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,

Respondent-Appellees,

On Writ of Certiorari to the State of Tourovia Court of Appeals

BRIEF FOR THE PETITIONER-APPELLANT DAVID R. TURNER

Team #2

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QUESTIONS PRESENTED

(1) Whether the ministerial exception of the First Amendment protects religious institutions from wrongful termination claims based on breach of contract and retaliatory discharge lawsuits brought by their 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 solely on the application of the ministerial exception to the lawsuit?

JURISDICTIONAL STATEMENT

The State of Tourovia Supreme Court had subject matter jurisdiction because the asserted claims of plaintiff David R. Turner (Turner) arose under the laws of the State of Tourovia, including specifically Labor Law § 470. The State of Tourovia Supreme Court granted the Motion to Dismiss, with prejudice, propounded by defendants St. Francis Church of Tourovia, et al. in an Order entered on January 20, 2015 by the Honorable Michelle L. Hall. Turner appealed this Order to the Appellate Division of the State of Tourovia Supreme Court, which affirmed the decision of the lower court on the merits with an Order entered on December 18, 2015 by John D. Carol, Clerk of the Court. Turner then appealed this Order to the State of Tourovia Court of Appeals, which entered an Opinion and Order finding for the defendants written by the Honorable C.J. Ridgers, Sorensen, Pell, Wagner, and J.J. Haskell, including a dissent by the Honorable Marcos and J.J. Berman, on August 16, 2016. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

STATEMENT OF THE CASE

This case concerns the many faithful ministers who are barred from a day in court for yielding to their moral, ethical, and religious obligations by seeking the enforcement of employment contracts or reporting criminal or tortious behavior occurring at their churches. It is also about the many church-trusting members of the public who will be put in danger if the current reading of the ministerial exception continues to disincentivize ministers from reporting immoral, illegal, or harmful behavior out of fear for losing his or her job.

David Turner was hired as pastor of St. Francis Church of Tourovia (hereinafter "the Church") on July 1, 2009. Turner v. St. Francis Church of Tourovia et al., No. 13-C-0451511 at 3 (To. Aug. 16, 2016). He and the church voluntarily entered into a yearly employment contract, which was renewed three times, in June 2010, June 2011, and June 2012. Id. The term of all three contracts was designated as July 1 through June 30. Id. On October 31, 2012, Pastor Turner's employment at the Church was suddenly terminated by Reverend Dr. Roberta Jones, superintendent of the Tourovia Conference of Christian Churches (hereinafter "CCC"), who informed Pastor Turner that the church was "transitioning" because it had "lost faith" in his spiritual leadership. Id.

Before his termination, Pastor Turner had uncovered potential fraud and tax evasion being committed by the Church via the administration of funds from the Edward Thomas Trust (hereinafter "the Trust"), of which the Church was a beneficiary. Id. at 4. Specifically, on May 16, 2012, approximately six months before

Pastor Turner's termination, the Church was informed that it was scheduled to receive a bequest from the Trust in the amount of $1,500,000.00. Id. The Trust expressly provided that one half of the bequest was to be used for the general operation and maintenance of the Church, while the other half was to be used for the upkeep of the Church's cemetery. Id. Pastor Turner, who before becoming pastor had twenty-five years of experience working as a financial manager at IBM Corporation and then as the Treasurer and Chief Financial Officer of another regional office of the CCC, was chosen to administer the bequest. Id.

Eventually, Pastor Turner discovered that the Church had sold its cemetery in 2009 and no longer maintained a related fund. Id. Based on his experience, he concluded that it would be a breach of trust—as well as fraud and tax evasion—for the Church to accept the portion of the bequest earmarked specifically for the upkeep of the cemetery. Id. Therefore, he advised the Church's Board of Trustees to notify Wells Fargo Bank (the Trust administrator) that it no longer owned the cemetery and to ask the bank for guidance. Id. Despite this advice, the Vice Chairman of the Board of Trustees explicitly instructed Pastor Turner to fraudulently request the full amount of the bequest from the bank and to deposit it into the Church's general operating account. Id. Pastor Turner made a conscientious decision and refused to follow these instructions and then, in August of 2012, took his concerns about accepting the portion of the bequest that was meant for the cemetery fund to Dr. Jones. Id.

A few months later, in early October of 2012, Pastor Turner, having determined that the CCC and the Church trustees had no intention of informing Wells Fargo of the situation, contacted the bank himself to ask for guidance. Id. He also contacted the IRS to advise them of the situation and to discuss any possible tax ramifications, but he was unable to reach the appropriate party. Id. Then, on October 16, 2012, Dr. Jones notified the appellant that his pastorship at the Church was terminated, effective October 31, 2012. Id.

On September 12, 2013, Pastor Turner filed a Complaint in the Tourovia Supreme Court against the Church, the CCC, and Dr. Jones. Id. The Complaint alleged wrongful termination based on breach of an employment contract and on retaliatory discharge. Id. In the Complaint, Pastor Turner requested relief in the form of monetary damages for the breach of contract and retaliatory discharge claims. Id. On March 31, 2014, the CCC and Dr. Jones filed a Motion to Dismiss Pastor Turner's September 12, 2013 Complaint, claiming that the First Amendment's ministerial exception barred the lawsuit for failure to state a cognizable claim. Id. The District Court exercised jurisdiction pursuant to 28 U.S.C. §1257(a). Id. A hearing was held on January 20, 2015, before the Honorable Michelle L. Hall. Id. Without inquiring into Pastor Turner's claim or allowing an opportunity for discovery, Judge Hall issued an Order granting the CCC and Dr. Jones's Motion to Dismiss. Id. She found that Pastor Turner's claims are fundamentally connected to issues of church doctrine and governance and would

require the court to review the church's motives for the discharge, which is precluded by the ministerial exception. Id.

The Court is finally presented with an opportunity to alleviate the burden that rests on the shoulders of the humble and righteous ministers of America's ecclesiastical communities. It is time for this Court to seize that opportunity and bring balance to the constitutional protections of churches and the community interests of fair contracting and open reporting. The ministerial exception simply cannot be invoked any longer as a veil for the dishonest and illegal conduct of churches. Churches owe more to their faithful parishioners and communities in which they reside.

SUMMARY OF THE ARGUMENT

Application of the ministerial exception to wrongful discharge claims based on breach of contract and retaliation pose no burden on either the free exercise clause or the establishment clause of the first amendment. Pursuant to Free Exercise clause analysis, the application of the ministerial exception to wrongful discharge claims based on breach of contract and retaliation does not necessitate government interference into a church's ecclesiastical operations and easily passes all three factors for determining statutory free exercise clause violation, especially considering both the overwhelming state interest in the enforcement of contracts and the extremely alarming status quo potential of criminal activity proceeding unchecked within religious institutions. Pursuant to Exercise Clause analysis, application of the ministerial exception to wrongful discharge claims based on

breach of contract and retaliation does not pose an automatic entanglement into ecclesiastical church affairs and therefore presents no automatic establishment clause violation. Petitioner-appellants advocate for the application of the "neutral principles of law" approach for resolution of wrongful discharge claims based on breach of contract and retaliation as an alternative to the automatic preclusion of these claims.

Next, discovery should have been allowed because Pastor Turner brought secular claims that can be reviewed without entangling the court in church doctrine. Specifically, Pastor Turner pled facts that survive the Rule 12(b)(6) standard and for which an inquiry can be made into neutral and generally applicable principles of contract law and the State of Tourovia Labor Law § 740. Monetary damages are then available because the Church's freedom to choose its ministers is not at stake, as it would be if it was reinstatement that Turner was after.

ARGUMENT

I. THE MINISTERIAL EXCEPTION SHOULD NOT PRECLUDE MINISTERIAL WRONGFUL DISCHARGE CLAIMS BASED ON BREACH OF CONTRACT AND RETALIATION BECAUSE THEY DO NOT VIOLATE THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT

The Free Exercise Clause of the United States Constitution provides that "Congress shall make no law . . . prohibiting the free exercise [of religion]." U.S. CONST. amend. I. The Free Exercise Clause bars enforcement of a statute whose application would directly affect religious beliefs. Minker v. Baltimore Annual Conference of United Methodist Church, 894 F.2d 1354, 1356 (D.C. Cir. 1990). See

also Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in North America, 344 U.S. 94, 116 (1952) (explaining that the Free Exercise Clause protects the power of religious organizations "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine"). In determining whether the proposed application of a statute would violate the Free Exercise Clause, courts must weigh three factors: "(1) the magnitude of the statute's impact upon the exercise of the religious belief, (2) the existence of a compelling state interest justifying the burden imposed upon the exercise of the religious belief, and (3) the extent to which recognition of an exemption from the statute would impede the objectives sought to be advanced by the state." E.E.O.C. v. Pac. Press Pub. Ass'n, 676 F.2d 1272, 1279 (9th Cir. 1982); see also Sherbert v. Verner, 374 U.S. 398, 403–07 (1963).

Some religious interests under the Free Exercise Clause are so strong that no compelling state interest justifies government intrusion into this "ecclesiastical sphere." Bollard v. California Province of the Soc'y of Jesus, 196 F.3d 940, 946 (9th Cir. 1999). A secular court may not, for example, adjudicate matters that necessarily require it to decide among competing interpretations of church doctrine, or other matters of an essentially ecclesiastical nature, even if they also touch upon secular rights. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 713 (1976) (reversing the Illinois Supreme Court's determinations regarding several matters of internal church governance, because "religious controversies are not the proper subject of civil court inquiry"); Presbyterian Church v. Mary

Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 449 (1969) (explaining that "First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice"); Kedroff, 344 U.S. at 115 (prohibiting judicial resolution of the question of which church patriarch was entitled to use St. Nicholas Cathedral because it is "strictly a matter of ecclesiastical government").

A. State Enforcement Of Ministerial Employment Contracts Does Not Violate The Free Exercise Clause

The enforcement of a religious institution's employment contracts presents no inevitable concerns of state interference into a church's ecclesiastical sphere and therefore wrongful discharge claims based on breach of contract should not be automatically precluded by the ministerial exception. In determining whether the proposed application of a statute would violate the Free Exercise Clause, courts must weigh three factors: "(1) the magnitude of the statute's impact upon the exercise of the religious belief, (2) the existence of a compelling state interest justifying the burden imposed upon the exercise of the religious belief, and (3) the extent to which recognition of an exemption from the statute would impede the objectives sought to be advanced by the state." Pac. Press Pub. Ass'n, 676 F.2d at 1279.

For the first factor, the state enforcing church employment contracts imposes zero burden upon the exercise of religious belief. The Court in Hosanna-Tabor exempted religious institutions from anti-discrimination laws because, in the Court's eyes, those laws functioned as a regulatory mandate interfering with

religious institutions' free exercise of religion. Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C., 565 U.S. 171, 188–89 (2012) ("[r]equiring a church to accept or retain an unwanted minister . . . interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs."). Contrarily, the enforcement of employment contracts is in no way a regulatory mandate and therefore does not necessarily impose any burden on a religious institution's free exercise of religion or on their governance. The state plays no role in religious institution's selection of ministers. It does not require religious institutions to enter into written employment contracts, and it does not mandate any specific contract terms. Instead, religious institutions voluntarily select their ministers, freely negotiate the terms of employment (including circumstances under which the minister could be fired), and willingly agree that both parties will be bound by those terms. See Minker, 894 F.2d at 1359, 1361 ("A church is always free to burden its activities voluntarily through contracts," and further that "[a] church, like any other employer, is bound to perform its promissory obligations in accord with contract law."). Allowing the state to enforce the employment contracts of religious institutions would merely recognize that the religious institution is bound by its contracts. Therefore, the enforcement of church employment contracts does not raise per se Free Exercise concerns and thus wrongful discharge claims based on breach of contract should not be automatically barred by the ministerial exception.

For the second and third factors, the state has a compelling interest in the enforcement of contracts which justifies any possible burden imposed upon religious institutions via the enforcement of their ministerial employment contracts. Enforcement of contracts is a sacred cornerstone of modern jurisprudence and is necessary for the growth and advancement of civilization. Contract law is "the legal underpinning of a dynamic and expanding free enterprise economy." E. Allan Farnsworth, The Past of Promise: An Historical Introduction to Contract, 69 COLUM. L. REV. 576, 599 (1969). "The right to contract freely with the expectation that the contract shall endure according to its terms is as fundamental to our society as the right to write and to speak without restraint." Blount v. Smith, 12 Ohio St. 2d 41, 47 (1967). "[I]t is a matter of great public concern that freedom of contract be not lightly interfered with." Steele v. Drummond, 275 U.S. 199, 205 (1927). "The general rule is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts." Twin City Pipe Line Co. v. Harding Glass Co., 283 U.S. 353, 356 (1931). If the ministerial exception was extended to bar all wrongful discharge claims brought by ministerial employees based upon breach of contract, no civil authority would be able to hold any religious organization to the terms of any contract it had negotiated with any ministerial employee. This broad application would summarily extinguish all legal job security for every ministerial employee in the United States. Ministers, such as Turner, deserve their day in court.

B. The Enforcement Of The State Of Tourovia Labor Law § 740 Does Not Violate The Free Exercise Clause

The ability of a church to be held liable under a state's employment retaliation statute presents no inevitable concerns of state interference into a church's ecclesiastical sphere and therefore wrongful discharge claims based on breach of contract should not be automatically precluded by the ministerial exception. In determining whether the proposed application of a statute would violate the Free Exercise Clause, courts must weigh three factors: "(1) the magnitude of the statute's impact upon the exercise of the religious belief, (2) the existence of a compelling state interest justifying the burden imposed upon the exercise of the religious belief, and (3) the extent to which recognition of an exemption from the statute would impede the objectives sought to be advanced by the state." Pac. Press Pub. Ass'n, 676 F.2d at 1279.

For the first factor, forbidding churches from retaliating against their own employees presents no automatic intrusion upon ecclesiastical matters. In no way would any religion's exercise be burdened by its churches being required to *not* fire an employee for failing to perform an "action that violates law, rule, or regulation, . . . [the] violation [of which] creates and presents a substantial and specific danger to public health or safety." State of Tourovia Labor Law § 740(1)(A).

For the second and third factor, the State of Tourovia, and the United States, has a strong compelling interest in preventing illegal activity cloaked under the guise of ecclesiastical affairs. Allowing the ministerial exception to automatically bar claims based upon State of Tourovia Labor Law § 740 (or other similar state

statutes) would brazenly allow religious institutions to openly commit fraud unchecked. Pursuant to the lower court's ruling, the St. Francis Church of Tourovia could hire and fire as many ministers as it wanted until it found an individual who would commit the fraud it sought to commit with no legal penalty. Furthermore, this vicious ability would not be restricted to fraud: automatically barring wrongful discharge claims based upon retaliation would allow churches to arbitrarily fire ministers who threaten to report child abuse without penalty, thereby, if desired, allowing churches the ability to carry on systemic child abuse indefinitely without penalty. Petitioners contend that the status quo precedent allowing religious organizations to effectively function as crime syndicates without legal penalty must be overturned. Therefore, wrongful discharge claims brought by ministers based on retaliation should not be automatically precluded by the ministerial exception.

II. THE MINISTERIAL EXCEPTION SHOULD NOT PRECLUDE MINISTERIAL WRONGFUL DISCHARGE CLAIMS BASED ON BREACH OF CONTRACT AND RETALIATION BECAUSE THEY DO NOT VIOLATE THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT

The Establishment Clause of the United States Constitution provides that "Congress shall make no law respecting an establishment of religion." U.S. CONST. amend. I. It affords protection against "sponsorship, financial support, and active involvement of the sovereign in religious activity." Lemon v. Kurtzman, 403 U.S. 602, 612 (1971). An "excessive entanglement" in violation of the Establishment Clause can arise when the state is required to interpret and evaluate church doctrine. See, e.g., Agostini v. Felton, 521 U.S. 203, 232 (1997) ("Whether a

government aid program results in such an entanglement has consistently been an aspect of our Establishment Clause analysis."). In Lemon, the Supreme Court articulated a three-part test to determine whether a statute violates the Establishment Clause: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion." Lemon, 403 U.S. at 612–13 (internal citations and quotations omitted).

A religious organization's decision to employ or to terminate employment of a minister is at the heart of its religious mission. Bollard, 196 F.3d at 949. The "determination of 'whose voice speaks for the church's' is *per se* a religious matter. . . . We cannot imagine an area of inquiry less suited to a temporal court for decision; evaluation of the 'gifts and graces' of a minister must be left to ecclesiastical institutions." Minker, 894 F.2d at 1356–57 (holding that the First Amendment prevented a claim under the federal Age Discrimination in Employment Act). A court may not be in the "impermissible position of having 'to evaluate . . . competing opinions on religious subjects.'" E.E.O.C. v. Catholic Univ. of Am., 83 F.3d 455, 465 (D.C. Cir. 1996) (applying the ministerial exception to Title VII in a case involving the denial of tenure to a professor of canon law).

A. State Enforcement Of Wrongful Discharge Claims Based On Breach Of Contract Does Not Violate The Establishment Clause Under The Lemon Test

Wrongful discharge claims based on breach of contract do not, by their essential nature, create excessive entanglement issues (even though they may do so). Therefore, these types of claims should not be automatically barred by the ministerial exception. In Lemon, the Supreme Court articulated a three-part test to determine whether a statute violates the Establishment Clause: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion." Lemon, 403 U.S. at 612–13 (internal citations and quotations omitted).

For the first factor, state enforcement of ministerial employment contracts has the secular purpose of preserving the legal validity of written contracts thereby justifying the respective employee's reliance upon said contracts. At its most basic, the enforcement of a ministerial employment contract does not interact with any part of a religious institution's ecclesiastical sphere; ministerial employment contracts are like any other contract.

For the second and third factors, a civil court ordering damages for breach of a ministerial employment contract does not advance nor inhibit religion, nor does it present an excessive entanglement problem. While the courts have been hesitant in dealing with any matters involving church governance, this hesitance is out of fear of entanglement, not because the enforcement of employment contracts is a per se

religious matter. While it is true that "[r]equiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. . . . According the state the power to determine which individuals will minister to the faithful . . . violates the Establishment Clause," the enforcement of ministerial employment contracts does not have to require churches to reinstate unwanted ministers. Hosanna-Tabor, 565 U.S. at 171 (2012). While a court requiring reinstatement as a remedy for wrongful discharge based on breach of contract would likely violate the Establishment Clause, as it would function as the courts interfering with a church's selection of who it desires to "minister to the faithful," a court requiring a church to pay damages as a remedy for a wrongful discharge based on breach of contract would not pose any ecclesiastical burden.

Hosanna-Tabor misguidedly addresses this issue of damages as burden: "An award of [front pay] would operate as a penalty on the Church for terminating an unwanted minister, and would be no less prohibited by the First Amendment than an order overturning the termination. Such relief would depend on a determination that Hosanna–Tabor was *wrong* to have relieved Perich of her position, and it is precisely such a ruling that is barred by the ministerial exception." Hosanna-Tabor 565 U.S. at 194 (2012) (emphasis added). The Court failed to acknowledge the possibility that a civil court could determine that a ministerial employment contract has been breached without making a determination on the ecclesiastical aspects of the discharge; the Court conflated a *legal wrong* with an *ecclesiastical wrong*. This

conflation somewhat makes sense under the "regulatory mandate" framework in which this decision was ruling, however any award of damages for breach of contract would not be operating as a penalty for the church making an independent ecclesiastical decision. Rather, the damages would simply be operating as a penalty for the church breaching an employment contract. The Court attempted to pre-empt this argument, however: "[t]he purpose of the [ministerial] exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason. The exception instead ensures that the authority to select and control who will minister to the faithful—a matter 'strictly ecclesiastical,'—is the church's alone." Hosanna-Tabor, 565 U.S. at 194–95 (2012) (quoting Kedroff, 344 U.S. at 119). Through this reasoning, then, the Court is not only defining all matters of church governance as per se ecclesiastical, but also including the employment contracts underlying and supporting the church government itself as per se ecclesiastical. This strict, over-encompassing logic fails to take into account both that "[t]he right to contract freely with the expectation that the contract shall endure according to its terms is as fundamental to our society as the right to write and to speak without restraint," and that employment contracts are *simply not ecclesiastical*. Blount, 12 Ohio St. 2d at 47. When a religious institution chooses to freely enter into an employment contract with a new minister, their ecclesiastical decision-making has already been done. A church first makes an independent religious determination that the new individual qualifies to "minister to the faithful," and then second, they offer that individual a written employment contract to give legal force to the

employment "promise" being made. It is misguided to read the Establishment Clause as sweepingly abrogating the overwhelming and pivotal state interest in providing remedy for breach of employment contracts to ministerial employees. Post Hosanna-Tabor, all religious ministers have no legal incentive to enter into any employment contracts; religious institutions have been shoved back into the dark ages of pre-contract-based civilization.

B. The Enforcement Of The State of Tourovia Labor Law § 740 Does Not Violate The Establishment Clause

In Lemon, the Supreme Court articulated a three-part test to determine whether a statute violates the Establishment Clause: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion." Lemon, 403 U.S. at 612–13 (internal citations and quotations omitted).

First, the statute has the clear secular legislative purpose of preventing employers from coercing employees to break the law under threat of discharge. Second, the primary effect of the statute is to decrease actions which both violate the law and pose substantial and specific danger to public health or safety. Third, the statute plainly fosters zero government entanglement with religion.

III. THE COURT SHOULD ADOPT THE NEUTRAL PRINCIPLES OF LAW APPROACH FOR RESOLUTION OF WRONGFUL DISCHARGE CLAIMS BASED ON BREACH OF CONTRACT AND STATE OF TOUROVIA LABOR LAW § 740

In order to resolve disputes involving churches, under what has been called the "neutral principles of law" approach, a court may apply neutral principles of law to determine disputed questions where religious doctrine is not implicated. Presbyterian Church in U.S., 393 U.S. at 449. Neutral principles "are wholly secular legal rules whose application to religious parties or disputes does not entail theological or doctrinal evaluations." Elmora Hebrew Ctr. Inc. v. Fishman, 125 N.J. 404, 414–15 (1991). Under the neutral principles approach, civil courts have no jurisdiction over, and no concern with, spiritual matters and the administration of a religious organization's affairs that do not affect the civil or property rights of individuals. Klagsbrun v. Va'ad Harabonim of Greater Monsey, 53 F. Supp. 2d 732, 738 (D.N.J. 1999), aff'd sub nom. Klagsbrun v. Vaad Harabonm of Greater Monsey, 263 F.3d 158 (3d Cir. 2001). However, temporal matters of a religious organization affecting civil, contract, or property rights may be resolved in civil courts. Id. Both the enforcement of employment contracts and the enforcement of the State of Tourovia Labor Law § 740 can be accomplished via the application of neutral principles devoid of any intrusions upon the ecclesiastical sphere. Both means of enforcement automatically begin with "purely secular disputes between third parties and a particular defendant, albeit a religiously affiliated organization. . . ." General Council on Finance and Administration of United Methodist Church v. California Superior Court, 439 U.S. 1369, 1373 (1978). The inherent neutral principles underlying the enforcement of employment contracts and the retaliation statute combined with the principle that the "extent to which a court may

permissibly inquire into disputes [arising within a religious organization] turns on the specific elements of the inquiry itself and the degree to which it might trench upon doctrinally sensitive matters . . .” requires the conclusion that all complaints alleging wrongful discharge based on breach of contract and/or retaliation should be heard under the neutral principles of law approach until entanglement issues arise, if any. Scotts African Union Methodist Protestant Church v. Conference of African Union First Colored Methodist Protestant Church, 98 F.3d 78, 95 (3d Cir. 1996).

IV. DISCOVERY SHOULD HAVE BEEN ALLOWED BECAUSE PASTOR TURNER BROUGHT SECULAR CLAIMS THAT CAN BE REVIEWED WITHOUT ENTANGLING THE COURTS IN CHURCH DOCTRINE.

The lower court erroneously affirmed the motion to dismiss without allowing for discovery and failed to acknowledge that Pastor Turner is seeking secular relief for secular wrongs. Claims should not be dismissed after the invocation of the First Amendment’s ministerial exception unless a court first permits a factual record to be developed and then determines, based upon that record, that the claims would substantially entangle the courts in religious doctrine. Minker, 894 F.2d at 1360. The Supreme Court has held that neutral principles of law permit a court to inquire into the non-doctrinal matters of a church, such as property disputes or the validity of breach of contract and tort claims, as long as the inquiry can avoid ministerial exception issues by being conducted in purely secular terms. Id.*;* see also Jones v. Wolf, 443 U.S. 595, 600-01 (1979). This continues to be the case after this Court’s ruling in Hosanna-Tabor, where it was explicitly stated that “we express no view on whether the [ministerial] exception bars other types of suits, including actions by

employees alleging breach of contract or tortious conduct by their religious employers." Hosanna-Tabor, 565 U.S. at 196 (2012).

A. Pastor Turner Pled Facts That Survive the Rule 12(b)(6) Standard Because Plausible Claims To Relief Were Stated That Do Not Violate The Free Exercise Or Establishment Clauses.

The same rationale for the neutral principles analysis supports the assertion that a factual record should have been developed through discovery. Pastor Turner's Complaint contains no reference to religious matters, nor would an inquiry intrude upon religious doctrines or force the court to "determine whether adjudication would require the court to choose between competing religious visions. . . ." Galetti v. Reeve, 331 P.3d 997, 1001 (N.M. Ct. App. 2014) (quoting McKelvey v. Pierce, 800 A.2d 840, 856-57 (N.J. 2002)); see also Presbytery of Beaver-Butler of United Presbyterian Church v. Middlesex Presbyterian Church, 489 A.2d 1317, 1320-21 (Pa. 1985) (holding contract disputes are questions of civil law and are not predicated on religious doctrines; therefore, the question of what was agreed to or whether there was an agreement can be examined.).

In other words, Pastor Turner's complaint meets the standard for surviving dismissal under Fed. R. Civ. P. 12(b)(6). A complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). Facial plausibility is "context-specific [and] requires the court to draw on its judicial experience and common sense." Ashcroft, 556 U.S. at 679 (citing Iqbal v. Hasty, 490 F.3d 143, 157–58 (2d Cir. 2007)). The requirement is met when factual

content allows the court to draw a reasonable inference about the defendant's liability and misconduct. Ashcroft, 556 U.S. at 678; Bell Atl. Corp., 550 U.S. at 556. However, there must be more than a possibility that a defendant acted unlawfully, as mere conclusory statements will not suffice to be accepted as true. Ashcroft, 556 U.S. at 678; Bell Atl. Corp., 550 U.S. at 555.

Ultimately, when there are well-pleaded facts, the court should assume the veracity of the allegations, then determine whether they give rise to an entitlement to relief. Id. It must not be forgotten that "the [ministerial] exception may serve as a barrier to the *success* of a plaintiff's claims, but it does not affect the court's authority to *consider* them." Petruska v. Gannon Univ., 462 F.3d 294, 303 (3d Cir. 2006) (emphasis added). Continuing to quickly dismiss claims due to the mere possibility of entanglement with religious doctrines, despite the ability to meet the standards described, will leave church ministers remediless in all conceivable scenarios, even those involving criminal or tortious activity.

1. State Enforcement Of And An Inquiry Into The Allegations Surrounding Pastor Turner's Employment Contract Does Not Violate The Free Exercise Or Establishment Clauses.

Because the claims brought meet the Rule 12(b)(6) standard, despite Defendants' veiled attempt to invoke the ministerial exception, discovery should have been allowed. Sufficient factual matter was pled, that when accepted as true, states claims to relief that are facially plausible and authorize "some form of *inquiry*… and some form of *remedy*…." Minker, 894 F.2d at 1360 (emphasis added). The facts pled give rise to claims rooted in neutral principles of contract, namely

that "a church is always free to burden its activities voluntarily through contracts, and such contracts are fully enforceable in civil court." Id. at 1359. In fact, the Supreme Court has acknowledged that courts may always resolve contracts governing "the manner in which churches . . . hire employees . . ." Id. (citing Jones, 443 U.S. at 606).

The court can draw reasonable factual and legal inferences with regard to the contractual allegations contained in the Complaint because it is specific and detailed. Pastor Turner had a simple employment contract which contractually obligated the Church to retain his employment for the specified time periods. Turner, No. 13-C-0451511 at 3.

The circumstances surrounding the termination are questionable because Pastor Turner previously threatened to report and refused to participate in certain tortious acts, including alleged fraud and tax evasion connected with the administration of funds from the Trust. Id. The allegations in the Complaint are still plausible and should move toward discovery, though, because in this specific context, reasonable inferences can be drawn about Defendants' misconduct without considering the Church's actual subjective motivations. Specifically, determining if Pastor Turner's employment contract was breached, thereby necessitating monetary damages for the remainder of his term, is an independent and secular inquiry that is wholly separate from the question of whether Defendants did in fact lose faith in his spiritual leadership.

Discovery for the issue of Pastor Turner's employment contract would be circumscribed narrowly, as to determine only if the dismissal for the reporting of and refusal to participate in tortious acts amounted to a black letter breach of a voluntary agreement of the parties. Pastor Turner merely seeks validation for his claims in light of the covenants contained in his employment agreement and neutral principles of contract law, rather than by asking in any way why he was terminated. Barring discovery would amount to an injustice that will only serve as a detriment to an honest and faithful minister's career, rather than protect the Church.

2. State Enforcement Of And An Inquiry Into Pastor Turner's Allegations Surrounding The State Of Tourovia Labor Law § 740 Does Not Violate The Free Exercise Or Establishment Clauses.

Pastor Turner's tort claims also meet the Rule 12(b)(6) standard because sufficient factual matter was pled that when accepted as true states a claim to relief that is facially plausible. Also, as was the case with his contract claims, Pastor Turner is entitled to "some form of *inquiry*… and some form of *remedy*…." Minker, 894 F.2d at 1360 (emphasis added). This is because the facts pled give rise to claims rooted in neutral principles of tort, namely that Defendants are liable for their misconduct in retaliating against Pastor Turner for his threats to report and refusal to participate in certain tortious acts, including fraud and tax evasion under Tourovia Labor Law § 740. This idea is guided by the principle that a church's freedom in matters involving the ministerial exception is not absolute, as there is a freedom of belief and a freedom of conduct, the latter of which is not unconditional for the protection of society. Heard v. Johnson, 810 A.2d 871, 882 (D.C. 2002). Thus,

even though the selection or retention of a minister is a purely ecclesiastical decision, it is not "totally free from legislative restrictions." Id. (quoting Sherbert v. Verner, 374 U.S. 398, 403 (1963). This is especially true when the activity "poses some substantial threat to public safety, peace, or order." Id. (citation omitted).

Under the Rule 12(b)(6) standard, the court can draw reasonable factual and legal inferences with regard to the tort allegations contained in the Complaint because Pastor Turner pled specific and detailed facts. Specifically, there are enough concrete facts for a court to reasonably infer that Pastor Turner may have been fired out of retaliation for reporting the fraudulent transfer it sought to commit. In the context thoroughly recited by Pastor Turner, reasonable factual and legal inferences are easily drawn about Defendants' liability and misconduct, as to make his claims plausible. There is certainly more than a possibility of unlawfulness. Therefore, the Court should assume the veracity of those allegations and allow for discovery that is limited to proving the facts alleged within the generally applicable elements of Tourovia Labor Law § 740.

3. The Allegation That The Church Lost Faith In Pastor Turner's Spiritual Leadership Is Conclusory And Should Not Be Accepted As True.

It is of no consequence that Pastor Turner included in his Complaint the assertion by Defendants that he was terminated because of lost faith in spiritual leadership. Unlike the other claims, this is a conclusory statement that is not supported by any facts. Therefore, it should not be accepted as true under the 12(b)(6) standard. After all, "in examining a complaint under Rule 12(b)(6), [the

court] will disregard conclusory statements and look only to whether *the remaining, factual allegations* plausibly suggest the defendant is liable." Khalik v. United Air Lines, 671 F.3d 1188, 1191 (10th Cir. 2012). This Court, for that reason, should flatly reject the conclusory statement regarding the Church's lost faith in Pastor Turner's spiritual leadership. Neither side is interested in that inquiry. It is also for this reason that the case at bar aligns with those like Minker and Petruska, which are discussed in detail below, that have been remanded for discovery because the claims brought do not clearly require an inquiry into religious matters. The court below could have heard Pastor Turner's breach of contract and retaliatory discharge claim by simply examining the facts pled in relation to the elements of neutral principles of contract and tort law.

4. The Remedies Sought By Pastor Turner Are Proper And Can Be Awarded For Defendants' Violations Of Secular Principles Of Contract And Tort Law Without Violating The Free Exercise Or Establishment Clauses.

The remedies sought in this case further prove the workability of the Rule 12(b)(6) process discussed above. Where, as here, the remedy sought is monetary damages for the remainder of an employment contract and tortious activity, the discovery process can be limited to an inquiry of only the facts giving rise to those claims and the elements that make out a claim for relief. Rather than engaging in an inquiry of the subjective motivations of the church in firing Pastor Turner, which neither side here is interested in doing, discovery would simply provide an opportunity to examine the allegations made in light of neutral principles of law. If it is found that those neutral principles have been violated, then the award of

damages would be proper because those laws are generally applicable and "like any other organization, churches may be held liable. . . ." Petruska, 462 F.3d at 310.

The decision to terminate Pastor Turner's contract has already been made and he is not seeking reinstatement. Thus, neither Defendants' "freedom to choose its minister," nor any other religious doctrine, is at risk of becoming entangled with the government. This is because the Court's award of monetary damages "would [not] require the church to employ [a minister, as to] interfere with the church's constitutionally protected choice…." Puri, 844 F.3d at 1158 (quoting Bollard, 196 F.3d at 950). Without such remedies, both ministers and churches will suffer, as the ministers will have no redress whatsoever for the actions of their employer and the churches ability to "recruit the best and brightest candidates for ministerial positions could be undermined because the church would be unable to offer… contractual assurances regarding job security." DeBruin v. St. Patrick Congregation, 816 N.W.2d 878, 907 (Wis. 2012) (quoting Justice Bradley J. Walsh, dissenting).

B. The Court Should Adopt The "Wait And See" Approach To Discovery In Cases Involving The Ministerial Exception Because Flatly Barring Claims Leaves Ministers Remediless And Has Negative Policy Implications.

The best practice with regard to discovery in cases where the applicability of the ministerial exception is not immediately clear is to allow the claims to move forward; dismissal on summary judgment grounds would be proper if the court subsequently determines that entanglement is unavoidable. This approach, recognized in some jurisdictions as the "wait and see" approach, is preferable to

flatly presuming entanglement without inquiry and, thereby, denying a minister his day in court and allowing church conduct to go unchecked.

The Supreme Court of Pennsylvania in Connor has recently conducted an "exhaustive survey" of when courts in the federal circuits and states ordinarily show deference to churches when answering ecclesiastical questions, rather than waiting and seeing if entanglement will occur later. Connor v. Archdiocese of Philadelphia, 601 Pa. 577, 606 (2009). As a result, the court became convinced that a "claim-by-claim, element-by-element approach" to the question was proper. Id. The following test was crafted by the court: (1) examine the elements of each of the plaintiff's claims; (2) identify any defenses forwarded by the defendant; and (3) determine whether it is reasonably likely that, at trial, the fact-finder would ultimately be able to consider whether the parties carried their respective burdens as to every element of each of the plaintiff's claims without "intruding into the sacred precincts" of a church. Id. at 608 (citing Presbytery, 507 Pa. at 261–62). In other words, the court is tasked with considering whether entanglement will become a problem if the case proceeds to discovery.

The "wait and see" approach is especially fitting for the first and second prongs of the Connor test, as some lower courts have found, when the case involves claims of breach of contract and the defense of the ministerial exception has been applied prematurely. See Minker, 894 F.2d at 1354; Petruska, 462 F.3d at 299.

In Minker, the court found that the minister had a right to "demonstrate that he can prove his case *without resorting to impermissible avenues of discovery or*

remedies" because the elements to make out the alleged claims required a mere determination of basic contract law and the remedy of money damages, unlike reinstatement, would not violate church autonomy. Id. (emphasis added). In particular, there could be a "fairly quick inquiry" into whether: (1) plaintiff received a promise from defendant, (2) defendant gave consideration for that promise, and (3) the promise could be, but was not, fulfilled. Id. Likewise, in Petruska, the Third Circuit adopted the "wait and see" approach when in a contract dispute it recognized the "entirely voluntary" nature of a church's contractual obligations and the fact that the particular elements of contract claims, "at the outset," did not entangle the courts. Petruska, 462 F.3d at 311.

The "wait and see" approach should be adopted by this Court. As in Connor, Minker, and Petruska, the claims made by Pastor Turner require mere determinations fundamental to basic principles of contract and tort law and the defense of the ministerial exception was applied prematurely. Minker and Petruska show the propriety of such a finding for contract disputes and this Court in Hosanna-Tabor left unanswered the question of the ministerial exception's applicability to tort disputes. Turner can properly demonstrate the validity of his contract claims by showing, like in Minker, that his employment contract was breached when mutually agreed to terms, i.e. promises, were violated. Those promises were supported by consideration and could have been, but were not, fulfilled. Second, Turner can do this for his tort claims by showing that, under State of Tourovia Labor Law § 740, (1) he reported or threatened to report the employer's

activity, (2) the law was violated, (3) the violation created a substantial and specific danger to public health or safety, and (4) the Church was notified of the violation and had a reasonable opportunity to correct. State of Tourovia Labor Law § 740(1)(A). As discussed above under the Rule 12(b)(6) standard, sufficient facts with regard to the plausibility of these claims were pled.

The development of a factual record through discovery would not excessively entangle the court in religious doctrine as to violate the third prong of the Connor test. Entanglement has both substantive and procedural dimensions. Bollard, 196 F.3d at 948. Substantive entanglement, which is what is at issue here, is implicated if a church's "*freedom to choose its ministers is at stake*." Id. at 948-49 (emphasis added). Excessive entanglement involves 'pervasive monitoring' or continuing governmental inspection of a religious organization's 'day-to-day operations.'" Elvig v. Calvin Presbyterian Church, 375 F.3d 951, 967 (9th Cir. 2004) (citing Agostini v. Felton, 521 U.S. 203, 234 (1997) and Jimmy Swaggart Ministries v. Bd. of Equalization of Cal., 493 U.S. 378, 395 (1990)). None of these potential dangers are present here and the threat of them arising is "severely curtailed where the inquiry is secular and limited to the discovery process." Id.

Besides an isolated reference to lost faith, the record is totally void of entanglement concerns. Therefore, the church's "freedom to choose its ministers" is not at stake on the face of the complaint, nor would it be during discovery. The remedy sought is monetary damages, rather than reinstatement to Turner's previously held position. If at any time the court determines that entanglement is

unavoidable, it can grant a motion for summary judgment. After all, although "the First Amendment's prohibition against . . . excessive entanglements with religious beliefs will make… task[s] at trial more difficult . . . these difficulties do not eliminate [a plaintiff's] right to enforce his employment contract" or recover on his tort claim. Minker, 894 F.2d at 1361.

CONCLUSION

For the foregoing reasons, Petitioner asks that the Court find that ministerial wrongful discharge claims based on breach of contract and retaliation are not automatically precluded by the ministerial exception to the First Amendment.

Respectfully submitted,
Pastor David R. Turner

By: /s/ Team #2
His Attorneys

Team #2