To be Argued by:
DONNA A. MILLING, ESQ.
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STATE OF NEW YORK

Court of Appeals

APL-2023-00119

IN THE MATTER OF
VICTOR O. IBHAWA,

Appellant,

vs.

NEW YORK STATE DIVISION OF HUMAN RIGHTS
AND DIOCESE OF BUFFALO,

Respondents.

Appellate Division Docket No. CA 22-00060
Erie County Index No. 806837/2021

BRIEF FOR APPELLANT VICTOR O. IBHAWA

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QUESTION PRESENTED

1. Is the First Amendment's ministerial exception a jurisdictional bar to NYSDHR's mandate to investigate discriminatory harassment and hostile work environment claims brought by a minister and should NYSDHR be permitted to abdicate its statutory duty under New York State Executive Law?

   Answer: No

PRELIMINARY STATEMENT

Appellant, Victor O. Ibhawa appeals from a final Order of the Appellate Division, Fourth Department entered on June 30, 2023. The Order reversed a judgment of Supreme Court, Erie County, which annulled the determination of New York State Division of Human Rights (hereinafter NYSDHR) to dismiss Appellant's hostile work environment claim against the Diocese of Buffalo (hereinafter Diocese) based on a lack of jurisdiction (R/A 31; numbers in parentheses preceded by R/A refer to pages of the Record on Appeal). In reversing and dismissing the Petition in its entirety, the Fourth Department held that NYSDHR's determination that it lacked jurisdiction with respect to Appellant's hostile work environment claim was not arbitrary or capricious or affected by an error of law "inasmuch as there is no controlling United States Supreme Court or New York precedent and the federal courts that have addressed the issue are divided on the extent to which the ministerial exception applies to claims of a hostile work environment" (*In the Matter of Victor O. Ibhawa v New York State Division of Human Rights and Diocese of Buffalo,* 217 AD3d 1500 [2023], *lv. denied* 40 NY3d 1088[2024]).

Appellant filed a timely Notice of Appeal to this Court on July 20, 2023 (R/A 327). Appellant filed a Preliminary Statement pursuant to Section 500.9 of the Rules of the Court of Appeals on July 20, 2023 (R/A 334). By motion dated July

27, 2023, Appellant moved for leave to appeal from the Order of the Appellate Division, Fourth Department (C-105; numbers in parentheses preceded by "C" refer to pages of Appellant's Compendium). NYSDHR filed an Affirmation in Opposition to Appellant's motion for leave to appeal on August 11, 2023 (C-123). The Diocese of Buffalo filed an Opposition to the Motion for Leave to Appeal on August 14, 2023 (C-128). By Order entered January 16, 2024, this Court denied Appellant's motion for leave to appeal as unnecessary (*Matter of Ibhawa v NYSDHR,* 40 NY3d 1088[2024]) (C-141). Pursuant to this Court's letter dated August 2, 2023 inviting comments on the issue of subject matter jurisdiction, Appellant filed a Jurisdictional statement dated August 8, 2023 (C-144). By correspondence dated August 14, 2023, the Diocese submitted comments on the issue of subject matter jurisdiction (C-148). In a letter dated January 16, 2024, this Court terminated its jurisdictional inquiry and designated that Appellant's appeal proceed in the normal course of briefing and argument (R/A 340).

POINT

THE MINISTERIAL EXCEPTION IS NOT A JURISDICTIONAL BAR TO NYSDHR'S MANDATE TO INVESTIGATE DISCRIMINATORY HARASSMENT AND HOSTILE WORK ENVIRONMENT CLAIMS BROUGHT BY A MINISTER AND NYSDHR SHOULD NOT BE PERMITTED TO ABDICATE ITS STATUTORY DUTY UNDER NEW YORK STATE EXECUTIVE LAW

In its Determination and Order of Dismissal For Lack of Jurisdiction, NYSDHR dismissed both Appellant's retaliatory firing and hostile work environment claims pursuant to Section 297.2 of the Human Rights Law, reasoning:

> "Complainant, a priest serving as the pastor (Parish Administrator) of a church comes under the ministerial exception (relative to the first amendment of the U.S. Constitution). The Division cannot interfere with the right of a church or other religious group, to determine who will work for them in this type of religious role" (R/A 31; numbers in parentheses preceded by R/A refer to pages of the Record on Appeal).

On appeal, NYSDHR argued that the ministerial exception barred the agency from considering employment claims by ministers against religious employers and "constrained" NYSDHR to dismiss all of Appellant's charges, including those related to hostile work environment. (C -11; numbers in parentheses preceded by "C" refer to pages of Appellant's Compendium.)

Specifically, NYSDHR relied on the holdings of the United States Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church and School v Equal*

Employment Opportunity Commission, et al., 565 U.S. 171(2012) and *Our Lady of Guadalupe School v Morrissey-Berru,*591 U.S. - , 140 S. Ct 249 (2020) as grounds for the agency's lack of jurisdiction to investigate Appellant's claims. (C-11, 15, 17). Such reliance is wholly misplaced however, since neither *Hosanna-Tabor Evangelical Lutheran Church and School v Equal Employment Opportunity Commission, et al.,* nor *Our Lady of Guadalupe School v Morrissey- Berru* specifically addressed the issue of whether the ministerial exception bars hostile work environment claims. In fact, the *Hosanna Tabor* court specifically stated that its ruling only applied the ministerial exception to bar claims of employment discrimination by a minister against a religious organization and that such exception constitutes an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar. (*Hosanna Tabor* at 195, n 4). "Today we hold only that the ministerial exception bars such a suit. We express no view on whether the exception bars other types of suits. There will be time enough to address the applicability of the exception to other types of suits" *(Id* at 26).

Similarly, in *Our Lady of Guadalupe,* while finding that the plaintiffs' employment discrimination claims fell within the ministerial exception, the Court stated that it was only deciding "the case before it" (*Our Lady of Guadalupe at 26).*

Notably, both decisions dealt specifically with the firing of employees and not their treatment during the course of their employment.

Despite conceding that the United States Supreme Court has not ruled on the applicability of the ministerial exception to hostile work environment claims, NYSDHR nevertheless contended that their dismissal of Appellant's claims, including those relating to racial harassment was "reasonable" (C-17). Citing *Our Lady of Guadalupe, supra*, NYSDHR then argued that there is a "sphere of activity" that the United States Supreme Court held was constitutionally protected and requires courts "to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions" (C-17).

However, in this case, Appellant Ibhawa's claim of a hostile work environment, arose from being subjected to disparaging racial and xenophobic epithets, in violation of New York State Executive Law §§ 296(1)(h); 296 (1)(a), not from any employment dispute. Appellant's complaint contained detailed allegations of discriminatory harassment and a hostile work environment. Specifically, the complaint alleged that a co-worker screamed profanities and the racial slur "n****r" at him, necessitating an emergency 911 call by Appellant who feared for his safety and locked himself inside the rectory. It further alleged that that on a prior instance Appellant was subjected to a violent outburst in the sacristy of the church when a parishioner yelled for Appellant to return to Nigeria,

prompting Appellant to file a police report with the Buffalo Police Department. According to the complaint, after Appellant reported the discrimination to the Diocese, members of the chancery criticized Appellant for firing the employee who yelled "n****r" at him, stating that "these things can be very delicate in America" and advised Appellant that "in America" there are "different ways in ministry and serving people." (R/A 41-42).

NYSDHR also argued that under the United States Supreme Court precedent in *Hosanna- Tabor* and *Our Lady of Guadalupe*, the First Amendment "protects a religious body from a court's or anti-discrimination agency's examination of *all* managerial decisions related to the employment of a minister, not just hiring and termination." (emphasis added; C-15). Such a conclusion, however, exceeds the actual scope of the decision in *Our Lady of Guadalupe*, which does not prohibit government intrusion in all matters, but only as to those decisions relating to the "faith and doctrine" of the church (*Our Lady of Guadalupe* at 10) . The majority was also careful to note that their ruling did not mean that religious institutions enjoy a general immunity from secular laws, but that their autonomy with respect to internal management decisions that are essential to the institution's central mission was protected (*Our Lady of Guadalupe* at 14-15). The dissent (Sotomayor, J.) also addressed the concern surrounding the potency of the ministerial exception. Justice Sotomayor wrote of the exception's ability to give an employer free reign

to discriminate because of race, sex, pregnancy, age, disability or other traits protected by law when selecting or firing their ministers, even when the discrimination is wholly unrelated to the employer's religious beliefs or practices (*Our Lady of Guadalupe* at 39).

The treatment of a minister during the course of employment is not relevant to the selection of who conveys the faith or "essential to the institution's central mission." *(Our Lady of Guadalupe* at 10-11) and therefore should fall outside of the scope of the ministerial exception. A claim of discriminatory harassment within the workplace is separate and distinct from the religious mission of the church. There is no furtherance of the mission by or within the alleged harassment. Insofar as the United States Supreme Court expressly stated that churches are not immune from secular laws (*Our Lady of Guadalupe* at 14-15 *quoting Hosanna-Tabor*), it was both an error of law and arbitrary and capricious for NYSDHR to ignore New York's anti-discrimination law as codified in Executive Law § 296(h) by dismissing Appellant's complaint on jurisdictional grounds.

Unlike the petitioners in *Hosanna-Tabor* and *Our Lady of Guadalupe*, Appellant did not allege a claim of age discrimination. Additionally, Appellant's hostile work environment claim was not brought under Title VII of the Civil Rights Act of 1964, but under New York State Executive Law § 296 and relates to whether the Division, a statutory agency of the Executive Department of the State

of New York, charged with enforcement of the Human Rights Law has jurisdiction to investigate a claim of a hostile work environment brought under the Executive Law.

Not only is there no United States Supreme Court precedent which bars NYSDHR from its jurisdiction of Appellant's hostile work claim, there is no controlling New York state case law from this Court or the United States Court of Appeals for the Second Circuit which prevents NYSDHR from investigating and enforcing New York State anti-discrimination laws under article 15 of the New York Executive Law. NYSDHR also conceded this fact on appeal stating that "it seems" that no New York state or federal court has considered whether hostile work environment claims are subject to the ministerial exception. (C-14). Although on appeal to the Appellate Division Fourth Department, NYSDHR cited federal circuit court decisions which considered the application of the ministerial exception to both claims of employment discrimination and hostile work environment, such cases while informative, are not controlling authority which would permit NYSDHR to abdicate its duty to exercise its jurisdiction over Appellant's claim of a hostile work environment. (C-14-17).

Absent any controlling federal or state precedent to permit NYSDHR to abdicate its legislative mandate to investigate Appellant's hostile work

environment claim, it's dismissal of the claim on jurisdictional grounds was both an error of law and an arbitrary and capricious abuse of discretion.

In dismissing Appellant's complaint citing a lack of jurisdiction based on the ministerial exception, NYSDHR erroneously conflated Appellant's employment discrimination claim of a retaliatory firing with his hostile work environment claim of being subjected to racial epithets and xenophobic assaults. The glaring omission in the Dismissal Order of any reference to Appellant's claim of a hostile work environment, New York State Executive Law or why NYSDHR was barred from reviewing Appellant's hostile work environment claim on the merits is further evidence of conflation of the issue. In fact, the dismissal order referenced only its lack of jurisdiction based on an inability to "interfere with the right of a church…to determine who will work for them in this type of religious role" (R/A 31).

By automatically refusing to take jurisdiction over any complaint of discrimination by a religious organization, the Division would deny New Yorkers access to a vital administrative mechanism for vindicating their rights under the Human Rights Law. Appellant Ibhawa is just such a New Yorker. Appellant filed a complaint with the Division on November 9, 2020 alleging multiple acts of unlawful harassment and discrimination by the Diocese of Buffalo on the basis of race/color, national origin and retaliation for opposing said discrimination in violation of N.Y. Executive Law, article 15 ("Human Rights Law"). As the agency

tasked with enforcing the Human Rights Law, the Division was obligated to accept his complaint and investigate the allegations. Instead, the Division abdicated that responsibility and dismissed his complaint for lack of jurisdiction without any controlling precedent. Nothing in the New York Human Rights Law, as codified in Executive Law §296 (11) constitutes a jurisdictional bar to a discriminatory harassment claim being lodged against a religious institution by a minister.

Anti-discrimination laws in New York State are codified in article 15 of the New York State Executive Law (Human Rights Law). Section 290(2) of the Human Rights Law provides for 'an exercise of the police power of the state for the protection of public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the constitution of this state concerning civil rights" (See, N.Y. Constitution, Article 1 § 11). Section 290(3) also provides that "the state has the responsibility to act to insure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life…" In furtherance of its initial mandate to eradicate discrimination to ensure that "every individual…has an equal opportunity to participate fully in the economic, cultural and intellectual life of the State" (N.Y. Executive Law § 290) in 2019, New York bolstered protections for employees by recent amendments and expansive changes to both the Human Rights and Labor Law.

Effective October 11, 2019, the Human Rights Law was amended to prohibit employers from subjecting any individual to "discriminatory harassment" because of, *inter alia*, an individual's … "race, color or national origin," eliminating the "severe and pervasive" standard common to the anti-harassment law (See, Executive Law § 296[1][h]; 296[1][a]). Significantly, the eleven amendments also added specific instruction to the Human Rights Law's "liberal construction" language that it must be liberally construed to maximize the law's remedial purposes, notwithstanding the construction of any comparably worded federal civil rights laws and requires any exceptions to and exemptions from the provisions to the article to be "construed narrowly in order to maximize deterrence of discriminatory conduct" (N.Y. Executive Law § 300).

Consistent with New York State's long history of protecting its citizens from unlawful discrimination, on March 11, 2020, New York State Attorney General, Letitia James, as part of a coalition of seventeen state attorneys general, fought to protect New Yorkers from employment discrimination by opposing the expansion of the ministerial exception, filing an amicus brief supporting the plaintiffs in *Our Lady of Guadalupe School v. Morrissey-Berru.*591U.S.-140 S.Ct 2049 (2020).

In a press release on March 11, 2020, Attorney General James stated:

> "Discrimination is wrong, plain and simple, and we will fight it anywhere we see it. A range of race, ethnicity, gender, age, and varying ability all provide our population with incredible diversity, adding tremendous value and varying voices to our places of work. Our coalition will fight this change because, in this nation, we value every form of diversity and will not tolerate discrimination under any circumstance." (Office of Letitia James, New York State Attorney General, Press Release March 11, 2020 -'Attorney General James Fights to Protect Employees from Discrimination', ag.ny.gov)

The coalition's brief argued:

> "States have a powerful interest in protecting their residents from "the harmful effects of discrimination." *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 609 (1982). They likewise have a powerful interest in protecting the religious freedom that is guaranteed in state constitutions as well as the United States Constitution. And—regardless of how the federal government chooses to draw the line in its own statutes and policies—States have a strong interest in preserving the ability to strike their own balance between employers' claims to religious autonomy and employees' right to be free from invidious discrimination." (Brief *Amici Curiae* of VA, CA, CO, CT, DE, District of Columbia, IL, MA ,MI, MN, NV, NJ, NY,OR, RI, VT and WA, *Our Lady of Guadalupe,* Case Nos. 19-267 & 19-348, pg. 1).

In an attempt to further expand protections for victims of discrimination, effective February 15, 2024, the Human Rights Law has extended the statute of limitations for New Yorkers who experience illegal discrimination from one year to three years. In a statement addressing the extension of the statute of limitations, Governor Kathy Hochul stated "New York State remains committed to promoting

safety, dignity, and respect for survivors as the tide of hate rises across our country". NYSDHR Commissioner Maria Imperial said of the extension "It significantly broadens the rights of all survivors of discrimination and helps raise the responsibility and liability of employers…to abide by the State Human Rights Law at all times" (https://spectrumlocalnews.com/nys/central-ny/politics/2024/02/14/new-york-to-extend-statute-of-limitations-for-discrimination-complaints, NYS, February 14, 2024).

The ministerial exception, codified in Executive Law § 296 (11) provides an exception for "any religious organization… from taking such action as is calculated by such organization to "promote the religious principles for which it is established or maintained". In keeping with the statutory enhancements designed to further eradicate discrimination, the codification of the ministerial exception under the Human Rights Law (Executive Law § 296(11), must be narrowly construed. Notably, while Section 11 provides an exception for "any religious organization… from taking such action as is calculated by such organization to 'promote the religious principles for which it is established or maintained", racial discrimination does not promote the religious principles of the Catholic Church. Absent any protected-choice rationale at issue, there is no intrusion on church autonomy, which is the intent of the exclusion. *(See, e.g. Avitzur v. Avitzur*, 58 NY 2d 108 [1983], *cert. denied* 464 US 817).

Neither Respondent NYSDHR nor the Diocese has ever alleged that subjecting Appellant to a hostile work environment including the use of racial epithets and xenophobic statements promotes the religious principles of the Catholic church. The ministerial exception is not compelled by statute. Rather, the ministerial exception is a court created doctrine rooted in the First Amendment (*Hosanna-Tabor* at 188,190). Neither of the Religion Clauses of the First Amendment protect against liability for unlawful secular acts. The Religion Clauses do not mandate extending religious institutions absolute freedom to unlawfully subject their ministers to discrimination despite there being no constitutional reason for protecting the employer's offending conduct. Any alternative would allow religious institutions to become "sanctuaries for sexual harassment and other unlawful discrimination by those who act outside of church doctrine (*Elvig v Calvin Presbyterian Church,* 375 F.3d 951[9th Cir. 2004]).

Public policy and fundamental fairness mandate that the State not blindly apply the ministerial exception to Appellant's hostile work environment claim absent an investigation and a determination that Respondent Diocese of Buffalo did not subject Appellant to discriminatory harassment creating a hostile work environment.

If NYSDHR's overly broad application of the ministerial exception to Appellant's hostile work environment claim, concededly unsupported by any

controlling legal authority is permitted to stand, it will give blanket immunity to religious organizations to harass its religious employees who are members of a protected class and the limitations set by the *Hosanna-Tabor and Guadalupe* court will be ignored. By its jurisdictional dismissal of Appellant's hostile work environment claim, New York State has effectively empowered religious organizations to subject religious ministers to a hostile work environment.

New York State has a compelling interest in preventing such an egregious result and to safeguard its residents from the harmful effects of discrimination and workplace hostility based on race and national origin. There is no question that had Appellant been a lay citizen employed by a non-religious organization, NYSDHR would have conducted an investigation into his claim of a hostile work environment, consistent with their mandate under New York State Executive Law §§ 290-301. By asserting a lack of jurisdiction based on the ministerial exception, NYSDHR has sent a message that religious organizations are free to subject their religious employees to a hostile work environment based on non-ecclesiastical reasons with impunity, leaving victims of discrimination with no recourse under the New York Human Rights Law or from NYSDHR, the agency tasked with such duties. There is nothing in the United States Constitution, the New York Constitution or any New York statute which requires such an unjust result.

9 N.Y.C.R.R § 465.5(d) (1) permits NYSDHR to dismiss a complaint for lack of jurisdiction or probable cause. In cases where the NYSDHR issues an order prior to holding a hearing dismissing a complaint for lack of jurisdiction, the standard of review is not whether there was substantial evidence in support of the determination but rather, whether the determination had a rational basis and was not arbitrary or capricious or affected by an error of law (*Matter of Tessy Plastics Corp. v State Div. of Human Rights*, 47 NY2d 789, 791[1979]; *Stoudymire v New York State Div. of Human Rights,* 36 Misc.3d 919 [2012] *aff'd* 109 AD3d 1096 [4th Dept 2013]; *In re Baust v New York State Div. of Human Rights,* 70 AD3d 1107[3rd Dept 2010] *lv denied* 15 NY3d 710; 24 Carmody-Wait 2d § 145.444). The arbitrary and capricious test for agency action chiefly relates to whether a particular action should have been taken or is justified and whether the administrative action is without foundation in fact (*Ahmed v City of New York,* 44 Misc.3d 228 [N.Y. Sup.Ct 2014], *aff'd as modified* 129 AD3d 435 [1st Dept 2015]; *see also Beck-Nichols v Bianco,* 20 NY3d 540[2013]). The burden rests on the party attacking the decision to overcome the presumption beyond a reasonable doubt that the decision was not grounded upon a rational basis (*see Matter of Rayle v Town of Cato Board,* 295 AD2d 978, 980 [4th Dept 2002] *lv denied* 74 NY2d 85). An error of law most often involves an allegation that the agency improperly interpreted or applied a statute or regulation (*see New York City Health and*

Hospitals Corp. v McBarnette, 84 NY2d 205 [1994]). In this regard, courts will uphold the interpretation of regulations by the agencies responsible for their administration if such interpretation is reasonable. Thus, the arbitrary and capricious and error of law standard are very similar. This standard is of course, an extremely deferential one.

In *Matter of Diocese of Rochester v New York State Division of Human Rights,* 305 AD2d 1000 (4th Dept 2003), the actions taken by NYSDHR, while not controlling, are instructive. In 2001, Judith Nichols filed a complaint charging the Diocese of Rochester with an unlawful discriminatory practice relating to employment on the basis of marital status, sex and opposing discrimination in violation of New York State Human Rights Law (R/A139). NYSDHR dismissed the complaint, citing a lack of jurisdiction based on the ministerial exception (R/A 135).

Subsequently, NYSDHR issued a reopening order recommending that its Legal Bureau issue a legal opinion on the jurisdictional aspects of the case prior to any investigation. (R/A 141). The Diocese of Rochester challenged the reopening order pursuant to CPLR Article 78, alleging that NYSDHR erred in reopening its dismissal order based on a lack of jurisdiction (*Matter of Diocese of Rochester, supra*). The Fourth Department upheld NYSDHR's decision to reopen the complaint and NYSDHR found that it had jurisdiction over the complaint. A

hearing was conducted and on June 29, 2007 the complaint was dismissed on the merits.

NYSDHR in its brief supporting its reopening order argued that the Human Rights Law may lend itself to a narrower construction of its religious exemption than does analogous federal law (R/A 176). The Division noted:

> "An arbiter of the Human Rights Law cannot ignore the statute's purpose 'to ensure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life (Executive Law § 290[3]), when considering the extent to which it is necessary to release a religious employer from the Human Rights Law's obligations in order to respect its First Amendment rights" (R/A 180).

The Division relied on *Scheiber v St. John's University,* 84 NY2d 120, 127(1994) for the proposition that the exemption for religious organizations set forth in Executive Law § 296 (11) is not absolute (R/A 172). Donald Scheiber, Vice President of Student Life at St John's University was fired from his position after twenty years of service. He filed suit alleging in part, that the University terminated him because of his religious beliefs, in violation of state and federal anti-discrimination laws. In analyzing the exemption for religious institutions under Executive Law § 296 (11), this Court cited its decision in *Matter of Klein (Hartnett),* 78 NY2d 662, 667(1991) which discussed the scope of the statutory exemption.

The *Klein (Hartnett)* court wrote:

> "We are mandated to read the Human Rights Law in a manner that will accomplish its strong anti-discriminatory purpose. To that end, the Legislature repealed a blanket exemption for religious, educational and charitable institutions, and those organizations are now prohibited from engaging in discrimination (*see,* Sponsor's Mem, 1965 NY Legis Ann, at 215-216).

Section 296(11) carved out a narrow exception for "preference" *** in employment, housing and admissions in order to promote the religious principles of such institutions" (*see,* Louis J. Lefkowitz, Mem for Governor, in Bill Jacket, L. 1965, ch 851). The exemption does not license a religious employer to engage in wholesale discrimination. Discrimination is unlawful, whether committed by a religious or any other employer. Nor does Executive Law § 296 (11) empower a religious organization simply to discriminate against persons on the basis of religion. Rather, the exemption operates to exclude from the definition of "discrimination", exercise of a preference in hiring persons of that same faith where the action is calculated by the institution to effectuate its religious mission. A religious employer may not discriminate against an individual for a reason having nothing to do with the free exercise of religion and then invoke the exemption as a shield against its unlawful conduct (*Scheiber* at 126-127).

It is the settled rule that "judicial review of an administrative determination is limited to the grounds invoked by the agency" (*Matter of Scherbyn v Wayne-*

Finger Lakes Bd. of Co-op Educ. Servs., 77 NY2d 753, 758[1991]). A reviewing court in dealing with a determination which an agency alone is authorized to make, must first judge the propriety of such action solely by the grounds invoked by the agency. While the court's review is deferential, it can interfere if there is no rational basis for the exercise of discretion or the action is without sound basis in reason. NYSDHR dismissed Appellant's complaint alleging employment discrimination and hostile work environment claims in reliance on the ministerial exception. While United States Supreme Court precedent may be read to permit dismissal of Appellant's tangible employment discrimination claims, no such conclusion can be reached concerning his hostile work environment claim.

NYSDHR's dismissal of Appellant's discriminatory racial harassment and hostile work environment claims violated Appellant's basic civil rights and anti-discrimination protection as afforded under New York Human Rights Law. If NYSDHR's application of the ministerial exception to Appellant's hostile work environment claim is permitted to stand, it will give blanket immunity to religious organizations to subject its religious ministers to a hostile work environment. New York State has a compelling interest in safeguarding all its residents from the harmful effects of discrimination and workplace hostility based on race and national origin. Access to justice depends on access to hostile work environment claims. Hostile work environment claims by ministerial employees can co-exist

with robust religious freedom and respect for the First Amendment rights of religious organizations.

If NYSDHR's abdication of its mandate under the Human Rights Law is upheld, a minister subjected to a hostile work environment by a religious employer will have no recourse in New York State. There is nothing in the United States Constitution, the New York Constitution or any New York statute or controlling case law which permits such an unjust result.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that the Order of the Appellate Division, Fourth Department be reversed and the matter be remanded to NYSDHR for an investigation of Appellant's hostile work environment claim.

Dated: March 13, 2024

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