No. 415-2017

In The

Supreme Court of the United States

DAVID R. TURNER,
Petitioner,

vs.

ST. FRANCIS CHURCH OF TOUROVIA, THE TOUROVIA CONFERENCE OF CHRISTIAN CHURCHES, AND DR. ROBERTA JONES
Respondents.

On Writ of Certiorari
to the United States Court of Appeals for the Fourteenth Circuit

RESPONDENTS' BRIEF

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JURISDICTION

The judgment of the Court of Appeals of Tourovia was entered on August 16, 2016. The writ of certiorari was subsequently granted. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1254 & 1257.

QUESTIONS PRESENTED

(1) Whether the ministerial exception of the First Amendment protects religious institutions from civil court entanglement for wrongful termination claims based on breach of contract and retaliatory discharge brought by ministerial employees?

(2) Whether complaints alleging wrongful termination by a minister are subject to 12(b)(6) Motions to Dismiss for failure to state a claim, without an opportunity for discovery, based on the application of the ministerial exception?

STATEMENT OF THE CASE

I. Factual Background

On July 1, 2009, David R. Turner was hired to perform religious duties as a pastor for the St. Francis Church of Tourovia (hereinafter "the Church"). *Turner v. St. Francis Church of Tourovia*, No. 13-C-041511 (Ct. App. Tourovia Aug. 16, 2016), at 3. The Church, satisfied with Pastor Turner's religious ministry and his interactions with its congregation, renewed his contract to serve as a pastor three separate times: in June 2010, June 2011, and June 2012. *Id.* Before assuming his religious duties, Pastor Turner was employed as a financial manager for IBM Corporation. *Id.* at 4. In May 2012, nearly three years into his ministry, Pastor Turner was "chosen by the congregation of St. Francis" to administer a donation from the Edward Thomas Trust (hereinafter "the Trust") to the Church of $1,500,000. *Id*.

However, in October 2012, Reverend Dr. Roberta Jones, superintendent of the Tourovia Conference of Christian Churches, informed Pastor Turner that because the Church had "'lost faith' in his spiritual leadership," that they would be "'transitioning'" to a different, more spiritual pastor. *Id.* at 3. On October 31, 2012, Reverend Jones terminated Pastor Turner's employment at the Church. *Id.*

Previous to the termination of his religious duties, Pastor Turner had a disagreement with the Tourovia Conference of Christian Churches concerning the administration of the Trust funds donated to the Church. He approached the St. Francis' Board of Trustees, stating that the full donation should not be deposited into the Church's general operating account. *Id.* at 4. The Board of Trustees disagreed and instructed Pastor Turner to deposit the full donation. *Id.* He refused. *Id.* Instead, Pastor Turner left a phone message for a representative of Wells Fargo Bank, which served as trustee for the donation, and unsuccessfully attempted to contact the IRS.

Neither Wells Fargo nor the IRS took action based on Pastor Turner's message.

II. Procedural Background

On September 12, 2013, Pastor Turner filed a Complaint in the Tourovia District Court, Eastview County, alleging wrongful termination due to breach of contract and retaliatory discharge in connection with his refusal to deposit the full donation into the Church's account. *Turner v. St. Francis Church of Tourovia*, No. 13-C-041511 (Tourovia D. Ct. Eastview Cty. Jan. 20, 2015) (District Court). On March 31, 2014, the Tourovia Conference of Christian Churches and Reverend Jones filed a Motion to Dismiss Pastor Turner's Complaint arguing the First Amendment's ministerial exception barred the entire lawsuit. *Turner,* No. 13-C-041511 (Appeals Court), at 4. The District Court granted the motion because Pastor Turner's "claims [were] fundamentally connected to issues of church doctrine and governance and would require court review of the church's motives for the discharge, which is precluded by the ministerial exception." *Id.* at 5. On appeal, the Court of Appeals of Tourovia heard argument concerning the ministerial exception and the need for discovery to determine religious entanglement in the employment decision. The Court of Appeals determined that the ministerial exception barred Pastor Turner's suit and that discovery "would entangle the court with the Church's affairs." *Id.* at 8, 10.

SUMMARY OF THE ARGUMENT

The ministerial exception, recognized by this Court in *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, is nothing new. Its bedrock principles are footed in the First Amendment of the Constitution: in the Establishment Clause and the Free Exercise Clause. The principle of non-entanglement, which is the essence of the ministerial exception, has been applied to religious sovereigns since 1871 in a continuous, replicating pattern. This Court has

safeguarded religious rights under the First Amendment by instructing civil courts that they must respect the sacred sphere and defer to religious decision-making. Anything else runs the risk of stunting free exercise and constructing state religion.

The principle of non-entanglement controls the present case. *Hosanna-Tabor* lays out both the policy and procedure on non-entanglement. First, *Hosanna-Tabor*'s expression of the ministerial exception is rooted in non-entanglement. In order to successfully assert the exception, a defendant must be a "religious group" under attack by a plaintiff who was employed as a "minister" of that group. Then, courts must determine whether the claims at hand, even those outside the context of employment discrimination, would entangle the court with religion. This claim-oriented, "issue-sensitive approach" assures the protection of religious sovereignty while also making sure that secular wrongs committed by religious groups do not evade review by mere utterance of the ministerial exception. However, for claims contesting the validity of the reason a religious group took negative action against an employee, this "issue-sensitive approach" is unnecessary. In *Hosanna-Tabor*, this Court declared the First Amendment has struck the balance in favor of religious groups; they receive the ministerial exception.

Second, *Hosanna-Tabor* sets forth the procedure of applying the ministerial exception. The ministerial exception operates as an affirmative defense. However, because of entanglement concerns, the application of the ministerial exception is based entirely on the pleadings and pursuant to a motion to dismiss for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(6). Specifically, this approach requires courts to scrutinize a plaintiff's complaint to see if the allegations therein trigger the ministerial exception. Namely, whether the complaint identifies a religious group, a minister, and claims whose adjudication would entangle the court with religion. If those elements are present within the complaint, the plaintiff has

essentially pleaded themself out of court by assuring the application of the ministerial exception. Courts should not intrude into such suits thereafter. Of course, for complaints that allege wholly secular claims, discovery may be proper where the danger of entanglement can be guarded against by the specter of the ministerial exception's application on a motion for summary judgment.

The ministerial exception applies to Pastor Turner's claims. Neither the Church's designation as a "religious group" nor Pastor Turner's designation as its "minister" is at issue. Rather, Petitioner's contention is that the ministerial exception cannot be applied to his present claims. But this contention forgets the footing of the ministerial exception: non-entanglement. Adjudication of Petitioner's breach of contract claim will entangle the Court by requiring an inspection and interpretation of Petitioner's religious contract with the Church. Doing so would require the Court to measure Petitioner's spiritual performance with the Church's congregation, a determination guaranteed to the Church by the First Amendment and the ministerial exception.

Adjudication of Petitioner's retaliatory discharge claim will also entangle the Court. Indeed, doing so will require the court to make a judgment concerning which explanation for Petitioner's termination is valid: the secular explanation Petitioner provides or the spiritual explanation the Church provides. However, *Hosanna-Tabor* has already put claims of this type to rest. Where spiritual reasons for termination are disputed, the First Amendment has struck the balance and the ministerial exception must be applied.

Procedurally, the Court can determine the correct application of the ministerial exception for this case from the allegations contained within Petitioner's Complaint. First, Petitioner's Complaint identifies the Church as a religious organization and Petitioner as its minister. Next, concerning Petitioner's breach of contract claim, Petitioner has not alleged any wholly secular

provision from his contract that would allow the Court to proceed into discovery with confidence that it will not be entangled in religion. Instead, the Petitioner alleges that the contract in its entirety was breached, an allegation that will require the Court to probe through religious and non-religious provisions. Last, concerning Petitioner's retaliatory discharge claim, his Complaint explains the Church terminated him because they lost faith in his spiritual leadership. Adjudication of any allegation of a spiritual nature intrudes upon the Church's religious sovereignty. This Court's decision on any matter inherently spiritual amounts to an establishment of religion. Thus, on the face of Petitioner's Complaint, the elements of the ministerial exception are clear. Petitioner has pleaded himself out of court by ensuring the application of the ministerial exception. Disregarding the religious content of Petitioner's Complaint will create unconstitutional entanglement.

ARGUMENT

I. Non-entanglement and the Ministerial Exception Demand Dismissal of Petitioner's Claims

A. The Ministerial Exception's Bedrock Principle Is Non-entanglement

The ministerial exception is derived from "bedrock principles" found in both the Establishment Clause and the Free Exercise Clause of the First Amendment. *Askew v. Trustees of Gen. Assembly of Church of the Lord Jesus Christ of the Apostolic Faith Inc.*, 684 F.3d 413, 418 (3d Cir. 2012). Long before the ministerial exception emerged by name, courts have applied these bedrock principles to issues of church and state. In 1871, this Court decided *Watson v. Jones* and held that courts must defer to churches for "questions of discipline, or of faith, or ecclesiastical rule, custom, or [religious] law" as to avoid any government entanglement with religion. 80 U.S. 679, 727 (1871).

Years later, this Court revisited the principle underlying the ministerial exception, stating

(1) that the First Amendment permits "religious organizations to establish their own rules and regulations for internal discipline and government [and] . . . the Constitution requires that civil courts accept their decisions as binding upon them," *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 724 (1976); (2) that religious organizations are independent "from secular control," "free from state interference [in] matters of church government," and have the "[f]reedom to select the clergy," *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952); and (3) that any inquiry by a court into a church's religious decisions "plunges an inquisitor into a maelstrom of Church policy, administration, and governance" that "comprises impermissible entanglement in the church's affairs." *Natal v. Christian & Missionary All*., 878 F.2d 1575, 1577-78 (1st Cir. 1989). By 1989, it was deemed "beyond peradventure that civil courts cannot adjudicate disputes turning on church policy and administration or on religious doctrine and practice." *Id.* at 1576.

B. *Hosanna-Tabor* and the Ministerial Exception Control Petitioner's Claims

Hosanna-Tabor sets forth the current, unified doctrine of the ministerial exception. First, to be protected by the ministerial exception, a defendant must be a "religious group" and assert the ministerial exception as an affirmative defense. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 195, n. 4 (2012). Second, the plaintiff bringing the claim against the religious group must be a "minister." *Id*. at 195.

For the purposes of the ministerial exception, a "religious group," "religious organization," or "religious institution" is defined as one "whose purpose is to advance understanding and practice" of a religion and whose "'mission is marked by clear or obvious religious characteristics,'" as courts have noted after *Hosanna-Tabor. Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 834 (6th Cir. 2015); *Kirby v. Lexington Theological*

Seminary, 426 S.W.3d 597, 609 (Ky. 2014) (quoting *Hollins v. Methodist Healthcare, Inc.*, 474 F.3d 223, 226 (6th Cir. 2007)). Thus, "to invoke the exception, an employer need not be a traditional religious organization such as a church, diocese, or synagogue, or an entity operated by a traditional religious organization." *Hollins*, 474 F.3d at 225. Indeed, since *Hosanna-Tabor*, the ministerial exception has been applied to "religiously affiliated hospitals, schools, and corporations." *Kirby*, 426 S.W.3d at 609. Often, the religious nature of an organization is not at issue when considering the application of the ministerial exception because of the wide legal definition such organizations have received.

But the religious nature of an employee's duties, such that they might be considered a "minister" for the purpose of the ministerial exception, almost always requires substantially more analysis. The Court in *Hosanna-Tabor*, well aware of the range of definitions jurisdictions before it had applied to the term "minister" and well aware how a strict definition could violate the First Amendment, deliberately avoided adopting "a rigid formula for deciding when an employee qualifies as a minister." *Hosanna-Tabor*, 565 U.S. at 190. Instead, the Court provided various factors that were sufficient, in a totality-of-the-circumstances evaluation, for the employee at hand in *Hosanna-Tabor*.

The Court in *Hosanna-Tabor* resolved many of the discrepancies of lower courts on the purview of the ministerial exception, including what constituted a "religious group" and a "minister." However, it did not resolve the question concerning what types of claims that the ministerial exception bars. Indeed, the decision in *Hosanna-Tabor* states only that employment discrimination suits are barred by the ministerial exception. *Id.* at 196. The Court specifically reserved its ruling on other types of suits for when circumstances arise under different claims. *Id.*

But lower courts have already begun to apply the ministerial exception defined by

Hosanna-Tabor outside the context of employment discrimination claims. Some courts have interpreted *Hosanna-Tabor*'s principles to allow certain claims to survive the ministerial exception under the "neutral principles" approach. *See Bigelow v. Sassafras Grove Baptist Church*, 786 S.E.2d 358, 360 (N.C. Ct. App. 2016) (permitting civil court review of a pastor's breach of contract and state wage and hour violation claims); *Kirby*, 426 S.W.3d 597 (permitting civil court review of a Christian social ethics professor's breach of contract claim). But a substantial majority of courts have chosen the approach more faithful to *Hosanna-Tabor*'s principle of non-entanglement, recognizing that certain claims outside the employment discrimination context must also be barred to preserve religious autonomy.

Indeed, lower courts have applied the ministerial exception to claims of breach of contract,[1] promissory estoppel,[2] wrongful discharge,[3] intentional infliction of emotional distress,[4] tortious interference with existing and prospective contractual relations, libel, slander, and civil conspiracy,[5] and claims of negligence and negligent hiring, retention, and supervision.[6] These cases appropriately (1) follow *Hosanna-Tabor* and foundational precedent[7] of the ministerial exception and (2) ensure that judicial decision-making does not become entangled in religious affairs.

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[1] *Warnick v. All Saints Episcopal Church*, 2014 WL 11210513 (Pa. Com. Pl. Apr. 15, 2014); *Reese v. Gen. Assembly of Faith Cumberland Presbyterian Church in Am.*, 425 S.W.3d 625 (Tex. App. 2014); *Mills v. Standing Gen. on Christian Unity*, 958 N.Y.S.2d 880 (N.Y. Sup. 2013); *DeBruin v. St. Patrick Congregation*, 816 N.W.2d 878 (Wis. 2012).
[2] *Fisher v. Archdiocese of Cincinnati*, 6 N.E.3d 1254 (Ohio Ct. App. 2014); *DeBruin*, 816 N.W.2d 878.
[3] *Melhorn v. Baltimore Washington Conference of the United Methodist Church*, 2016 WL 1065884 (Md. Ct. Spec. App. March 16, 2016) (unpublished).
[4] *Fisher*, 6 N.E.3d 1254; *Reese*, 425 S.W.3d 625.
[5] *Warnick*, 2014 WL 11210513.
[6] *Givens v. St. Adalbert Church*, 2013 WL 4420776 (Conn. Super. Ct. July 25, 2013) (unpublished); *Erdman v. Chapel Hill Presbyterian Church*, 286 P.3d 357 (2012).
[7] *See Serbian E. Orthodox Diocese*, 426 U.S. 696; *Watson*, 80 U.S. 679; *Kedroff*, 344 U.S. 94.

In *Mills v. Standing Gen. Comm'n on Christian Unity*, the Supreme Court of New York County, New York, appropriately applied the ministerial exception recognized by *Hosanna-Tabor* to a breach of contract claim because the court's interpretation of a church employee's contract would have required the court "to interpret various sections" of a religious text dealing with "immoral conduct" and "breach of trust." 958 N.Y.S.2d 880, 887 (N.Y. Sup. 2013). Similarly, in *Givens v. St. Adalbert Church*, the ministerial exception was applied to claims of negligence, negligent hiring, retention, and supervision because the claims could not "be adjudicated without inevitable entanglement in matters of faith and doctrine and church governance," specifically whether a church employee was a "practicing Catholic" that had sustained "spiritual damage" and whether a church was "subject to the constitution, canons, rules, regulations, and discipline of the Roman Catholic Church." 2013 WL 4420776, at *9 (Conn. Super. Ct. July 25, 2013) (unpublished). In *Warnick v. All Saints Episcopal Church*, the ministerial exception barred claims of tortious interference with existing and prospective factual relations, libel, slander, civil conspiracy, and breach of contract because adjudication of those claims involved discussions of a church employee's ministry and would have "invade[d] the Church's process for choosing clergy [and] challenge the Church's understanding of its own Constitutions and Canons," an exercise the court determined "would be an unconstitutional incursion by the state into sacred precincts." 2014 WL 11210513, at *9-10 (Pa. Com. Pl. Apr. 15, 2014).

In *Fisher v. Archdiocese of Cincinnati*, the Ohio Court of Appeals barred claims of promissory estoppel and intentional infliction of emotional distress under the ministerial exception because those claims were "inextricably entangled with [the church employee's] age-

discrimination claim," that was, beyond debate, subject to the ministerial exception. 6 N.E.3d 1254, 1262 (Ohio Ct. App. 2014).

In *Erdman v. Chapel Hill Presbyterian Church*, the Supreme Court of Washington applied the ministerial exception to negligent supervision claims "because it is virtually impossible to adjudicate such claims without inquiring into existing church doctrines and beliefs . . . or, just as problematic, forcing state-established standards onto a religious organization after the fact without regard to the organization's religious doctrines, beliefs, and customs." 286 P.3d 357, 367 (Wash. 2012). The court in *Erdman* also repudiated the "neutral principles" theory, stating that "there is no room for the [theory] in the case of civil tort claims brought against a church involving its authority to hire and control its ministers" because entanglement in church doctrine is inevitable. *Id*. at 368-69.

Taken together, these cases point back to the bedrock principle underlying the ministerial exception, the principle that has guided its application across jurisdictions long before this Court decided *Hosanna-Tabor*: non-entanglement in religion. Thus, as presently, when this Court is asked to apply the ministerial exception to previously undetermined types of claims, it should do so according to the "issue-sensitive approach" to non-entanglement defined by the Second Circuit in *Rweyemanu v. Cote*, 520 F.3d 198, 200 (2d Cir. 2008), and endorsed by the Superior Court of Connecticut in *Givens v. St. Adalbert Church.* 2013 WL 4420776, at *8. That approach holds that "in an employment related action against a religious institution, even if it is established that the plaintiff's primary duties render him a ministerial employee . . . courts must consider whether adjudicating the particular claims and defenses in the case would require the court to intrude into a religious institution's exclusive right to decide matters pertaining to doctrine or its internal governance or organization." *Id.* (quoting *Dayner v. Archdiocese of Hartford*, 23 A.3d

1192, 1207-08 (Conn. 2011)). Such an "issue-sensitive approach" has protected the judiciary from entanglement in various types of religiously related claims. This approach is strong enough and simple enough to discriminate between religious and secular claims.

However, for claims contesting the validity of the reason a church took negative action against an employee, the "issue-sensitive approach" is unnecessary; "the First Amendment has struck the balance" and "[t]he church must be free to choose those who will guide it on its way." *Hosanna-Tabor*, 565 U.S. at 196. Extending this Court's decision in *Hosanna-Tabor*, the Wisconsin Supreme Court applied this balance struck by the First Amendment, stating that "within the decisions protected by the First Amendment are the hiring and firing of ministerial employees, regardless of the motivation behind those decisions. Accordingly, religious institutions may make arbitrary decisions regarding hiring or firing of ministerial employees and nevertheless be free from civil review for having done so," regardless of how an employee brings his claims. *DeBruin v. St. Patrick Congregation*, 816 N.W.2d 878, 887 (Wis. 2012) (citations omitted). The Fifth Circuit took a similar stance on the issue, after *Hosanna-Tabor*, saying "it is immaterial if the reason for termination is not religious, but rather pretextual." *Cannata v. Catholic Diocese of Austin*, 700 F.3d 169, 174 (5th Cir. 2012). Thus, *Hosanna-Tabor* sent the message that on the issue of a religious employer's motivation for an employment action, the law has been settled: the Constitution demands the application of the ministerial exception.

C. The Church Is Entitled to the Ministerial Exception for All of Petitioner's Claims

Petitioner does not argue that he is not a "minister" or that the St. Francis Church of Tourovia is not a "religious group" for the purposes of the ministerial exception. He argues only that the ministerial exception should not apply to either of his claims. However, a proper

consideration of non-entanglement requires the application of the ministerial exception to both of Petitioner's claims.

1. The Ministerial Exception Precludes Adjudication of Petitioner's Breach of Contract Claim

Adjudication of Petitioner's breach of contract claim would result in unconstitutional entanglement. As the issue-sensitive approach to entanglement dictates, this Court cannot intrude into the Church's exclusive right to decide matters pertaining to its internal governance or organization. Yet, that is precisely what the Petitioner asks this Court to do. The Petitioner requests this Court to look into the details of a contract he made with a religious organization, one that likely contains religious principles and clauses,[8] that, much like the contract in *Mills*, would require the interpretation of the Court. This sort of inquiry would plunge this Court into a maelstrom of the Church's religious tenets and policies, something that the First Amendment staunchly forbids. Doing so would be an unconstitutional incursion by the state into sacred precincts of the Church's decision-making as to who is spiritually qualified to lead the St. Francis congregation as pastor. As such, this Court should apply the ministerial exception to Petitioner's breach of contract claim.

2. The Ministerial Exception Precludes Adjudication of Petitioner's Retaliatory Discharge Claim

Petitioner's retaliatory discharge claim merits an even simpler application of the ministerial exception. The Petitioner argues that the Church's reasoning for his termination was pretextual and retaliatory, rather than based on the spiritual reasoning the Church provided. He asks this Court to look into the minds of Reverend Jones and the members of the Tourovia

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[8] Petitioner's Complaint does not specify the details of his contract with the Church beyond the one-year renewals made in June 2010, 2011, and 2012 after Petitioner was hired in July 2009. As explained below in Part II, Petitioner's failure to allege wholly secular contract provisions deprives this Court the ability to adjudicate the contract at all; any inquiry would be entangling.

Conference of Christian Churches and determine which justification for his termination was true. He asks the Court to find a balance in his favor. But the First Amendment has already struck the balance on this exact issue: the ministerial exception must be applied. Indeed, it is immaterial whether any part of the Church's reasoning for the Petitioner's termination was retaliatory; it matters nothing the actual motivations of the Church. In fact, no matter the level of arbitrariness that motivated Petitioner's termination, the Church must be free from civil review for its actions in this circumstance. Petitioner's request for this Court to examine his religious termination is the exact evil that the ministerial exception, as shown in *Hosanna-Tabor*, exists to protect against. Here, the Constitution demands the application of the ministerial exception to Petitioner's retaliatory discharge claim.

II. The Allegations In Petitioner's Complaint Call for the Ministerial Exception

Petitioner asks this Court to reach further into the factual circumstances surrounding his termination of religious employment before making any decision. But in this case, there is no need. The Court can balance its requirement to be faithful to the First Amendment pursuant to the ministerial exception *and* be faithful to its duty to not prematurely decide a case. All it must do is look to Petitioner's Complaint.

A. The Ministerial Exception's Pleading Standard Requires Dismissal of Petitioner's Claims at the Pleading Stage

Procedurally, the application of the ministerial exception is somewhat unique. *Hosanna-Tabor* made clear that "the exception operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar." 565 U.S. at 195, n. 4. *Hosanna-Tabor*'s clarification of procedure, jointly with its principle of non-entanglement, calls for "the 'unusual step' of dismissing a discrimination claim under Rule 12(b)(6) 'only where the allegations of the complaint itself set forth everything necessary to satisfy the affirmative defense,'" an approach

lower courts have recognized since *Hosanna-Tabor*. *Collette v. Archdiocese of Chicago*, 200 F. Supp. 3d 730 (N.D. Ill. 2016) (citing *Hyson USA, Inc. v. Hyson 2U, Ltd.*, 821 F.3d 935, 939 (7th Cir. 2016) and *Sidney Hillman Health Ctr. of Rochester v. Abbott Labs., Inc.*, 782 F.3d 922, 928 (7th Cir. 2015)). In other words, this approach holds that a religious group may only succeed with the ministerial exception when a plaintiff "affirmatively plead[s] himself out of court" by placing facts in his complaint which trigger the ministerial exception.[9] *Hyson*, 821 F.3d at 939 (quoting *Chicago Bldg. Design, P.C. v. Mongolian House, Inc.*, 770 F.3d 610, 614 (7th Cir. 2014)).

Understanding the procedure of the ministerial exception explains away what otherwise appears to be contradictory case law about how the ministerial exception should apply to claims other than employment discrimination. For example, in *Galetti v. Reeve*, the New Mexico Court of Appeals considered whether the ministerial exception should apply to a religious schoolteacher's complaint that alleged a breach of contract. 331 P.3d 997, 1001-03 (N.M. Ct. App. 2014). The complaint's discussion of the contract claim spoke only in terms of the time the school should have notified the schoolteacher that they would not renew her contract. *Id.* Because the complaint invited no interpretation of a religious provision or interfered with the school's employment decision-making, the court determined that the claim could "potentially be resolved without any religious entanglement." *Id.* at 1002. Of course, the court reserved the right to find in favor of the school on summary judgment if during the course of discovery, it became

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[9] In this determination, the Court "must assume the truth of the well-pleaded factual allegations of the complaint, including the reasonable inference that may be drawn from those allegations." *Melhorn v. Baltimore Washington Conference of United Methodist Church*, 2016 WL 1065884, at *3 (Md. Ct. Spec. App. Mar. 16, 2016) (unpublished). Thus, a well-pleaded complaint that leads a court to conclude, explicitly or by reasonable inference, that adjudication of the claim would entangle the court in religion, merits the application of the ministerial exception.

apparent that adjudicating the schoolteacher's breach of contract claim turned "on matters of interpretation or church governance." *Id.*

Similarly, in *Minker v. Baltimore Annual Conference of United Methodist Church*, the D.C. Circuit considered whether the ministerial exception should apply to a Methodist minister's complaint alleging a breach of contract. 894 F.2d 1354 (D.C. Cir. 1990). The text of the minister's complaint had two bases for a breach of contract claim: (1) "passages from the Book of Discipline—'the book of law of the United Methodist Church'" and (2) a superintendent's oral promises to find the minister a different congregation. *Id.* at 1355 ("courts may not consider provisions whose enforcement would require 'a searching and therefore impermissible inquiry' into church doctrine" (quoting *Serbian E. Orthodox Diocese v. Milivojevich,* 426 U.S. at 723)). Because it was clear from the complaint that the court would have to interpret the "Book of Discipline," a religious text, the court quickly determined that this basis for the breach of contract claim was barred by the ministerial exception. *Id.* at 1358. Concerning the oral promises, the complaint alleged that the superintendent has assured the minister he would be "moved to a congregation more suited to his training and skills, and more appropriate in level of income, at the earliest appropriate time." *Id.* at 1355. Because nothing in the complaint concerning the oral contract required the court to engage in religious interpretation or tread on sacred decision-making of the church, the court allowed discovery to proceed on this ground, but with the caveat that as soon as any inquiry "into matters of ecclesiastical policy" began, the court reserved the right to find in favor of the church by means of the ministerial exception on summary judgment. *Id.* at 1359-60.

It is important to note that both plaintiffs' complaints from *Galetti* and *Minker* affirmatively alleged, on the face of the complaint, the secular portions of the contract from

which their breach of contract claims were derived. Without identifying a specific provision, the plaintiffs' complaints would otherwise have required courts to search through the entirety of a religious contract, entangling them in religious provisions of which the complaint did not warn them.

In *Melhorn v. Baltimore Washington Conference of United Methodist Church*, a case with strikingly similar facts to the present case, a pastor alleged in his complaint that the reason offered for his termination by a church was that "the church was 'transitioning' because it had 'lost faith' in his spiritual leadership," although the pastor alleged his termination was actually retaliation for a financial disagreement with the church. 2016 WL 1065884, at *1 (Md. Ct. Spec. App. Mar. 16, 2016) (unpublished). The court deciding *Melhorn* quickly determined that the pastor's complaint merited application of the ministerial exception. The court explained that to reach a decision between the two conflicting explanations, both stated in the complaint, it would have to "encroach on the ability of a church to manage its internal affairs." *Id.* at *5 (alterations and quotations omitted).

The allegations found in Petitioner's complaint merit the application of the ministerial exception. First, the Complaint establishes the basic requirements for the ministerial exception: a "religious group" and a "minister." Petitioner's Complaint states explicitly "he was a minister at St. Francis and that the Church terminated his employment because it stated it had lost faith in his spiritual leadership." *Turner*, No. 13-C-041511, at 3 (appellate opinion). This short statement, on the face of the Complaint, pleads the elements of the ministerial exception: (1) it identifies the Church as a "religious group" and (2) it identifies the Petitioner as a "minister." Neither of these statements are in dispute by either of the parties.

Next, the information in the Complaint specific to Petitioner's claims shows that the

ministerial exception must apply or the court will entangle itself with religion. Just as the ministers in *Galetti* and *Minker*, Petitioner brings a breach of contract claim against the Church. However, unlike the written contract from *Galetti* and the oral contract from *Minker*, Petitioner did not affirmatively allege, on the face of his Complaint, secular provisions of his contract that he seeks to enforce. Indeed, a close inspection of the Complaint reveals nothing but a vague challenge to his religious contract as a pastor of the Church. This vagueness calls out for the application of the ministerial exception. Without applying the ministerial exception, this Court will have to probe Petitioner's contract for secular provisions that may or may not have been violated. Such an exercise risks severe entanglement of the Court in the Church's religious employment policies, as is expressly forbidden by *Hosanna-Tabor*.

Petitioner also brings a retaliatory discharge claim. His Complaint provides for the application of the ministerial exception on this claim, just as the complaint in *Melhorn*. Petitioner's Complaint offers two possible reasons for his termination: (1) because of his "threat to report and refusal to participate in certain tortious acts" in connection "with the administration of funds" from the Trust and (2) because the Church "lost faith in his spiritual leadership." *Turner*, No. 13-C-041511, at 3-4, 9 (appellate opinion, quoting Complaint). The second reason, set forth by the Church, is enough to trigger the ministerial exception. Clearly, adjudicating a dispute between these two statements would require the Court to interpret just what loosing faith in a St. Francis pastor's leadership means. But that would impermissibly entangle the court with religious employment in violation of *Hosanna-Tabor*'s key principles.

Petitioner has pleaded himself out of court by alleging everything necessary in his Complaint to ensure the application of the ministerial exception. He has alleged the Defendants are a religious group, he has alleged he was its minister, and he has alleged facts that would

require the Court to impermissibly entangle itself in religion on his breach of contract and retaliatory discharge claims. Each and every one of these allegations is a red flag, signaling this Court to avoid unconstitutional entanglement.

B. Further Discovery on Petitioner's Claims Is Religious Entanglement Itself

Both *Galetti* and *Minker* permitted courts to engage in discovery on matters that did not engage the ministerial exception on the face of a complaint. And both courts promised that the moment it became clear that a question did in fact require a religious inquiry by the courts, that the case would quickly be resolved in a religious group's favor upon a motion for summary judgment. For complaints that truly do not implicate religion, this approach strikes the right balance between the First Amendment and the Court's interest in fully adjudicating claims. But that is not the result that Petitioner's Complaint warrants.

Because Petitioner's Complaint, on its face, merits the application of the ministerial exception, any further discovery constitutes an unconstitutional entanglement of this Court into religion. Such further discovery is the very evil of entanglement that the First Amendment and the ministerial exception exist to protect against. Here, entanglement will occur in at least two ways. First, this Court's attempts to interpret Petitioner's contract with the Church will fail because to understand Pastor Turner's performance of the contract, this Court will have to examine the tenets, beliefs, and proper behaviors of ministers for the Church. This is a body of knowledge where the religious expertise of the Church and its leaders reigns supreme. Second, in this Court's attempts to understand Pastor Turner's retaliatory discharge claim, the Court will be forced to decide which reason is more true or compelling: Petitioner's statement that he was fired in retaliation for disagreeing with the Church's treatment of a financial donation or the Church's statement that he was fired because the Church was transitioning to a more spiritual pastor. Such

a task would unconstitutionally discredit the Church's right to make religious employment decisions on religious terms. Any replacement of the Church's authority in this realm constitutes an establishment of religion. Thus, permitting further discovery into Petitioner's claims will result in this Court's inevitable entanglement of religion. Applying the ministerial exception at the pleading stage saves the Court from an unconstitutional impropriety.

CONCLUSION

For these reasons, the judgment of the Court of Appeals of Tourovia should be affirmed.

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