No. 415-2017

In the Supreme Court of the United States

DAVID R. TURNER,
Petitioner-Appellant,

v.

ST. FRANCIS CHURCH OF TOUROVIA, THE TOUROVIA CONFERENCE OF CHRISTIAN CHURCHES, AND REVEREND DR. ROBERTA JONES // ST. FRANCIS CHURCH OF TOUROVIA, et al.,
Respondents-Appellees.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

BRIEF FOR PETITIONER

TEAM 16

Counsels for Petitioner
David R. Turner

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QUESTIONS PRESENTED

1. Whether the ministerial exception prevents courts from enforcing religious institutions' employment contracts and from hearing retaliatory discharge claims, even if they stem from a minister's report of refusal to participate in the religious institutions' tortious or illegal conduct.

2. Whether the ministerial exception can be the sole reason for a court to grant a motion to dismiss alleging a wrongful termination claim, without affording the opportunity for discovery or for the claim to be heard on its merits.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a), which is reprinted in A-2.

CONSTITUTIONAL PROVISIONS INVOLVED

Provisions of the United States Constitution applicable to this case, including Amendments I, V, and XIV, are reprinted in A-1.

STATUTORY PROVISIONS INVOLVED

Statutory provisions applicable to this case, including the State of Tourovia Labor Law Section 740, are reprinted in A-5 and A-2.

STATEMENT OF THE CASE

a. *Mr. Turner's Employment Contract with St. Francis*

David Turner ("Mr. Turner") is a working man with a demonstrated history of calculated thinking and keeping to the book. For twenty-five years, Mr. Turner worked as a financial manager for IBM Corporation ("IBM"), and eventually pursued another financial position as the Treasurer and Chief Financial Officer ("CFO") of the Tourovia Conference of Christian Churches ("CCC"). (R. 4.) On July 1, 2009, Mr. Turner was hired by the St. Francis Church of Tourovia ("St. Francis") to work as a pastor—a position that, although requiring a different set of responsibilities than he accrued in his history in finance, still reflected his foundation in abiding by guidelines. (R. 3.)

To govern their employment relationship and memorialize Mr. Turner's hire, St. Francis offered Mr. Turner a yearly employment contract; rather than an offer with looser expectations, such as Mr. Turner's employment as an independent contractor, affording him hourly wages, or even an agreement without a set term for employment. (R. 3.) Mr. Turner accepted the terms of this employment contract, and planned to operate under its terms—including the June 30, 2010 expiration date. (R. 3.) However, Mr. Turner owed no duty to continue working for St. Francis beyond the expiration of the contract, and St. Francis did not have any duty to renew the contract. (R. 3.) Nonetheless, St. Francis chose to renew their employment contract with Mr. Turner, without modification or noted reservation, for three consecutive years—in June 2010, June 2011, and June 2012. (R. 3.)

b. *St. Francis's Distribution of the Bequest, and Mr. Turner's Premature Termination*

On May 16, 2012, St. Francis was notified that it was set to receive a $1,500,000 bequest from the Edward Thomas Trust ("the Thomas Trust" or "the Trust"). (R. 4.) The Trust

specifically delineated how the bequest was to be allocated through its provisions: one half—exactly $750,000—was to be used for the general operation and maintenance of St. Francis, and the other half—exactly $750,000—was to be used for the upkeep of the St. Francis's cemetery. (R. 4.) While Mr. Turner's extensive experience in financial management played no role in his pastorship, it made him uniquely adept to assume the duties of administering the bequest. (R. 4.) Consequently, St. Francis chose Mr. Turner to be administrator of the Trust. (R. 4.)

Mr. Turner did not have to look through St. Francis's books for long before he discovered that St. Francis sold its cemetery for profit in 2009, and accordingly, no longer maintained, nor needed to maintain, a cemetery fund. (R. 4.) Through his decades of familiarity with the standards of fiduciary responsibility, Mr. Turner determined that it would be a breach of trust—as well as possible fraud and tax evasion—for St. Francis to accept the $750,000 half of the bequest specifically designated to the cemetery's upkeep. (R. 4.)

Concerned, Mr. Turner informed the St. Francis Board of Trustees ("the Board") of the circumstances, which, at minimum, amounted to a breach of trust. (R. 4.) He advised the Board to notify Wells Fargo Bank ("the Bank"), a trustee for the Thomas Trust, that St. Francis no longer owned the cemetery, and to seek the Bank's guidance about how to legally proceed. (R. 4.) However, against Mr. Turner's advisement, the Vice Chairman of the Board instructed Mr. Turner to deposit the *entire* $1,500,000 into St. Francis's general operating account—*double* the $750,000 explicitly allocated by the bequest. (R. 4.)

Yet Mr. Turner, in his assigned role as trust administrator, had a duty to act prudently and in the best interest of St. Francis as a beneficiary. (R. 4.) His experience informed him of precarious legal consequences for breaches of trust, as well as possible criminal consequences of fraud and tax evasion. (R. 4.) Mr. Turner refused to follow the Board's direction to knowingly

break the law. (R. 4.) Instead, he relied on his experience, and in August 2012, Mr. Turner took his legal concerns to Reverend Dr. Roberta Jones ("Dr. Jones"), the superintendent of the CCC. (R. 4.) However, Dr. Jones, the CCC, and the Board expressed no intention to inform the Bank of the situation, nor take any other action to correct. (R. 4.)

Between August and October 2012, nothing had changed: Mr. Turner still acted as the Trust's administrator; Dr. Jones, the CCC, and the Board still showed no sign of action; and Mr. Turner still had an independent duty to act in good faith. (R. 4.) Thus, Mr. Turner took initiative to contact the Bank himself to seek guidance in legally handling the bequest. (R. 4.) Met with no answer, he then contacted the Internal Revenue Service ("IRS") to discuss any possible tax ramifications. (R. 4.)

On October 16, 2012, within a few weeks of Mr. Turner's contact to the Bank and the IRS, Dr. Jones suddenly terminated Mr. Turner from his employment as pastor at St. Francis, effective October 31, 2012. (R. 4.) St. Francis terminated Mr. Turner approximately eight months in advance of the natural expiration of Mr. Turner's employment contract. (R. 4.) Despite no noted changes in Mr. Turner's performance in his pastorship, nor in St. Francis's mission, Dr. Jones offered Mr. Turner the brief explanation that St. Francis was "transitioning" because it had "lost faith" in his spiritual leadership. (R. 3.)

c. *Procedural History*

On September 12, 2013, within one year of Mr. Turner's notice of his termination, Mr. Turner filed a complaint ("Complaint") in the State of Tourovia Supreme Court ("the District Court") against St. Francis, the CCC, and Dr. Jones (collectively, "St. Francis"). (R. 3.) The Complaint set forth several wrongful acts committed by St. Francis, and included Mr. Turner's prayer for monetary relief. (R. 4.) He first asserted that St. Francis's breach of his

employment contract, when St. Francis terminated Mr. Turner eight months in advance of the natural expiration of the contract, amounted to wrongful termination. (R. 3-4.) Mr. Turner then asserted that his termination as pastor was a retaliatory discharge, and resulted directly from his report and refusal to partake in St. Francis's intended breach of trust. (R. 3-4.)

On March 31, 2014, the CCC and Dr. Jones filed a motion to dismiss Mr. Turner's Complaint stating that the First Amendment's ministerial exception arrested the lawsuit not for lack of harm to Mr. Turner, but in brazen and exclusive reliance on the ministerial exception. (R. 4.) The District Court exercised jurisdiction pursuant to 28 U.S.C. § 1257(a) and held a hearing on January 20, 2015. (R. 4.) Without further inquiry, Judge Michelle L. Hall ("Judge Hall") abruptly issued an order granting the CCC and Dr. Jones's motion to dismiss ("the Order"). (R. 4.) As there was no opportunity given to explore the merits of Mr. Turner's claims, and no discovery granted to unearth the untenable truth behind St. Francis's conduct, the Order noted "reasons stated on the record in open court" as grounds to explain the dismissal. (R. 6.) In mere reliance on nothing but St. Francis's word, Judge Hall found that Mr. Turner's breach of contract and retaliatory discharge claims would include court review of the St. Francis's motives for the discharge, implicating the ministerial exception of the Free Exercise Clause. (R. 2, 4-5.)

Mr. Turner appealed, but the Tourovia Court of Appeals ("the Court of Appeals") muzzled Mr. Turner in his attempt to protect his own rights. Now, upon this Court's grant of his petition for writ of certiorari, Mr. Turner may finally have his day in court. (R. 15.)

SUMMARY OF THE ARGUMENT

We are a nation of the people, by the people, and for the people; a nation which was envisioned to safeguard the rights and freedoms of its people. Yet, despite our founders' aspirations to prolific freedom, in reality, the rights of one cannot be absolutely guaranteed in instances of their direct conflict with the rights of another. In cases of conflict, rights must be balanced to promote equal justice. Commenting on the balance of conflicting rights, Abraham Lincoln once said, "my right to swing my fist ends where your nose begins." This case is about finding the line drawn where St. Francis's rights must end such that Mr. Turner's rights can be preserved. The only conclusion to this matter that is consistent with the truth and principles of equal justice of, by, and for its people under law is a reversal and remand of the Tourovia Court of Appeals.

David Turner, Appellant in this matter, upheld his contractual obligations, his fiduciary duties as administrator of the Trust, and his civic duty to report and refuse to participate in violations of law. Yet St. Francis, Respondent in this matter, has been permitted to trample Mr. Turner's rights, leaving him unable to recover. St. Francis should not be free to use the ministerial exception's protection as a pretext for St. Francis's unchecked disregard for law.

Mr. Turner and St. Francis willingly entered into an employment contract to govern his pastorship for a fixed yearly term beginning on July 1, and ending on the following June 30. For that term, Mr. Turner conceded his right to be employed elsewhere in exchange for St. Francis's promise for employment. Each June for three years, St. Francis renewed its employment contract with Mr. Turner, without modification, and Mr. Turner relied on the contract's security.

When St. Francis suddenly terminated Mr. Turner in October 2012, eight months prior to the contract's renewed end date of June 2013, St. Francis breached the contract. St. Francis

voluntarily restricted its right to freely terminate its ministerial employees when it willingly entered into a legally enforceable contract. But, churches are not exempt from their promissory obligations and thus, Mr. Turner has a legal right to have his breach of contract claim proceed.

The termination was also an act of retaliatory discharge. Tangential to his role as pastor, Mr. Turner was chosen to administer the Thomas Trust. His fiduciary duties included strict adherence to the Trust's directives, and acting in good faith under the law. St. Francis did not respect these duties. The Trust granted St. Francis a $1,500,000 bequest to be equally allocated among two accounts, including its cemetery fund. Mr. Turner warned that because the cemetery had been sold, it would be a breach of trust, and likely fraud and tax evasion to keep its $750,000 share. Disregarding the law, St. Francis instructed him to deposit the entire bequest in its other fund. Mr. Turner, in an earnest effort to legally fulfill his duties, sought help from the Bank and the IRS, but to no avail. Soon after, St. Francis fired Mr. Turner because he failed to partake in their attempted fraudulent scheme, and his report drew focus to its fraud, yet feebly claimed that it had "lost faith" in his spiritual leadership.

Regardless, the ministerial exception does not afford protection to religious institutions in its discharge of non-ministers because only ministers communicate religious doctrine and implicate free exercise rights. While Mr. Turner is concededly a minister in his pastoral role, he was fired for his secular actions as trust administrator. It would overextend the ministerial exception to allow unchecked discharge of secular roles that do not abridge free exercise rights.

Like with contractual obligations, religious institutions are not exempt from general and neutrally applicable laws. Tourovia Labor Law Section 740 ("Section 740") is one such law that restricts retaliatory discharge by *all* employers when *any* employee, regardless of ministerial status, reports its violation of laws. Thus, under Section 740, the ministerial exception does not

exempt St. Francis from retaliatory discharge claims from its ministers, nor from underlying violations of general and neutrally applicable law. Thus, Mr. Turner's claim should proceed.

After his termination, Mr. Turner sought protection under the law he scrupulously followed. He filed a claim for wrongful termination due to breach of contract and retaliatory discharge, but his complaint was dismissed without discovery or consideration on its merits.

Mr. Turner's complaint should not have been dismissed because it included facts sufficient to support each element of his claim. Thus, at the very least, Mr. Turner should have been allowed to discovery. Parties have a right to conduct discovery into relevant non-privileged matters, even if discovered evidence would be inadmissible in court. Discovery, including review of the contract, the Trust's directives, or phone records to the Bank or IRS, would not curtail St. Francis's free exercise rights. Yet, even that meager discovery would be critical to clarify the error that Mr. Turner's claim impermissibly entangles religious doctrine, or even ties to religion beyond the parties' titles. Application of the ministerial exception here, where free exercise rights are plainly not at risk, creates a windfall for St. Francis *because* of its religious status, rewarding it for injustices no other institution would be able to survive.

It has been over four years since his termination, but Mr. Turner's claim has yet to be heard on its merits. While the lower courts let the fear of violating St. Francis's free exercise rights guide their overbroad application of the ministerial exception, Mr. Turner's right to due process has been fatally restricted. Against principles of fundamental fairness, Mr. Turner has been precluded from recovery for his claim, and has been left with no other avenue for remedy.

This Court's reversal and remand for discovery is the fair, and only correct conclusion to ensure justice for one of our own—Mr. Turner. St. Francis has deliberately and repeatedly

disregarded the law, and must be held accountable to Mr. Turner. Thus, the Petitioner respectfully requests the judgment of the Tourovia Court of Appeals be reversed and remanded.

ARGUMENT

I. THE COURT OF APPEALS' DECISION SHOULD BE REVERSED AND REMANDED BECAUSE THE MINISTERIAL EXCEPTION IS NOT AN UNLIMITED JURISDICTIONAL BAR OF COURTS HEARING BREACH OF CONTRACT CLAIMS OR RETALIATORY DISCHARGE CLAIMS.

The Free Exercise Clause of the First Amendment is not absolute, and its application does not extend to the protection of religious institutions from lawsuits alleging illegal, fraudulent conduct, or breach of contract claims. *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 565 U.S. 171, 181 (2012). In relevant part, the First Amendment states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . " U.S. CONST. amend I. This "free exercise" was held to protect individual religious rights, but implicitly, the free exercise rights of religious institutions as well through the ministerial exception. *Hosanna-Tabor*, 565 U.S. at 188. However, the ministerial exception is merely a narrowly applied affirmative defense to anti-discrimination employment complaints by ministerial employees against their employer religious institution. *Collette v. Archdiocese of Chicago*, 2016 WL 4063167 (N.D. Illinois, 2016). Religious groups have an interest in having freedom to choose who will "preach their beliefs, teach their faith, and carry out their mission," but this interest coexists among other rights and interests, such as employment statutes and the constitutional rights of the People. *Hosanna-Tabor*, 565 U.S. at 196. However, while ministers are narrowly precluded from bringing certain employment discrimination claims against religious institutions, such preclusion in no way applies to " . . . actions by employees alleging breach of contract or tortious conduct by their religious employers." *Id*. at 196.

Here, St. Francis breached its employment contract with Mr. Turner when it terminated him eight months earlier than the contract provided because St. Francis, like all public and private establishments, is bound by the terms of the contracts it voluntarily forms. Additionally, while both parties concede that Mr. Turner was a minister in his pastoral role, Mr. Turner's grounds for his retaliatory discharge claim are based upon his secular role as administrator of the Thomas Trust, which is a separate and non-ministerial role. Thus, evaluating his claim related to this secular conduct does not limit St. Francis's free exercise rights.

A. Mr. Turner's Wrongful Termination Claim Due to Breach of Contract is Not Preempted by the Ministerial Exception because St. Francis Voluntarily Bound Itself to a Legally Enforceable Employment Contract, Which Does Not Implicate St. Francis's Free Exercise Rights.

Churches are not—and should not be—considered or treated as superior to the law. *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985). For nearly 150 years, churches have been free to choose to burden their religious activities in exchange for the structure and security provided by legally enforceable contracts. *Watson v. Jones*, 8 U.S. 679, 714 (1891). Contracts exist for the practical purpose of promoting efficient, and mutually beneficial relationships that are protected by the security of legal enforceability. *DeBruin v. St. Patrick Congregation*, 343 Wis. 2d. 83, 151 (Wis. Ct. App. 2012). But, for a church to retain contractual protections that enable it to more ably pursue its own religious objectives, that contract must also be enforceable against the church. *Petruska v. Gannon University*, 462 F.3d 294, 310 (3d Cir. 2006). Accordingly, as intended by the parties, courts have the authority to enforce the terms of those contracts, without such enforcement amounting to a state-imposed limit upon its free exercise rights. *Id; see also Watson*, 8 U.S. at 714.

Plainly named, the ministerial exception is an *exception* from application of anti-discrimination laws to a church's internal governance and leadership determinations. *Kirby v.*

Lexington Theological Seminary, 426 S.W.3d 597, 608 (Ky. 2014). It is *not* a jurisdictionally barred exemption from government intervention in all hiring and firing, nor is it an exemption from church conduct that violates non-excepted laws and has an external societal impact. *Id; see also Collette*, 2016 WL 4063167 at *4. Yet, an unlimited application of the ministerial exception would be to grant churches divine insulation from the law, rendering churches not only superior to the law, but immune from it. *Watson*, 8 U.S. at 714. Thus, despite the ministerial exception's limit on court inquiry into strictly internal church governance, courts preserve jurisdiction to hear and resolve contract and tort claims. *Kirby*, 426 S.W.3d at 608.

Churches are bound by their mutually beneficial, legally enforceable contracts, even if a religious employee is found to be a minister under the law. *Kirby*, 462 S.W.3d at 604. In *Kirby*, a tenured professor taught Christian social ethics at a theological seminary for fifteen years before he was terminated. His employment contract provided that the seminary would only terminate a tenured professor on three grounds. *Id.* at 616. Believing that the enumerated grounds were inapplicable to his own situation, the professor brought a breach of contract claim and a racial discrimination claim against the seminary. *Id.* at 601. Finding the professor to be a minister, the court dismissed the discrimination claim because it was barred by the ministerial exception. *Id.* at 606. *See also Hosanna-Tabor*, 565 U.S. at 192. However, determining that the ministerial exception is not an unlimited jurisdictional bar, the court found that the breach of contract claim could proceed. *Id.* at 606, 614. Distinguishing the two claims, the court importantly noted that the ministerial exception's purpose is for religious institutions to freely select those who present its faith tenets. *Id.* at 616. So while the racial discrimination claim would conflict with this purpose, analyzing whether the contract was breached did not. *Id.* at 616.

The Court further emphasized that because the seminary chose to make a promise to the professor, which was supported by consideration and memorialized in a contract, it voluntarily restricted its own conduct. *Id.* at 616. Thus, despite the professor's ministerial status, proceeding with the contract claim in no way constituted government interference in internal church governance, nor did it limit the seminary's free exercise rights. *Id*. at 615-616.; *see also Petruska*, 462 F.3d at 310 (concluding that inquiry into whether the Catholic college breached its contract when it changed appellant's duties did not limit its right to select its ministers, and that applying state contract law to the claim did not violate the Free Exercise Clause).

Additionally, although inquiry into a church's reasons for failing under a contract threatens "to touch the core of the rights protected by the free exercise clause," a minister's breach of contract claim against a church can be heard if it is presented by a fairly direct inquiry into whether a contract was formed, and if it was breached. *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354, 1360 (D.C. Cir., 1990); *see also* Rest. 2d of Contracts § 1. In *Minker*, a minister of the United Methodist Church was reassigned to a position where he was paid below the standard for a pastor with his qualifications. *Id.* at 1355. He was promised to be moved at the earliest possible time to another congregation more suitably reflective of his experience and salary needs. *Id.* After four years with no fulfillment of the promise, the minister brought an age discrimination claim and a breach of oral contract claim against the church. *Id.* at 1356.

While the ministerial exception barred the age discrimination claim, the court held that it could not bar the breach of contract claim. *Id.* at 1358. The court drew a line between inquiry into the reasons behind a church's breach, which would be an excessive entanglement in its affairs, and mere direct inquiry into whether there was an offer and acceptance, supported by

consideration, and resulting in breach. *Id.* at 1360. The court notably stated that "the first amendment does not immunize the church from all temporal claims made against it." *Id.* The court held that the church's promise was an enforceable contract supported by its offer and acceptance, and consideration given by the minister, further noting that breach would occur if assignments became available, but were not offered to the minister. *Id.* at 1358. This direct inquiry into elements establishing a contract does not cross the line into inquiry of the church's reasoning. *Id.* Thus, the ministerial exception did not bar the contract claim. *Id.*

Here, David Turner does not allege employment discrimination by St. Francis. Rather, he asserts a claim for wrongful termination due to breach of contract. (R. 3.) Accordingly, the ministerial exception does not bar Mr. Turner's claim that St. Francis breached his employment contract when they terminated him eight months prior to the natural expiration of his contract.

Despite Mr. Turner's status as a minister, the ministerial exception does not bar Mr. Turner's wrongful termination claim because it stems from a breach of contract claim. Just as the seminary in *Kirby* voluntarily restricted its ability to freely fire its tenured ministers through its explicit contractual enumeration of permissible grounds for termination, St. Francis voluntarily restricted its ability to fire Mr. Turner through the fixed June 30 expiration date of the employment contract. (R. 3.) St. Francis renewed Mr. Turner's contract each of the three years he worked there, and it did so without any modifications or reservations. (R. 3.) However, while Mr. Turner's yearly contract was renewed in June 2010, June 2011, and June 2012, his employment was terminated on October 31, 2012—approximately eight months earlier than the contract's natural expiration date of June 30, 2013. (R. 3.) As the seminary in *Kirby* violated its own contract by terminating its tenured professor against its own terms, St. Francis violated its own contract by prematurely terminating Mr. Turner.

The court in *Kirby* determined the professor's breach of contract claim should proceed because the circumstances did not call for government interference in the church's selection of ministers. Accordingly, Mr. Turner's breach of contract claim should proceed because mere inquiry into the contract's terms does not interfere with St. Francis's free exercise rights, and does not invoke the ministerial exception.

Additionally, inquiry into Mr. Turner's breach of contract claim does not even threaten "to touch the core rights protected by the free exercise clause" because it requires nothing more than a direct contractual inquiry into four succinct elements. The court in *Minker* found that the minister's breach of contract claim could be evaluated simply by establishing: whether he was promised a more suitable congregation, whether he gave consideration in exchange for that promise, and whether any congregation became available, but was not offered to the minister. *Minker*, 894 F.2d at 1360. The instant case requires the same surface inquiry into the four elements establishing a breach of contract claim—*none* of which even graze the surface of limiting St. Francis's religious freedom, let alone threaten to "touch [its] core rights."

St. Francis has hidden behind the veil of the ministerial exception in part because of Dr. Jones's paltry explanation of its termination of Mr. Turner: that despite repeated unmodified renewals of his contract and no noted changes in his spiritual leadership, St. Francis "lost faith" in Mr. Turner. While investigation into this purported reason might threaten St. Francis's free exercise rights, like in *Minker*, such investigation is superfluous to hearing his claim.

Mr. Turner's breach of contract claim can proceed independently of any evaluation of St. Francis's motives for termination by mere direct inquiry to establish the claim's elements: offer, acceptance, and consideration to form a legally enforceable contract, and St. Francis's breach of that contract. *See also Galetti v. Reeve*, 331 P.3d 997, 1001 (N.M. Ct. App. 2014) (finding that

the inquiry into whether a religious institution breached its promise when it failed to timely terminate the plaintiff's teaching contract could succeed without any religious intrusion). This Court need not look deeper than inquiry into whether St. Francis promised to employ Mr. Turner as a pastor between July 2012 and June 2013, whether Mr. Turner gave St. Francis consideration of any value, such as his work, and whether St. Francis breached that fully-formed contract when it terminated Mr. Turner eight months prior than his contract provided. (R. 3-4.)

Moreover, freedom to contract depends upon the mutual expectation that valid contracts will be enforced—if not by the parties', then by force of law. *DeBruin*, 343 Wis. 2d at 151. St. Francis can choose to offer its future ministers less binding contracts, thereby unlimitedly preserving its free exercise rights through unchecked at-will termination. However, if the ministerial exception is applied so broadly that it bars common-law contract claims, ministers who rely on contract enforceability to govern their employment will be unlimitedly deprived.

In expression and pursuit of their *own* free exercise rights, ministers, like Mr. Turner, choose to devote their lives' work to their religious faith through their employment with religious institutions. But without the legal enforceability that contracts are defined to provide, any contracted provision—including medical benefits, church-funded housing, a set term of employment, or a set salary—could at any time, for any reason be ripped from the ministerial employee's hands. *Id.* For the ministerial exception to operate as a bar on breach of contract claims would pervasively discourage individuals from pursuing jobs aligned with their faith, and would thus be counterintuitive to the very purpose of the Free Exercise Clause. *Id.*

Employment benefits can be inextricably linked to health, housing, and welfare needs, and barring common-law contract claims would leave these resources vulnerable. In the event of an employer's breach of contract, people would have no avenue for remedy or recourse. It is

unconscionable to limit the options of people to curtailing their free exercise rights for secure contract terms, or pursuit of their free exercise rights through unstable ministerial employment.

Accordingly, because Mr. Turner's wrongful termination claim is grounded in St. Francis's breach of contract, the ministerial exception does not preclude his common-law contract claim and the decision of the Court of Appeals should be reversed and remanded.

B. Because Mr. Turner's Wrongful Termination Claim Due to Retaliatory Discharge Arose from His Purely Secular Conduct as Administrator of the Trust and Not His Ministerial Role as a Pastor, the Ministerial Exception Does Not Bar Governmental Inquiry Into His Claim.

The First Amendment does not provide a religious institution with immunity from every legal claim brought against it, but only claims that implicate religious doctrine. *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). However, a claim cannot be barred under the ministerial exception unless a "minister" employee bring the claim against its church-employer. *Hosanna-Tabor*, 565 U.S. at 192. Courts consider three factors to determine if a religious employee is a minister under law: (1) whether the employee operates under a ministerial title, (2) whether the employee holds himself out to be a minister, and (3) if the employee's job duties reflect a role in conveying the church's message and carrying out its mission. *Id.*

However, a minister's lawsuit against its religious employer is not sufficient to bar their claim because of their ecclesiastical statuses, alone. *Bourne v. Center on Children, Inc.*, 154 Md. App. 42, 57 (Md. Ct. Spec. App. 2003). Determination of whether a minister's claim can be heard in civil court focuses on the facts of the lawsuit and whether the claims asserted are purely secular. *Id.* Additionally, the Free Exercise Clause does not absolutely prohibit all government interference with a religious organization. *Hosanna-Tabor*, 565 U.S. at 196. Indeed, government interference may be appropriate if questions arise regarding a church's compliance with general laws related to building, licensing, taxes, social security, and the like. *Coulee Catholic Schools v.*

Labor and Industry Review Com'n Dept. of Workforce Development, 320 Wis. 2d 275, 313 (Wis. Ct. App. 2009).

Where a general and neutrally applicable law incidentally burdens religious practices, the Free Exercise Clause of the First Amendment has not been offended. *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 878 (1990). In *Employment Div*., two members of the Native American Church were fired from their jobs for using peyote, a controlled substance that could not legally be possessed under Oregon law. *Id*. at 874. The employees argued that they ingested peyote for sacramental purposes at a Native American Church ceremony, and thus their employer's application of the state law violated their free exercise rights. *Id*. This Court held that an individual's religious beliefs do not excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. *Id*. at 879. Because the law does not specifically target a religion and applies to everyone, the employees' termination and subsequent denial of unemployment benefits was proper. *Id*. at 894.

Similarly, if a claim concerns an alleged fraudulent transfer of funds, it can be heard in civil court because it does not require court interpretation of religious doctrine. *Listecki v. Official Committee of Unsecured Creditors*, 780 F.3d 731, 742 (7th Cir. 2015). In *Listecki*, the Archdiocese settled a $17,000,000 lawsuit. *Id.* at 734. Afterward, it created a trust to maintain money to operate several Catholic cemeteries and mausoleums, with the noted expectation that those funds would be safe from claim in future instances of legal claim or liability. *Id*. It shortly thereafter sought approval from the Vatican to transfer roughly $55,000,000 to be protected in the trust. *Id.* But, before the transfer was approved, a court ruled that certain statutes of limitations could be tolled to allow other related lawsuits to proceed. *Id.* The Archdiocese then filed for bankruptcy and sought declaratory judgment that the trust could not be used to satisfy

the claims of the related lawsuits, arguing that application of certain provisions ("challenged provisions") of the Bankruptcy Code would violate its free exercise rights. *Id.*

Despite the bankruptcy court's finding that the Archdiocese's exercise of religion would be substantially burdened if the trust funds were required to satisfy the claims, the Seventh Circuit found that the challenged provisions of the Bankruptcy Code were general and neutrally applicable laws that governed all business entities with equal force. *Id* at 735, 743. The court reasoned that those provisions did not favor any religious practice because anyone could donate money to qualified religious or secular charitable organizations under the Bankruptcy Code. *Id* at 744. The court ultimately held that "fraudulent or improper actions cannot be excused in the name of religion." *Id*. Thus, the court found that it could consider issues surrounding a church's fraudulent activities without, itself, abridging its free exercise rights. *Id* at 750.

Here, David Turner does not allege discrimination by St. Francis. Rather, he asserts a claim for retaliatory discharge. Accordingly, the ministerial exception does not bar Mr. Turner's claim that he was discharged because of his refusal to engage in St. Francis's tortious conduct.

Because Section 740 is a general and neutrally applicable law, this Court's inquiry into whether St. Francis engaged in fraudulent conduct and retaliated against Mr. Turner does not unduly abridge St. Francis's free exercise rights. Section 740 prohibits any employer from discharging or taking other retaliatory adverse employment action against an employee because that employee discloses or threatens to disclose information to a public entity, or refuses to participate in an action that violates the law. S. Touro. § 740 Labor Law. Thus, like the Oregon law in *Employment Div*. prohibited all persons from possessing peyote, Section 740 prohibits all employers from taking retaliatory employment actions against their employees if the employee reports or threatens to report the employer's violation the law. *Id*. Applied here, Section 740

prohibits St. Francis from acting in retaliation of Mr. Turner's report of St. Francis's intended breach of trust, fraud, and tax evasion—all of which are *also* general and neutrally applicable laws that offer no exemption for religious institutions. Further, just as this Court determined that applying the Oregon law to the employees' unemployment claims in *Employment Div*. did not violate employees' free exercise rights, this Court should hold that applying Section 740 to Mr. Turner's wrongful termination claim does not violate St. Francis's free exercise rights.

Additionally, Section 740 applies to Mr. Turner's duties as administrator of the Trust, a role that required new responsibilities and governing guidelines that he did not have as a pastor. Inquiry into Mr. Turner's performance of such duties does not require inquiry into church doctrine. *See also Bourne,* 154 Md. App. at 55 (reasoning that the court could not hear a breach of contract claim when a clergy member's complaint about a pastor's ministerial style required an inquiry into his fulfillment of his ministerial duties and the religious tenets of the church).

In fact, Mr. Turner's duties in his respective titles were functionally dissimilar in every way. While Mr. Turner was concededly a minister in his pastoral role at St. Francis, he was not so in his role as administrator of the Trust. Considering the factors laid out in *Hosanna-Tabor,* as a pastor, Mr. Turner: (1) operated under the ministerial title of "pastor," (2) held himself out to be a pastor, and (3) had job duties including leading his congregation, which reflected his role in conveying St. Francis's message. 565 U.S. at 192. However, considering the same factors per his capacity as administrator of the Trust, Mr. Turner: (1) operated under the title of "Trust Administrator," which is not akin to "minister" in meaning nor in function, (2) held himself out to be a prudent financial adviser in his administration of a $1,500,000 bequest, and (3) had job duties to manage the bequest in an internal administrative manner that did not reflect a role in conveying St. Francis's message to the congregation, nor in carrying out its religious mission.

Rather than providing spiritual leadership to St. Francis's congregation, which he did in his pastoral role, Mr. Turner was to administer the $1,500,000 bequest according to the Trust's specific guidelines. (R. 4.) Additionally, rather than conveying St. Francis's religious mission to the congregation, which he did in his pastoral role, Mr. Turner was to prudently act in St. Francis's best interest, in a good faith execution of his fiduciary duties. *Id.* Furthermore, rather than relying on St. Francis's religious doctrine, Mr. Turner relied on St. Francis's financial records. *Id.* When he found St. Francis no longer owned the cemetery, which $750,000 of the bequest was to fund, rather than looking to his church for guidance, he advised the Board to seek guidance, and eventually sought that guidance himself in communication with the Bank and the IRS. *Id.* As administrator, Mr. Turner had an affirmative duty to keep St. Francis from incurring liability in their mishandling of the Trust—a protective and secular role he never had as a pastor.

Yet, within only weeks after Mr. Turner contacted the Bank and the IRS, and his refusal to fraudulently deposit the entire bequest into an account only scheduled to receive half, Mr. Turner's pastorship was suddenly terminated. *Id.* Because there was no shift in Mr. Turner's quality as a spiritual leader, nor any shift in St. Francis's spiritual direction, Mr. Turner was left to make sense of the facts before him—the close proximity in time between Mr. Turner's report and refusal to participate in tortious conduct and his subsequent termination was no coincidence.

Moreover, since Mr. Turner's retaliatory discharge claim is ingrained in his refusal to participate in the fraudulent deposit of the entire bequest into a non-operational cemetery fund, this Court does not need to interpret any religious doctrine to hear his claim. Like the Archdiocese in *Listecki* attempted to use its trust fund for fraudulent purposes, St. Francis attempted to deposit the entire bequest for its unentitled profit. Mr. Turner's refusal to deposit the entire bequest, against St. Francis's order to do so, directly resulted in Mr. Turner's

termination, approximately two weeks later. *Id.* Further, like the challenged provisions of the Code in *Listecki*, Section 740 is a general and neutrally applicable law prohibiting retaliatory discharge and adverse employment action by *any* employer.

Mr. Turner knew St. Francis's instructions to deposit $750,000 into the inappropriate account would be at the very minimum a breach of trust, but likely even fraud and tax evasion, and consequently reported St. Francis. (R. 4.) If Mr. Turner had followed St. Francis's specific instructions, Mr. Turner would have violated the law. So, just as the Court in *Listecki* rejected the excuse of fraudulent or improper actions in the name of religion, this Court should not excuse St. Francis from Mr. Turner's retaliatory discharge under the ministerial exception. Since Section 740 applies neutrally to all public and private employees, Mr. Turner's claim does not require inquiry into any religious doctrine. Accordingly, because the ministerial exception does not apply to claims that do not require inquiry into religious doctrine, such as Mr. Turner's wrongful termination due to failure to participate in tortious conduct claim, his claim can be heard in court.

Since Mr. Turner's wrongful termination claim stems from his report of and refusal to participate in St. Francis's fraudulent and tortious conduct, the ministerial exception does not preclude his recovery on the grounds of retaliatory discharge. Thus, the decision of the Court of Appeals should be reversed and remanded.

II. THE MOTION TO DISMISS SHOULD NOT HAVE BEEN GRANTED WITHOUT AN OPPORTUNITY FOR DISCOVERY BECAUSE THE MINISTERIAL EXCEPTION IS INAPPLICABLE TO MR. TURNER'S CLAIM.

Justice requires a narrow application of the ministerial exception such that religious institutions cannot evade responsibility by masquerading illegal conduct as constitutionally protected activity. The ministerial exception is an affirmative defense, and it should only be applied "where the allegations of the complaint itself set forth everything necessary to satisfy the

affirmative defense." *Collette*, 2016 WL 4063167, at *4 (citing *Sidney Hillman Health Ctr. Of Rochester v. Abbott Labs.*, Inc., 782 F.3d 992, 998 (7th Cir. 2015)).

Both the District Court and Court of Appeals refused to conduct even a surface inquiry into Mr. Turner's claims out of fear of unconstitutionally entangling themselves in St. Francis's internal governance. However, had they allowed discovery, the courts would have learned that Mr. Turner's claim in no way violates St. Francis's free exercise rights. Therefore, the motion to dismiss should not have been granted, and this case should be reversed and remanded.

A. Mr. Turner's Complaint Should Not Have Been Dismissed because His Wrongful Termination Claim is Well-Detailed and Plausible.

On its face, Mr. Turner's well-detailed complaint survives the plausibility standard laid out in *Twombly* and *Iqbal.* Yet, both the District Court and Court of Appeals refused to consider the complaint's merits because it involved religious actors. Still, the ministerial exception is not absolute, and is not applicable here. Thus, Mr. Turner's claim should be heard.

To assert a claim, a plaintiff's complaint must assert a short and plain statement of the claim, show a prayer for relief, and show the plaintiff's entitlement to that relief. Fed. R. Civ. P Rule 8. The plaintiff must plead factual content that allows the deciding court "to draw the reasonable inference that the defendant is liable for the [alleged] misconduct." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007). A respondent can assert a defense to a plaintiff's claim by filing a motion to dismiss for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. Rule 12(b)(6). However, to survive such a motion, a plaintiff's complaint simply must "*nudge* their claims across the line from conceivable to plausible." *Twombly*, 550 U.S. 544, at 570 (emphasis added); *See also Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009).

In *Twombly*, this Court held that the plaintiff did not include sufficient facts to state a claim for relief that was plausible on its face, and thus, the complaint had to be dismissed. 550

U.S. at 570. To satisfy the relevant statutory elements under which the plaintiff claimed relief, the complaint had to show that the company was liable because they engaged in a "contract, combination . . . or conspiracy, in restraint of trade or commerce." *Id.* at 548 (quoting § 1 of the Sherman Act). This Court looked to whether enough was alleged to survive a motion to dismiss for failing to state a claim upon which relief could be granted. *Id.* at 548-49. This Court concluded that the complaint was not sufficient because its allegations were only a bare assertion of the defendants' conspiracy. *Id.* at 556-7, 9. In its analysis, this Court reasoned that while a complaint attacked by a 12(b)(6) motion does not need to include detailed factual allegations, the plaintiff must provide the grounds of his entitlement to relief, and "more than labels and conclusions, and a formulaic recitation of the elements of the cause of action." *Id.*

Similarly in *Iqbal*, the Court held that the complaint in issue failed to plead sufficient facts to state a claim for relief against the defendants. 556 U.S. at 687. Instead of pleading sufficient facts, the plaintiff's complaint merely described the policy of holding post September-11 detainees, and how he was subjected to the policy. *Id.* at 682-83. The complaint alleged that the policy was purposefully designed to target individuals of a certain race, religion or national origin, and was unconstitutional. *Id.* at 681-82. However, he failed to plead that the defendants "purposefully" adopted the policy and targeted individuals specifically because of their race, religion or national origin. *Id.* at 682. This Court reasoned that in the context of considering a motion to dismiss, a trial court should identify allegations that are mere conclusions because conclusions are not entitled to the assumption of truth. *Id.* at 664. Because the allegations were conclusory in nature, this disentitled the complainant to the presumption of truth. *Id.* at 681. Comparing the plaintiff's pleading to the one in *Twombly*, this Court stated that here to there are "bare assertions" that amount to nothing more than a recitation of the elements of the constitutional claim the plaintiff asserts. *Id.* at 681 (citing *Twombly*, 550 U.S. at 555).

Because Mr. Turner filed a detailed complaint, which satisfied the standards of both *Twombly* and *Iqbal*, St. Francis's motion to dismiss should not have been granted, and Mr. Turner's case should be reversed and remanded for discovery.

Mr. Turner filed a complaint alleging wrongful termination due to breach of contract and retaliatory discharge. (R. 3-4.) Unlike the complaints in *Twombly* and *Iqbal*, Mr. Turner's complaint went "across the line from conceivable to plausible." *Twombly*, 550 U.S. 544, 570; *see also Iqbal*, 556 U.S. 662, 680. Mr. Turner satisfied the elements of a breach of contract, because his contract was terminated prior to a fixed expiration date. (R. 4.) Mr. Turner's complaint also satisfies the elements required for retaliatory discharge under Section 740.

To establish retaliatory discharge, Mr. Turner needed to plead more than just "bare assertions," to satisfy Section 740(1)(B)(a)-(c). (R. 15.); *Iqbal* at 681 (citing *Twombly*, 550 U.S. at 555). First, Mr. Turner had to show that he reported or threatened to report St. Francis's activity. Section 740(1)(B)(a); (R. 15.) Once Mr. Turner learned that St. Francis sold its cemetery in 2009, he advised the Board that using half of the $1,500,000 bequest to maintain that non-existing cemetery would "certainly be a breach of trust—if not fraud and tax evasion." (R. 4.) Mr. Turner then went to Dr. Jones with his concerns and informed her that it would be illegal to accept the full bequest when only half was allocated to that fund. (R. 4.) Mr. Turner, left with no other option but to do the right thing, called both the Bank and the IRS for guidance. (R. 4.)

Second, Mr. Turner had to show that a particular law, rule, or regulation was violated. Section 740(1)(B)(b); (R. 15.) Based on his financial experience, Mr. Turner determined that it would be a breach of trust—as well as possible fraud and tax evasion—for St. Francis to accept the full $1,500,000 bequest when only $750,000 of it was assigned to the cemetery. (R. 4.)

Third, Mr. Turner had to show that St. Francis's violation was the kind that creates a substantial and specific danger to public health or safety. Section 740(1)(B)(c); (R. 15.) Mr. Turner's twenty-five years of experience at IBM afforded him a practical understanding of the legal guidelines for financial management. (R. 4.) However, Mr. Turner's degree of experience is not required to know that tax evasion is a federal crime. *See* 26 U.S.C. § 7201 ("Any person who willfully attempts . . . to evade . . . any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony . . .). Furthermore, breach of trust and fraud are also violations of the law. Pervasive societal harm and endangering public health and safety are intrinsic to criminal acts and violations of the law.

Therefore, because Mr. Turner's complaint was detailed, plausible, and required the opportunity for discovery, St. Francis's motion to dismiss should not have been granted, and the decision of the Court of Appeals should be reversed and remanded for discovery.

B. The Opportunity for Discovery Would Have Revealed that St. Francis's Actions Unprotected by the Ministerial Exception because Mr. Turner's Claim is Not Unconstitutionally Entangled with Religious Doctrine.

The ministerial exception is not a limitless defense, and should not result in a religious institution's exemption from what justice requires. *Rayburn,* 772 F.2d 1164, at 1171. If discovery were permitted, the District Court would have learned that, despite Mr. Turner's adamant expert advice against depositing the entire bequest into a general maintenance fund, St. Francis was determined to engage in illegal activities—critical information, which is needed but has not been sought, before the conclusion that the ministerial exception can be drawn.

Each party may obtain discovery regarding non-privileged matters relevant to "any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action . . . the parties' relative access to relevant information . . . the

importance of the discovery in resolving the issues," and information does not need not be "admissible in evidence to be discoverable." *See* Fed. R. Civ. P. Rule 26(b)(1). A minister's breach of contract claim does not, at the outset, unconstitutionally entangle the court with religion. *See Petruska*, 462 F.3d 294, at 311. Thus, it is premature to foreclose a contract claim without an opportunity to offer evidence. *Minker*, 894 F.2d at 1360. Once evidence is offered, the court can control the case and determine whether there are impermissible entanglements. *Id.*

In *Minker*, the Court held that the plaintiff's oral contract claim could not be totally foreclosed on a motion to dismiss. 894 F.2d at 1361. The plaintiff argued that the first amendment should not bar his action for a breach of an oral employment contract. *Id.* at 1359. The Court, in viewing the allegations in a light mot favorable to the plaintiff, determined that the facts clearly established a contractual relationship, and that contracts are fully enforceable in civil court. *Id.* (citing *Watson*, 80 U.S. at 714). The court remanded the case and instructed the District Court that the plaintiff was entitled to pursue his breach of contract claim "to the extent he can divine a course clear of the Church's ecclesiastical domain." *Id.* at 1361.

Similarly, in *Petruska*, the Third Circuit held that the ministerial exception did not bar the plaintiff's breach of contract claim, and that the case should be remanded for further consideration on his claim. 462 F.3d at 312. The court found that the plaintiff's claim did not automatically lead to a government inquiry into the religious affairs of the church. *Id.* If the defendant's response to the plaintiff's allegations raised particular issues that would have resulted in excessive entanglement, the claim could be dismissed on that basis at summary judgment. *Id.* However, the court stated this conclusion cannot be drawn from the face of the complaint. *Id.* Therefore, the claim was appropriately remanded. *Id.*

Mr. Turner should be given the opportunity to obtain discovery based on the allegations made in his complaint. On remand, this Court should direct the District Court to permit discovery, review the evidence, and determine whether Mr. Turner's claim can proceed.

Just as in *Petruska*, this complaint should not have dismissed solely based on its face, without the opportunity for discovery. 462 F.3d at 312. Here, there was sufficient evidence that Mr. Turner's complaint required more of an inquiry in order to determine whether there would be unconstitutional entanglements if the case proceeded. *Id.* On its face, Mr. Turner's claim alleges wrongful termination based on breach of an employment contact and on retaliatory discharge due to his secular duties—not poor fulfillment of St. Francis's spiritual mission. (R. 4.)

Furthermore, foreclosure of Mr. Turner's contract claim would be premature without the opportunity for the parties to offer evidence. *Minker,* 894 F.2d at 1360. Any information obtained through discovery is not required to be admissible as evidence. Fed. R. Civ. P. Rule 26. Therefore, Mr. Turner should be permitted to provide evidence to the court in support of his claims. For example, Mr. Turner could have provided deed transfer records of St. Francis's sale of its cemetery, email records or witness statements regarding communications between the Board and St. Francis, or even phone records or calendared meetings between either St. Francis or Mr. Turner, and the Bank. So long as the documents were non-privileged and were related to the claim, the law would not restrict their discovery. *Id.* After discovery, if the District Court found, based on the evidence, that hearing the claim would impermissibly entangle ecclesiastical affairs, the court could, at that point, grant summary judgment. *Petruska*, 462 F.3d at 312.

Society cannot afford to turn a blind eye to wrongdoing, even if committed by a religious institution. Here, St. Francis received a grant of a $1,500,000 bequest, and exactly half of that was allocated to a cemetery that St. Francis sold years ago. (R. 4.) Yet even after Mr. Turner's

advisement to St. Francis of the certain breach of trust, but likely additional fraud and tax evasion, St. Francis knowingly ordered him to deposit the entire amount anyway. (R. 4.) Beyond the legal violations, St. Francis refused to acknowledge Mr. Turner's concerns—concerns he was required to have in the Trust administrator capacity that St. Francis, itself, afforded him. (R. 4.) Even though St. Francis's dead weight stunted him in his effective execution of his legal duties, Mr. Turner still made every attempt to uphold his fiduciary duty to prudently handle administering the Trust in the best interest of St. Francis, and in good faith. *See* The Law of Trusts and Trustees § 541 ("The trustee must continually demonstrate good faith in administering the trust and in dealing with beneficiaries"). Coincidentally, Mr. Turner was then fired within only a few weeks of seeking guidance from the bank and the IRS. (R. 4.)

Therefore, because Mr. Turner's complaint was detailed, plausible, and discovery would have revealed the secular nature of his claims, St. Francis's motion to dismiss should not have been granted, and the decision of the Court of Appeals should be reversed and remanded.

C. Mr. Turner's Case Should be Reversed and Remanded because He Has Been Deprived the Opportunity to Have His Claim Heard on its Merits, Thus Leaving Him with No Other Avenue for Remedy, and Violating His Due Process Rights.

Mr. Turner has a valid claim for wrongful termination based on breach of contract and on retaliatory discharge. (R. 3-4.) When the District Court halted his claim from proceeding, Mr. Turner was denied his constitutional right to due process of law, guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution.

In a nation with reverence to equal justice under law, due process is an essential cornerstone that expresses a requirement of fundamental fairness in justice. *Lassiter v. Department of Social Services of Durham County NC*, 452 U.S. 18, 24 (1981). Due process has never been precisely defined because it is not a technical concept with a "fixed content," and it is

unrelated to time, place and circumstances. *Id.* However, in practical enforcement of the right to due process of law, legal proceedings must follow the rules and forms "which have been established for the protection of private rights." *Rees v. City of Watertown*, 86 U.S. 107, 122 (1873). This Court has stated there is a two-step standard analysis for determining whether the due process clause has been violated. *See Swarthout v. Cooke*, 526 U.S. 216, 219 (2011). First, the Court asked whether there exists a liberty or property interest of which a person has been deprived; and second, if there is such a liberty or property interest, this Court then asked whether the procedures followed by the State were constitutionally sufficient. *Id.* In application of this test, a deprived property interest is akin to a breach of contract, in that such deprivation or breach causes harm to a person's protected interest, which that person has more than an abstract need or desire to protect. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972).

Here, Mr. Turner's claims satisfy both elements of the *Swarthout* two-step test. 526 U.S. at 219. First, Mr. Turner was deprived of his property interest when St. Francis prematurely terminated his employment, thus breaching his contract. *Id.* (R. 4.) Mr. Turner's contract was a tangible record of security that provided him with a reasonable expectation of employment stability and legal enforceability—both of which amount to more than an abstract need. *Id.*

The second step of the test requires the procedures followed by the State to be constitutionally sufficient. *Swarthout*, 526 U.S. at 219. On January 20, 2015, the District Court held a hearing in response to the CCC and Dr. Jones's filing of a motion to dismiss Mr. Turner's complaint. (R. 4.) The record is silent as to what occurred in the hearing, and the District Court's Order referred to nothing more than "reasons stated on the record in open court" as the grounds for dismissing Mr. Turner's complaint. (R. 4.) The District Court said little about these purported "reasons," but triflingly offered that the claims were "fundamentally connected to issues of

church doctrine" and would require the court to review "the church's motives for the discharge, which is precluded by the ministerial exception." (R. 4-5.)

Barring Mr. Turner from the opportunity to pursue discovery into evidence in support of his claim runs contrary to the purpose of the due process clause—fundamental fairness. *Lassiter,* 452 U.S. at 24. The District Court's abrupt dismissal was in full accordance with hearing St. Francis's word and purported rights, and it provided St. Francis with their sought remedy. Contrarily, failing to hear Mr. Turner's valid claims on the merits effectively muzzled him in his assertion of rights before he even entered the courthouse. Mr. Turner was left with *no* avenue for remedy for the breach of employment contract and retaliatory discharge injustices done unto *him* by St. Francis. Meanwhile St. Francis has prevailed with unbridled protection and freedom, despite its unconstrained misconduct. This is St. Francis swinging its fist beyond where Mr. Turner's nose begins; this is *not* consistent with fundamental fairness in due process of law.

Therefore, this Court should find that Mr. Turner's due process right to have his case heard on the merits was violated because of Judge Hall's refusal to permit even meager discovery to determine if Mr. Turner's claim was separate from ecclesiastical activities.

CONCLUSION

For the aforementioned reasons, the judgment of the Court of Appeals of Tourovia should be reversed and remanded to the District Court.

Respectfully submitted,

TEAM 16

Counsels for Petitioner
David R. Turner

Dated: March 10, 2017

APPENDIX

CONSTITUTION OF THE UNITED STATES OF AMERICA

U.S. CONST. amend. I. Free Exercise Clause.
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…

U.S. CONST. amend. V. Due Process Clause.
No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time or war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. amend. XIV. Section 1.
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive an person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CODE

28 U.S.C. § 1257(a). State courts; certiorari.
(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

15 U.S.C. § 1. ("Sherman Act"). Trusts, etc., in restraint of trade illegal; penalty.
Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

26 U.S.C. § 7201. Attempt to evade or defeat tax.
Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

FEDERAL RULES OF CIVIL PROCEDURE

Fed. R. Civ. P. Rule 8. General Rules of Pleading

(a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) DEFENSES; ADMISSIONS AND DENIALS.

(1) *In General.* In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) *Denials—Responding to the Substance.* A denial must fairly respond to the substance of the allegation.

(3) *General and Specific Denials.* A party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) *Denying Part of an Allegation.* A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) *Lacking Knowledge or Information.* A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) *Effect of Failing to Deny.* An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) AFFIRMATIVE DEFENSES.

(1) *In General.* In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including: accord and satisfaction; arbitration and award; assumption of risk; contributory negligence; duress; estoppel; failure of consideration; fraud; illegality; injury by fellow servant; laches; license; payment; release; res judicata; statute of frauds; statute of limitations; and waiver.

(2) *Mistaken Designation.* If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) PLEADING TO BE CONSICE AND DIRECT; ALTERNATIVE STATEMENTS; INCONSISTENCY.

(1) *In General.* Each allegation must be simple, concise, and direct. No technical form is required.

(2) *Alternative Statements of a Claim or Defense.* A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) *Inconsistent Claims or Defenses.* A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) CONSTRUING PLEADINGS. Pleadings must be construed so as to do justice.

Fed. R. Civ. P. Rule 12(b). How to Present Defenses.

(b) HOW TO PRESENT DEFENSES. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;
(2) lack of personal jurisdiction;
(3) improper venue;
(4) insufficient process;
(5) insufficient service of process;
(6) failure to state a claim upon which relief can be granted; and
(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

Fed. R. Civ. P. Rule 26(b)(1). Discovery Scope and Limits.

(1) *Scope in General.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

STATE OF TOUROVIA LABOR LAW

Touro. Labor Law, § 740. Retaliatory discharge.

(1) Prohibited Employer Activity.

A. An employer may not discharge, suspend, demote, or take other retaliatory adverse employment action against an employee because that employee discloses or threatens to disclose information to a public entity or objects to or refuses to participate in action that violates law, rule, or regulation, which violation creates and presents a substantial and specific danger to public health or safety.

B. In order to maintain a Section 740 claim, the burden is on the plaintiff to show:

   a. That he or she reported or threatened to report the employer's activity, policy, or practice;

   b. That a particular law, rule, or regulation was violated; and

   c. That the violation was the kind that creates a substantial and specific danger to public health or safety.

(2) This law protects both public and private employees.

(3) Employee must first report any violation to his or her supervisor/employer and must allow a reasonable opportunity for the employer to correct.

(4) It shall be a defense for the employer that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this section, Section 740, or the Tourovia Labor Law.

(5) Remedies

A. Employee may file a civil action within one year of the incident.

B. Employee may request relief in form of injunction, reinstatement, full compensatory monetary damages including fringe benefits and back pay, attorney fees, court fees.

RESTATEMENT (SECOND) OF CONTRACTS

Rest. 2d § 1. "Contract."
A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.