuse to hire or employ or to bar or discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions, or privileges of employment, unless based upon a bona fide occupational qualification.") Because material questions of fact exist as to whether Fontbonne's decision with respect to Mr. Barrett was the product of unlawful discrimination, summary judgment should be denied.

Mr. Barrett was told during the interview process at Fontbonne that every adult member of the school community was regarded as both a teacher and a "minister of the mission," and that, as such, they are expected to serve as role models of Catholic faith and teaching for Fontbonne's students. (Barnes Aff., ¶¶ 4-6; Plaintiff's Admissions, No. 12; Barrett Depo., 71:22 – 74:6, 76:21 – 77:3). After Mr. Barrett later informed the school of his marriage to Mr. Suplee, Fontbonne advised Mr. Barrett that he could not work at the school because he is a spouse in a same sex marriage, and such marriages are contrary to the teachings of the Catholic faith. There is no dispute on this point. However, Fontbonne's decision was not based on animus directed at Mr. Barrett because of the fact that he is a gay man. (Barnes Depo., 161:8 – 162:3). In fact, Mr. Barrett's being gay, of itself, would not have impeded his eligibility for employment. Id. Again, there does not appear to be any dispute on these points. Instead, Fontbonne's decision was driven by its

concern that, as a spouse in a same-sex marriage, Mr. Barrett would not be able to fulfill his role in the school community as a teacher and minister of the school's mission. (Barnes Depo. 115:2-16.) As he was informed, every member of the learning community is expected to model Catholic values and the teaching of the Church. In Fontbonne's estimation, Mr. Barrett would not have been able to do so; and in fact would be modeling a message at odds with Catholic beliefs regarding marriage, and at odds with what was being taught in Fontbonne's religion classes. (Barnes Depo. 116:17 – 117:3).

In Chapter 151B cases, the plaintiff has the burden of proving four elements: "membership in a protected class, harm, discriminatory animus, and causation." *Sullivan v. Liberty Mut. Ins. Co.*, 444 Mass. 34, 39 (2005). The "ultimate issue of discriminatory intent" is a question of fact, and therefore, "summary judgment is a disfavored remedy in the context of discrimination claims based on disparate treatment. *Blare v. Husky Injection Molding Systems Boston, Inc.*, 419 Mass. 437, 439 (1995). Here, as in most cases, it is not clear that the harm alleged was caused by any animus harbored by Fontbonne against Mr. Barrett as a male or as a gay man.

The practice in Massachusetts has been to review such cases under a three-stage order of proof. *Id.* at 440. Under that familiar analysis, once the plaintiff has made out a prima facie case of discrimination, the burden then shifts to the defendant employer to articulate a legitimate, non-discriminatory reason for the adverse employment action. The employer's burden "is not onerous." *Id.* at 442. Nor does the employer's reasoning have to pass any tests of business judgment, or persuade the fact-finder that it was correct in its belief. *Matthews v. Ocean Spray Cranberries, Inc.*, 426 Mass 122, 128 (1997). It is enough for the employer to produce some evidence that its decision was motivated by something other than the discriminatory animus that Chapter 151B was enacted to combat. The burden then shifts back to the plaintiff to demonstrate

that the proffered reason for the employment decision is mere pretext. At that point, the fact finder may, but is not required to, conclude that the adverse employment action was in fact the result of unlawful discriminatory animus. *Blare*, 419 Mass. at 445-46.

Here, assuming that the plaintiff is able to make out a prima facie case of discrimination, Fontbonne's legitimate reason for declining to hire Mr. Barrett is, as stated above, that he would be unable to fulfill his role as a model and minister in the learning community. Was Mr. Barrett going to be formally teaching religion? Or conducting bible studies? No. But that does not change the fact that Fontbonne expects all of its faculty and staff to model lives consistent with the teachings of the Catholic faith—the faith and teaching that the school seeks to instill in its students. (Barnes Depo., 92:22 – 93:5; See also. Kearney Depo., 55:5-22 ("I believe that Fontbonne Academy has the most complete understanding of any of our ministries about the importance of everyone being part of the enterprise. ... [T]he adult learning community includes faculty and staff. They all attend the meetings. They get the same message. They all understand that they are there to model in a very serious way, intentional way, ... the teachings of the Church and the values of the Congregation of the Sisters of St. Joseph.")). Just as a Fontbonne employee would not be able to fulfill that role if he or she was known to be participating in abortion rights activities, or living with another person in a romantic relationship outside of marriage, neither can the employee fulfill that role if he or she is a spouse in a marriage that the Catholic faith does not believe to be legitimate.

This is a case where a religious employer, an employer whose mission is grounded in the task of imparting its religion to its students, made a decision not to hire a prospective employee because that employee, if hired, would not have been able to carry out part of his role within the school's community. While these are issues that engender strong feelings on all sides, it is not

the court's role to choose a side, or to determine whether Fontbonne's choice was right or wrong as a matter of law. Rather, it is a jury question as to whether Fontbonne engaged in unlawful discrimination, or, instead, made a legitimate employment decision based on the nature of its mission and its assessment of Mr. Barrett's ability to carry out his role within that mission.

Because the determination of whether Fontbonne engaged in unlawful discrimination on the basis of sexual orientation or sex is fundamentally a question of fact, the plaintiff's motion for summary judgment should be denied.

B. The plaintiff misapplies federal decisions regarding Title VII claims in asserting that Mr. Barrett was subjected to discrimination on the basis of sex.

The analysis above is applicable to Count I of the plaintiff's complaint, alleging discrimination on the basis of sexual orientation, as well as to Count II, alleging discrimination on the basis of sex. The plaintiff, however, appears to base his claim of sex discrimination on his allegations of sexual orientation discrimination. Relying on the EEOC's recent decision in *Baldwin v. Foxx*, the plaintiff maintains that "sexual orientation discrimination is inherently and necessarily discrimination because of a person's sex." Regardless of the conclusions of the EEOC in *Baldwin*, however, the two species of discrimination should not be equated under Massachusetts law. The *Baldwin* decision was construing the antidiscrimination provisions of Title VII, which does not include sexual orientation as a suspect classification or protected status. As a result, Title VII's prohibition on sex discrimination has at times been construed to apply to discrimination on the basis of sexual orientation. The federal courts have varied in their approach to the issue and not all have found sexual orientation claims to be cognizable under Title VII's prohibition of discrimination on the baseis of sex. See Clancy, *The Queer Truth: The Need to Update Title VII to Include Sexual Orientation*, 37 J. Legis. 119 (2011),

Regardless of the judicial constructions that have been applied to Title VII, there is no Title VII claim in this case and Chapter 151B *does* include sexual orientation as a protected category. The protection of both sex and sexual orientation necessarily indicates that the two categorizations have different meanings under Massachusetts law. If sexual orientation were subsumed within sex discrimination, the separate listing of sexual orientation would be superfluous. See *Commonwealth v. Daley*, 463 Mass. 620, 624 (2012) ("In statutory interpretation, '[n]one of the words of a statute is to be regarded as superfluous.'")

The plaintiff points to the Supreme Judicial Court's decision in *Macauley v. MCAD*, which only illustrates the point. There the Court found that Chapter 151B's prohibition on sex discrimination did not include claims for discrimination on the basis of sexual orientation, and that, if the scope of 151B was to be enlarged, it was the responsibility of the Legislature, rather than the Courts. *Macauley v. MCAD*, 379 Mass. 279, 282-83 (1979). Ten years later, the Legislature did just that. The question of whether that decision would later have been revisited by the Court was made immaterial when the legislature adopted sexual orientation as a separately protected category in 1989. Because sexual orientation is its own protected category under Chapter 151B, the plaintiff's Title VII analysis is irrelevant. Here, Fontbonne's employment decision was not made on the basis of any trait of sex, or on the basis of stereotypes regarding any trait of sex. A female applicant married to another woman, would have caused Fontbonne the same concerns and resulted in the same decision. For this additional reason, the plaintiff's motion for summary judgment should be denied as to Count II of the Complaint.

III. The undisputed facts and applicable law demonstrate that Fontbonne is entitled to the exemption for religiously-affiliated entities found in M.G.L. ch. 151B.

Even if Fontbonne engaged in conduct that would otherwise violate Chapter 151B, the plaintiff's motion for summary judgment should nevertheless be denied because the express terms of Chapter 151B exempt Fontbonne from the statute's substantive prohibitions. The application of Chapter 151B's religious exemption to Fontbonne is fully set forth in Fontbonne's Memorandum of Law in support of its motion for summary judgment. In the interest of concision, that analysis is incorporated here by reference. As that analysis demonstrates, the plaintiff's assertion that the statutory exemption is limited to religiously-affiliated groups that are exclusive in their admission practices is mistaken and is not supported by the statute's terms or its legislative evolution.

As the plaintiff acknowledges, the Legislature chose in 1989 to dramatically expand the scope of the exemption for religiously affiliated groups. It did so by adding identical exempting language to the definitions section of the statute, as well as to the substantive section. See M.G.L. ch. 151B, §§ 1(5) and 4(18). Both additions permit a qualifying entity to take "any action with respect to matters of employment" and there is not the barest hint in the substantive section of the statute that the Legislature intended the restriction that the plaintiff seeks to insert. The Legislature could easily have created such a restriction, but it did not do so.

Instead, as is discussed in Fontbonne's summary judgment motion, the 1989 amendments are properly read to contemplate a broad group of qualifying entities (essentially, churches, religiously-affiliated charities, and religiously-affiliated schools) some of which will be exclusive in their admission or hiring practices to adherents of the same faith. The substantive section permits, but does not require, such exclusivity. For its part, the definitions section makes clear that, in the case of those groups that are exclusive, discrimination in hiring on the basis of religion

continues to be permitted (as it was prior to the 1989 amendments). In addition, however, such organizations are now permitted to take "any action" regarding employment, as is set out in the substantive section.

The definitions section of the statute thus refers to a subset of the larger group of organizations to which the religious exemption applies; it does not, as the plaintiff would have it, set the limits of the exemption's applicability. If, as the plaintiff contends, the exempting language in the substantive section of the statute was not intended to apply to employers, then the Legislature's inclusion there of permission to take "any action with respect to matters of employment" makes no sense. No one other than an employer would be taking such an action.

The plaintiff invites the court to read the exempting language of Chapter 151B with one eye closed. Taken as a whole, however, it is clear that the Legislature, "in legislating a religious exemption ... has abdicated its interest in regulating otherwise prohibited conduct under G.L. ch. 151B where religious organizations take action based on religious doctrine." *Larsen v. Sacred Hearts Parish School*, 2000 WL 33665362 at *3 (MCAD, Jul. 14, 2000). Accordingly, and for the reasons expressed in Fontbonne's summary judgment motion, Fontbonne is exempt from the prohibitions set out in G.L. ch. 151B, § 4 and is entitled to judgment as a matter of law on each count of the plaintiff's Complaint.

IV. The plaintiff has failed to show that Fontbonne, as a matter of law, is not entitled to protection under the Massachusetts Constitution.

"The Massachusetts Constitution is, if anything, more protective of individual liberty and equality than the Federal Constitution; it may demand broader protection for fundamental rights; and it is less tolerant of government intrusion into the protected spheres of private life." *Goodridge v. Department of Public Health*, 440 Mass. 309, 313 (2003). One of the ways in which the

Supreme Judicial Court has construed the Massachusetts Constitution to provide greater security for protected conduct than its federal counterpart is in its analysis of cases involving the right to religious belief and the expression of religious belief. The Supreme Judicial Court defined its analysis in *Attorney General v. Desilets*, 418 Mass. 316 (1994). In cases where there is tension between religious exercise and the application of a state statute, the court's task is to determine whether the statute substantially burdens the free exercise of religion; and, if it does, whether the burden is justified by a sufficiently compelling state interest. *Desilets*, 418 Mass. at 322. Several factors inform the analysis. The party asserting its religious rights must show "(1) a sincerely held religious belief, which (2) conflicts with, and is thus burdened by, the state requirement." Once that showing has been made, the burden shifts to the proponent of the statute to demonstrate "that (3) the requirement pursues an unusually important governmental goal, and that (4) an exemption would substantially hinder the fulfillment of the goal." *Id.* at 322-23.

Desilets itself involved a property owner who refused to lease housing to unmarried couples because sexual relations outside of marriage violated his religious beliefs, and he believed that he would be facilitating such relations by renting housing accommodations to such couples. The landlord was sued for violation of Chapter 151B's prohibition of discrimination in housing on the basis of marital status. The Court concluded that the landlord had a sincere religious belief that was substantially burdened by application of the statute, and treated as questions of fact the issues of whether there was a state interest sufficiently compelling to justify the burden, remanding for further proceedings on those issues. *Id.* at 331-32. Because similar questions of fact exist here, the plaintiff's motion for summary judgment should be denied.

There does not appear to be any dispute in this case regarding Fontbonne's sincerely held beliefs. That the Roman Catholic Church recognizes marriage as a state that can exist solely

between one woman and one man, and that Fontbonne Academy, a Catholic school, also holds this belief, is not challenged by the plaintiff. The Church's position is well-known, and the plaintiff himself has acknowledged that he was aware of it at the time he applied to Fontbonne. (Barrett Depo., 39:8-11, 39:20 – 40:9, 57:3 – 58:1). Neither is there any dispute in this case that Fontbonne's decision regarding Mr. Barrett's employment was based on, and an expression of, this belief. The remaining components of the *Desilets* test, however, remain open on this record, making summary judgment inappropriate.

A. Application of Chapter 151B to Fontbonne constitutes a substantial burden on Fontbonne's free exercise rights.

As discussed above, it is a factual question whether Fontbonne's decision to decline to hire Mr. Barrett, constitutes a violation of Chapter 151B, § 4. If ultimately found not to be, then there is no conflict between the statute and Fontbonne's exercise of its beliefs. If, on the other hand, it is determined that Fontbonne discriminated against Mr. Barrett in violation of section 4, then this case falls within the same category of substantial burden as was found in *Desilets* itself.

In bringing this action, the plaintiff is asking the Commonwealth, through this court, to require Fontbonne Academy to employ Mr. Barrett, when to do so would undermine the beliefs Fontbonne espouses, or face liability and sanction. However the issue is framed—that is, whether Fontbonne should be required to take an action it has already determined is contrary to its beliefs; or whether Fontbonne is being sanctioned for failing to take such action—it is difficult to think of a clearer limitation on Fontbonne's expressive rights. Like the *Desilets* defendants, who had a faith-based objection to being required to lease housing to an unmarried, cohabitating couple, Fontbonne has a faith-based objection to employing a spouse in a same-sex marriage.

The *Desilets* Court's determination of the existence of a substantial burden turned on the compelled creation of a landlord-tenant relationship, where the creation of the relationship would make the defendants' religious exercise more onerous. As stated by the Court,

> the government has placed a burden on the defendants that makes their exercise of religion more difficult and more costly. The statute affirmatively obliges the defendants to enter into a contract contrary to their religious beliefs and provides significant sanctions for its violation. Moreover, both their nonconformity to the law and any related publicity may stigmatize the defendants in the eyes of many and thus burden the exercise of the defendants' religion.

Desilets, 418 Mass. at 324.

Like the *Desilets* defendants, application of the statute would "affirmatively oblige" Fontbonne to enter an employment relationship contrary to its beliefs. Here, as there, the statute "provides significant sanctions for its violation." And here, as there, "nonconformity to the law and any related publicity may stigmatize the defendants in the eyes of many and thus burden the exercise of the defendant's religion." The plaintiff seeks to employ the Commonwealth's statutes and its Judiciary to curtail Fontbonne's ability to make hiring determinations in conformity with the faith it espouses. It takes nothing away from the plaintiff's rights or the dignity of his civil relationship to acknowledge that such action would impose a substantial burden on Fontbonne's exercise of its beliefs.

B. The plaintiff has failed to show that there is any compelling governmental goal that would be hindered by exempting Fontbonne from the application of Chapter 151B in making employment decisions based on its religious beliefs.

On the scale opposite the impairment of a sincerely held religious belief is the interest to be furthered by application of the statute. To outweigh Fontbonne's right to express its religious views as it sees fit, the interest must be compelling. The plaintiff must demonstrate the existence of an "important governmental interest that is sufficiently compelling that the granting of an

exemption to people in the position of the defendants would unduly hinder that goal." *Desilets*, 418 Mass. at 316. The plaintiff's memorandum reviews at length the history of gay rights in this country, all apparently in service of the proposition that eradication of discrimination on the basis of sexual orientation is a compelling state interest. While there is no doubt that gay men and lesbians have historically been treated unfairly, the analysis for purposes of this case, must be, as the *Desilets* Court stated, "more focused." "The general objective of eliminating discrimination of all kinds referred to in [the statute] cannot alone provide a compelling State interest that justifies the application of that section in disregard of the defendant['s] right to free exercise of [its] religion." *Id.* at 325. In *Desilets*, for example, the Court concluded that "at the least" there had to be a showing that the Commonwealth had a "compelling interest in the elimination of discrimination in housing against an unmarried man and an unmarried woman who have a sexual relationship and wish to rent accommodations to which [Chapter 151B] applies." *Id.* at 326.

Likewise here the question is not generally whether elimination of discrimination on the basis of sexual orientation is a compelling interest generally. Here the appropriate question is whether there is a compelling interest in eliminating discrimination by private, religious employers, against spouses to a same-sex marriage. Stating that there is a compelling interest in the elimination generally of employment discrimination, or the elimination generally of discrimination on the basis of sex or sexual orientation does not address the issue.

More importantly for the *Desilets* analysis, however, the plaintiff can point to no evidence that any of the assertedly compelling goals he cites would be hindered, unduly or otherwise, by the exemption of Fontbonne from application of Chapter 151B. There is no evidence in this case that requiring Fontbonne to hire Mr. Barrett would serve in any way to erase a history of oppression and systemic discrimination; nor is there evidence that it would help to eradicate any stigma faced

by gay and lesbian people; nor is there evidence that it would do anything to protect the status of marriage and prevent the denigration of one class of marriages. Requiring Fontbonne to hire Mr. Barrett will not change the status of his marriage for purposes of our civil law and it will not change the fact that the Catholic Church views marriage as a state that can only exist between a woman and a man. Neither will requiring Fontbonne to hire Mr. Barrett do anything to make up for or do away with any indignity or oppression directed against gay or lesbian people in the past. At no time has Fontbonne treated Mr. Barrett with anything short of dignity and respect. The suggestion, implicit in the plaintiff's argument, that Fontbonne somehow shares responsibility for the history of cruelty endured by gay and lesbian people is as baseless as it is offensive. Ultimately, and tellingly, the plaintiff's lengthy explication of the interests assertedly at issue here makes no effort to identify how any of them would be hindered by recognizing Fontbonne's entitlement to make hiring decisions based on its religious beliefs. As there is no evidence that any important governmental interest would be unduly hindered by exempting Fontbonne from Chapter 151B, the plaintiff's motion for summary judgment should be denied.

C. There is no interest at issue in this case having to do with the denigration of any asserted class of marriage.

The plaintiff's assertion that the state has a compelling interest in protecting the status of marriage and preventing denigration of one class of marriages has no relevance to this case. Whatever the truth of that statement may be in the context of state action and the deprivation of equal rights by the state, none of the decisions cited by the plaintiff applied to private parties, and none of them purported to alter any religious definition of marriage or require any religion to recognize as a marriage any relationship inconsistent with its beliefs on the subject. See, e.g., *Obergefell v. Hodges*, 135 S. Ct. 2584, 2607 (2015) ("[I]t must be emphasized that religions, and

those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered."); *Goodridge*, 440 Mass. at 312 ("Many people hold deep-seated religious, moral, and ethical convictions that marriage should be limited to the union of one man and one woman.... Many hold equally strong religious, moral, and ethical convictions that same-sex couples are entitled to be married.... Neither view answers the question before us.") The plaintiff's apparent suggestion that the Commonwealth has a compelling interest in requiring a private religious school to adopt one or another civil definition of marriage is entirely unsupported and contrary to basic constitutional principles.

D. The Legislature has already weighed and determined the appropriate balance between nondiscrimination and the accommodation of religious belief.

Further supporting the point that there are no compelling interests at risk of being hindered in this case is the fact that the Legislature, for its part, has already addressed the issue, and resolved it in favor of a broad religious exemption. As is discussed in detail elsewhere in the parties' motion papers, the same legislative Act that added sexual orientation to the list of suspect classifications under Chapter 151B, created a new, broad exemption from Chapter 151B's prohibitions for religious and religiously-affiliated entities. The Legislature, in other words, has already determined that the goal of eliminating invidious discrimination could be sufficiently accomplished without state enforcement against religious organizations. In doing so, it necessarily determined that such exemptions do not unduly hinder any compelling state interest. The

Legislature's determination is entitled to deference; and in the absence of any evidence to the contrary should be controlling.

E. Fontbonne's interests in religious freedom are not diminished by the nature of its curriculum, the thoughtful response of its head of school, or a selective reading of Church documents.

The fact that Fontbonne provides a college preparatory education, encourages critical thinking among its students, prepares its students to thrive in a pluralistic society, and welcomes respectful debate does nothing to undercut Fontbonne's interest in its religious expression. The plaintiff's contention that a religious school must be insular, sheltering, and intolerant of dissent in order to retain its rights of religious expression is specious at best, as is the suggestion that by encouraging intellectual openness Fontbonne loses its interest in maintaining its Catholic identity and imparting that identity to its students. Some of the greatest intellectual achievement in the history of humankind has been accomplished by Catholic schools and Catholic clergy. Religious rights are not premised on exclusivity and closed-mindedness.

Likewise, the fact that Mary Ellen Barnes carefully considered the decision whether to hire Mr. Barrett after learning of his marriage does not detract from the burden placed upon the school if faced with the choice of hiring Mr. Barrett or facing judicial sanction. Again, the plaintiff's argument would reward unreasoned, knee-jerk responses and punish thoughtful consideration of a problem before making a decision. Whether Ms. Barnes was unsure of the best course for her school, and whether she sought counsel from a colleague on a question she had not confronted previously are completely irrelevant to whether the institution's expression of its belief is burdened by being made subject to liability under the Anti-Discrimination Statute.

The plaintiff's argument regarding the Catechism and the Code of Canon law is simply disingenuous. Focusing on whether a person is baptized, the plaintiff ignores the fact that both documents uniformly define marriage as the union of a man and a woman. The Church's opposition to same-sex unions being defined as "marriages" is well known, and in fact was known to the plaintiff. The plaintiff's selective reading and feigned ignorance do not alter that position.

The evidence does not allow for a finding as a matter of law that Fontbonne's rights to religious expression are outweighed by any compelling government interest. In fact, the plaintiff's argument that an exemption would hinder the any of the state's interests is circular. Every exemption to every prohibitive statute necessarily allows the beneficiary of the exemption to engage in conduct that would otherwise be prohibited. The same legislative body that crafts the prohibition also crafts the exemption and is aware of what it is doing. Unless we are to assume that those legislators intend to undermine their own efforts, exemptions to prohibitive statutes cannot of themselves be considered a hindrance of the legislative goal. Again, nowhere in the fifty-six pages of the plaintiff's memorandum does he identify any way in which the asserted government interests in this case would be undermined by recognizing an accommodation for Fontbonne's religious beliefs. The suggestion that such exemptions undermine society's interests generally, or that one would do so in this case is empty.

The plaintiff's motion for summary judgment should be denied.

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CERTIFICATE OF SERVICE

I, Jeffrey K. O'Connor, of MORRISON MAHONEY LLP, 1500 Main Street, Suite 2400, P.O. Box 15387, Springfield, Massachusetts 01115-5387, hereby certify that on the 21st day of September, 2015, I caused the foregoing document to be served upon the other party or parties in this action by FedEx delivery to:

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