No. 415-2017

In the

Supreme Court of the United States

DAVID R. TURNER,
PLAINTIFF-PETITIONER

-against-

ST. FRANCIS CHURCH OF TOUROVIA, THE TOUROVIA CONFERENCE OF CHRISTIAN CHURCHES, AND REVEREND DR. ROBERTA JONES,
DEFENDANTS-RESPONDENTS

ON WRIT OF CERTIORARI
TO THE STATE OF TOUROVIA
COURT OF APPEALS

BRIEF FOR PETITIONER

TEAM 20

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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 lawsuit?

STATEMENT OF THE CASE

Statement of the Facts

St. Francis Church of Tourovia (hereinafter "St. Francis" or "the Church") hired David R. Turner (hereinafter "Mr. Turner" or "Petitioner") as a pastor on July 1, 2009. Record (hereinafter "R.") at 4. Mr. Turner's pastorship was renewed three times, in June 2010, June 2011, and June 2012. *Id.* On May 16, 2012, Mr. Turner was informed that the Church was scheduled to receive a bequest from the Edward Thomas Trust (hereinafter "the Thomas Trust" or simply "the Trust") in the amount of $1,500,000.00. *Id.* at 5. Before Mr. Turner worked as a pastor for St. Francis, he worked as a financial manager for IBM Corporation for nearly twenty-five years and later as the Treasurer and Chief Financial Officer of another regional office of the Tourovia Conference of Christian Churches (hereinafter "CCC")[1]. *Id.* at 4, 5. Mr. Turner was chosen by the congregation of St. Francis to administer the Trust bequest on the basis of his extensive experience in this field. *Id.* at 5.

Per the provisions in the Trust, one half of the bequest was intended for the Church's general operation and maintenance, while the other half was intended for the upkeep of the Church's cemetery. *Id.* However, Mr. Turner quickly discovered that the Church sold its cemetery in 2009 and no longer maintained the cemetery fund. *Id.* Because it would not be possible to use half of the bequest for a cemetery that St. Francis no longer owned or maintained, 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 cemetery upkeep portion of the bequest. *Id.* Therefore, Mr. Turner advised the St. Francis' Board of Trustees to notify Wells Fargo Bank[2] that St. Francis no longer owned

[1] The CCC provides employee oversight to St. Francis. R. at 3.
[2] Wells Fargo Bank was serving as trustee of the Trust. R. at 4.

the cemetery and further advised the Board to ask the bank for guidance. *Id.*

However, despite Mr. Turner's learned advice, the Vice Chairman of the Board of Trustees told Mr. Turner to request the full amount of the bequest from the bank and to deposit it into the Church's general operating account. *Id.* Mr. Turner refused to perfidiously simply accept the full amount of the bequest and, in August of 2012, took his concerns about accepting the cemetery portion of the bequest when St. Francis no longer maintained either a cemetery or a cemetery fund to Reverend Dr. Robert Jones, superintendent of the CCC. *Id.* at 5. However, it became clear to Mr. Turner in early October of 2012 that the CCC and the Church trustees had no intention of informing Wells Fargo that St. Francis no longer had a cemetery and could not use half of the bequest as per the Trust's provisions. *Id.*

Mr. Turner took the initiative to contact the bank himself to ask for its guidance and left a message for the representative who he believed was handling the Trust. *Id.* Additionally, Mr. Turner contacted the IRS to advise them of the situation so that they could discuss any possible tax ramifications, however, he was unable to reach the appropriate party. *Id.* Mr. Turner's efforts to remedy the situation ended on October 16, 2012, when Dr. Jones informed Mr. Turner that his pastorship at St. Francis was terminated, effective October 31, 2012. *Id.* The only explanation that Dr. Jones provided to Mr. Turner for the termination was that the church was "transitioning" and that St. Francis had "lost faith" in Mr. Turner's spiritual leadership. *Id.* at 4.

Procedural History

On September 12, 2013, Mr. Turner brought a cause of action against St. Francis, the CCC and Dr. Jones alleging wrongful termination based on breach of an employment contract and on retaliatory discharge pursuant to Tourovia's law[3] because of Mr. Turner's recommendation to

[3] For Tourovia's law related to retaliatory discharge, *see infra* Appendix.

report and refusal to participate in certain tortious acts, including alleged fraud and tax evasion, connected with the administration of funds from the Trust. *Id.* at 4, 5. Specifically, Mr. Turner requested relief in the form of monetary damages for the breach of contract and retaliatory discharge claims. *Id.* at 5.

On March 31, 2014, the CCC and Dr. Jones field a Motion to Dismiss, claiming that the First Amendment's ministerial exception barred the lawsuit for failure to state a cognizable claim. *Id.*; U.S. CONST. amend. I. The Supreme Court of Tourovia for Eastview County exercised jurisdiction pursuant to 28 U.S.C. §1257(a). *Id.* On January 20, 2015, a hearing was held where the Honorable Michelle L. Hall presided. *Id.* Judge Hall issued an Order the following day granting the CCC and Dr. Jones' Motion to Dismiss stating, *inter alia*, that Mr. Turner's claims are fundamentally connected to issues of church doctrine and governance that would require court review of the Church's motives for the discharge, which is precluded by the ministerial exception. *Id.* at 5, 6. The Supreme Court's order was affirmed by the Appellate Division of the Tourovia Supreme Court on December 18, 2015. *Id.* at 3.

Mr. Turner appealed the Appellate Division's decision and on August 16, 2016, the State of Tourovia Court of Appeals affirmed, by a 5-2 decision, the lower court's Order granting the CCC and Dr. Jones' Motion to Dismiss. *Id.* at 4. Justice Marcos and Berman filed a dissenting opinion and proposed that the ministerial exception does not act as a judicial bar to all employment-related lawsuits, specifically those that have nothing to do with ecclesiastical concerns. *Id.* at 11. Mr. Turner appealed to the Supreme Court of the United States of America. *Id.* at 15.

STANDARD OF REVIEW

This Court reviews *de novo* the dismissal of a complaint for failure to state a claim and must accepts all allegations as true and construing those facts in the light most favorable to the

plaintiff. *Harry v. Marchant*, 291 F.3d 767 (11th Cir. App. 2002).

OPINIONS BELOW

The opinion of the State of Tourovia Court of Appeals indicated in the record at R. 4–14. The opinion of the Appellate Division, Second Department of the State of Tourovia Supreme Court is indicated in the record at R. 3. The opinion of the Supreme Court in the State of Tourovia is indicated in the record at R. 2.

SUMMARY OF THE ARGUMENT

The protections of the First Amendment, specifically the ministerial exception that allows religious institutions to govern themselves on all matters related to ecclesiastical concerns, does not preclude courts from adjudicating secular matters that are completely unrelated to religion. Churches, just as any other organization that is free to enter into land agreements, contracts and other similar arrangements, are entitled to be held accountable for what the organization voluntarily agrees to. The ministerial exception protects religious organizations in their choices of who should lead and the types of qualities that best exemplify the beliefs that the church wishes to nurture, which is different than imposing consequences on a minister for something that is not inherent to his or her person.

However, society has an interest in determining that certain conduct, even if religious, is unacceptable and should not be permitted. Conduct that a state or federal law determines to be unlawful by a neutral law can and should be applicable to all individuals and organizations, including churches. Moreover, the government has an interest in ensuring that any ministers that are associated with churches who do not want to participate in any prohibited conduct and who go a step further to protect society from such conduct, should receive the full protection of the law.

Also, the ministerial exception applies to ministers acting in his or her role as a minister.

The ministerial exception is not triggered for a minister's action when acting in a particular role that falls outside of the ecclesiastical realm.

The lower court incorrectly granted the Motion to Dismiss because the appellant plead a sufficient claim to relief that is required under this Court's jurisprudence. Instead, the court treated a mere legal conclusion as an unambiguous factual allegation that created an affirmative defense. A 12(b)(6) motion tests a complaint for a clear statement of a claim for which relief can be granted. Appellant complained of both breach of contract and retaliatory discharge. Only these charges survive a traditional Motion to Dismiss analysis.

Also, the lower court incorrectly applied the affirmative defense of ministerial exception. An affirmative defense when raised is typically raised through a 12(c) Motion for Judgment on the Pleadings and here was analyzed on a Motion to Dismiss. More importantly, when an affirmative defense is argued during the pleadings stage only unambiguous facts as alleged by the plaintiff can be used to support and establish the existence of the affirmative defense. Here, the lower court took an ambiguous fact alleged in the complaint and presented it as a legal conclusion to establish the necessary elements of the affirmative defense. Instead, of allowing for additional discovery the lower court erred in its analysis of the Motion to Dismiss.

Finally, the lower court was incorrect to assume that additional discovery would burden the Appellee's First Amendment Rights. Several courts have allowed discovery to probe the ministerial exception and ruled on summary judgment or have allowed the case to go to trial. Fairness and justice demand the additional inquiry to ensure that either the ministerial exception exists or to allow discovery on the claims and factual disputes before the court. Ultimately, with limited discovery the court can protect any overly burdensome discovery and ensure that the court doesn't unnecessarily meddle with the ecclesiastical realm in violation of First Amendment rights.

ARGUMENT

I. THE MINISTERIAL EXCEPTION OF THE FIRST AMENDMENT DOES NOT PROTECT RELIGIOUS INSTITUTIONS FROM WRONGFUL TERMINATION CLAIMS BASED ON BREACH OF CONTRACT AND RETALIATORY DISCHARGE LAWSUITS BROUGHT BY THEIR EMPLOYEES.

The protections of the First Amendment, specifically the ministerial exception that allows religious institutions to govern themselves on all matters related to ecclesiastical concerns, does not preclude courts from adjudicating secular matters that are completely unrelated to religion. *See* U.S. CONST. amend. I[4]; *see Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597, 615 (Ky. 2014); *see Galetti v. Reeve, Gillen, Conyne, and Texico Conference Association of Seventh-Day Adventists*, 331 P.3d 997, 999 (N.M. App. 2014); *see Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354, 1361 (D.C. Cir. 1990). Moreover, this exception does not act as a jurisdictional bar to all employment-related lawsuits brought before the secular courts. *See Watson v. Jones*, 80 U.S. 679, 714 (1871). This Court's decision in *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, specifically stated "that the ministerial exception" only bars an "*employment discrimination suit* brought on behalf of a minister, challenging [the] church's decision to fire [the minister]." 565 U.S. 171, 196 (2012) (hereinafter "*Hosanna-Tabor*") (emphasis added). This Court specifically affirmed that it's decision "express[ed] *no view* on whether the exception bars other types of suits, *including actions by employees alleging breach of contract or tortious conduct by their religious employers*." *Id.* (emphasis added).

Here, the Plaintiff's claims based on breach of contract and retaliatory discharge against St. Francis should not be barred by the ministerial exception because Mr. Turner's basis for his

[4] For the full text of the First Amendment, *see infra* Appendix.

claims deal only with a decision to fire him in retaliation for his refusal to comply with fraudulent and tortious money handling practices. R. at 4, 5; *see Galetti*, 331 P.3d at 999; *see Minker*, 894 F.2d at 1361. Refusing to participate in tortious conduct in no way implicates First Amendment concerns that trigger the ministerial exception, insulating fraudulent money handling is outside any legitimate interest in protecting a church's ecclesiastical independence and Mr. Turner's handling of money is outside the scope of the protections provided to a minister functioning within a church. *See Galetti*, 331 P.3d at 999.

A. The Ministerial Exception Does Not Automatically Bar a Minister's Wrongful Termination Lawsuit When it is Based Upon Claims Unrelated to Religious Doctrine or Practice, Like Breach of Contract or Retaliatory Discharge for Refusing to Engage in and then Reporting Tortious Conduct.

The history of the ministerial exception does not provide an absolute bar for all claims made against a church. *See Jones*, 80 U.S. at 714. Rather, the purpose of the ministerial exception is "to allow religious institutions, free from government interference, to exercise freely their right to select who will present their faith tenants." *Kirby*, 426 S.W.3d at 615. Therefore, churches "may be held liable for their torts and upon their valid contracts," *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985), and the courts are able to resolve those disputes and, likewise, other claims that do not arouse concerns about governmental intrusion into ecclesiastical matters that, therefore, do not trigger the ministerial exception because of the need for First Amendment protection. *Jones*, 80 U.S. at 714; *Kirby*, 426 S.W.3d at 615; *Galetti*, 331 P.3d at 999. Mr. Turner's claims based on breach of contract and retaliatory discharge against St. Francis should not be barred by the ministerial exception because Mr. Turner's basis for his claims rests entirely within the doctrines of contract and retaliatory discharge, which are not religious in nature and do not trigger the ministerial exception and First Amendment protection. R. 5; *see Jones*, 80 U.S. at 714; *see Kirby*, 426 S.W.3d at 615; *see Galetti*, 331 P.3d at 999.

The purpose of the ministerial exception is "to allow religious institutions, free from government interference, to exercise freely their right to select who will present their faith tenants." *Kirby*, 426 S.W.3d at 615. The most recent case in which this Court has interpreted the ministerial exception was in *Hosanna-Tabor*, which provided guidance as to the foundational issues involved in initiating the trigger on the exception. 565 U.S. at 188–89. At a minimum, in order for the ministerial exception to be germane, the defendant must be a church and the plaintiff must be a minister. *Id.* at 180. Moreover, the definition of what qualifies as a "minister" will be determined by the religious organization, not the courts. *Id.* at 190. However, the cornerstone of this Court's decision rested on the fact that resolving the employment discrimination suit would necessarily involve interfering with the church's decision on who is qualified to lead the church and that "[t]he exception . . . ensures that the authority to select and control who will minister to the faithful—*a matter 'strictly ecclesiastical*,' . . . —is the church's alone." *Id.* at 194–95 (quoting *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 119 (1952) (hereinafter "*St. Nicholas Cathedral*") (emphasis added). Discrimination, the claim raised by the plaintiff in *Hosanna-Tabor*, is the hallmark domain within the church that the ministerial exception has always been intended to secure. *See* 565 U.S. 171 at 194–95. Employment decisions that may be considered discriminatory in the secular world are perfectly permissible within the ecclesiastical realm. *See id.*

Courts can resolve disputes based in secular causes of action that do not implicate ecclesiastical concerns. *Jones*, 80 U.S. at 714; *Kirby*, 426 S.W.3d at 615; *Galetti*, 331 P.3d at 999. This Court in *Jones* resolved a land dispute involving a church where both parties to the dispute claimed that the land at issue belonged to them and not the opposing party. 80 U.S. at 680, 681. The *Jones* Court noted that "[r]eligious organizations come before [it] in the same attitude as other

voluntary associations for benevolent or charitable purposes, and their rights of property, *or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints*." *Id.* at 714 (emphasis added). The court in *Kirby* likewise resolved a dispute brought by a terminated tenured professor at seminary who claimed, *inter alia*, breach of contract. 426 S.W.3d at 601. The *Kirby* court held that a church, as an organization, is "'always free to burden its activities voluntarily through contracts, and such contracts are fully enforceable in civil court.'" *Id.* at 615 (quoting *Minker v. Balt. Annual Conference of United Methodist Church,* 894 F.2d 1354, 1360 (D.C. Cir. 1990)). Lastly, the *Galetti* court involved a former teacher filing suit against a religious school alleging, *inter alia*, breach of contract and retaliatory discharge. 331 P.3d at 999. The *Galetti* court noted that "[t]he First Amendment does not immunize every legal claim against a religious institution or its members, but only those claims that are rooted in religious belief" and that "[a]s pled, Plaintiff's claims are not rooted in religious belief and thus do not implicate the First Amendment as a matter of law." *Id.*[5]

Here, this Court should hold that Mr. Turner's claims based on breach of contract and

[5] "*See also Sanders v. Casa View Baptist Church*, 134 F.3d 331, 337 (5th Cir.) ('[D]uties underlying the plaintiff's claims for . . . breach of fiduciary duties are *not derived from religious doctrine.*'), *cert. denied sub nom.*, *Baucum v. Sanders*, 525 U.S. 868 . . . (1998); [*see also*] *Doe v. Evans*, 814 So.2d 370, 375–76 (Fla. 2002) (recognizing viability of breach of fiduciary duty claim by parishioner against church and clergy engaged in marital counseling as *not violative of Free Exercise of Establishment Clauses where plaintiff did not assert any violation of church tenets as basis for cause of action*); [*see also*] *Moses v. Diocese of Colorado*, 863 P.2d 310, 320—21 (Colo. 1993) (holding that First Amendment did not bar claims of fiduciary duty or negligent hiring and supervision against clergy and their superiors; *such claims 'do not involve disputes within the church and are not based solely on ecclesiastical or disciplinary matters*'), *cert. denied*, 551 U.S. 1137 . . . (1994); [*see also*] *Erickson v. Christenson*, . . . 781 P.2d 383, 386 ([Or. App.]1989) (rejecting argument that claim of breach of fiduciary duty is actually clerical malpractice claim requiring imposition of standard of care involving examination of religious beliefs in violation of First Amendment; *breach of fiduciary duty claim merely requires proof of 'existence and breach of a confidential relationship*')." *McKelvey v. Pierce*, 800 A.2d 840, 856 (N.J. 2002) (emphasis added).

retaliatory discharge against St. Francis should not be barred by the ministerial exception because Mr. Turner's basis for his claims deal only with a decision to fire him in retaliation for his refusal to comply with fraudulent and tortious money handling practices. R. at 5; *see Galetti*, 331 P.3d at 999; *see Minker*, 894 F.2d at 1361. Moreover, Mr. Turner's claims have nothing to do with any discriminatory intent on the part of St. Francis, but, rather, involves merely a claim that because Mr. Turner refused to be complicit in fraudulent activity, the Church retaliated against him by firing him. R. at 5; *see Hosanna-Tabor*, 565 U.S. 171 at 194–95.

The purpose of the ministerial exception is "to allow religious institutions, free from government interference, to exercise freely their right to select who will present their faith tenants." *Kirby*, 426 S.W.3d at 615. The most recent case in which this Court has interpreted the ministerial exception was in *Hosanna-Tabor*, which provided guidance as to the foundational issues involved in initiating the trigger on the exception. 565 U.S. at 188–89. Just as this Court found in *Hosanna-Tabor* that the plaintiff was a minister and the defendant was a church, here, Mr. Turner is also a minister and the Church is a church. R. at 5; *see id.* at 180. Because Mr. Turner is a minister and St. Francis is a church, this Court should find that the ministerial exception may be applicable here as it was in *Hosanna-Tabor*. R. at 5; 565 U.S. at 180. However, because the cornerstone of this Court's decision in *Hosanna-Tabor* to apply the exception as a bar to a courtroom resolution rested on the fact that a discrimination claim would necessarily involve interfering with the church's decision on who is qualified to lead the church, "*a matter 'strictly ecclesiastical*,' . . . [and] the church's alone," this Court should find that its holding does not preside over Mr. Turner's claims. R. at 5; 565 U.S.at 194–95 (quoting *St. Nicholas Cathedral*, 344 U.S. at 119) (emphasis added). Employment discrimination, the claim raised by the plaintiff in *Hosanna-Tabor*, is the hallmark domain of the church's independence that the ministerial exception has always been intended to

secure, and is an entirely different legal claim than breach of contract or retaliatory discharge. R. at 5; 565 U.S. at 194–95. Breach of contract and retaliatory discharge do not involve an invasion by the government into what it deems is and is not acceptable bases on which to hire and fire ecclesiastical leaders. R. at 5; 565 U.S. at 194–95. Therefore, this Court should find that its decision in *Hosanna-Tabor* does not govern the facts of Mr. Turner's claim and further that the ministerial exception does not bar Mr. Turner's claims. R. at 5565 U.S. at 194–95.

Courts can resolve disputes based in secular causes of action that do not implicate ecclesiastical concerns. *Jones*, 80 U.S. at 714; *Kirby*, 426 S.W.3d at 615; *Galetti*, 331 P.3d at 999. Just as this Court in *Jones* resolved a land dispute involving a church and this Court noted that "[r]eligious organizations come before [it] in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, *or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints*," Mr. Turner's claims based in contract and retaliatory discharge should be resolved in the courts as well. R. at 3, 4; *see* 80 U.S. at 680, 681, 714 (emphasis added). Also, just as the court in *Kirby* likewise resolved a dispute brought by a terminated tenured professor at seminary who claimed, *inter alia*, breach of contract and held that a church, as an organization, is "'always free to burden its activities voluntarily through contracts, and [that] such contracts are fully enforceable in civil court,'" this Court should likewise find that Mr. Turner's claims are also fully enforceable in civil court. R. at 5; *see* 426 S.W.3d at 601, 615 (quoting *Minker,* 894 F.2d at 1360). Lastly, just as the *Galetti* court noted that "[t]he First Amendment does not immunize every legal claim against a religious institution or its members, but only those claims that are rooted in religious belief" and applied this reasoning, the *Galetti* court resolved a claim brought by a former teacher filing suit against a

religious school alleging, *inter alia*, breach of contract and retaliatory discharge and this Court should hold that it can likewise resolve Mr. Turner's claims. R. at 5; *see* 331 P.3d at 999.

Therefore, this Court should reverse the finding of the State of Tourovia Court of Appeals and hold that Mr. Turner's claims based in breach of contract and retaliatory discharge are not barred by the ministerial exception because Mr. Turner's basis for his claims deal only with a decision to fire him in retaliation for his refusal to comply with fraudulent and tortious money handling practices and Mr. Turner's claims have nothing to do with any discriminatory intent on the part of St. Francis. R. at 5; *see Hosanna-Tabor*, 565 U.S. 171 at 194–95; *see Jones*, 80 U.S. at 714; *see Kirby*, 426 S.W.3d at 615; *see Galetti*, 331 P.3d at 999.

B. The Compelling Nature of the Government's Interest in Not Interfering Between the Church and its Ministers Does Not Extend to Insulating the Reporting of Tortious Conduct.

At some point, regardless of whether it is a religious belief or not, society has a right to say that certain conduct is unacceptable. *Hosanna-Tabor Evangelical Lutheran Church and School, Petitioner, v. Equal Employment Opportunity Commission, et al.*, 2011 WL 4593953 (U.S.), 5 (U.S. Oral. Arg., 2011) (hereinafter "*Hosanna-Tabor* Oral. Arg."). When a minister reports unacceptable conduct, such as conduct that is declared illegal by a neutral law, he or she should not be prohibited from seeking the protection of the law for refusing to be complicit in breaking the law. *See Employment Div., Dept. of Human Res. of Oregon v. Smith*, 494 U.S. 872 (1900); *see Listecki v. Official Committee of Unsecured Creditors*, 780 F.3d 731, 742–43 (7th Cir. 2015), *cert. denied*, 136 S.Ct. 581 (2015). Mr. Turner's claims assert a wrongful termination based on fraud perpetrated by the Church against the Wells Fargo Bank and societal interests in preventing fraud and illegal conduct should allow his claims to proceed. R. at 4, 5; *see Smith*, 494 U.S. at 890; *see Listecki*, 780 F.3d at 742–43; *see Hosanna-Tabor* Oral. Arg. at *5.

Society has a right to say at some point what conduct is unacceptable, even if religious, and if an individual, even a minister, reports this unacceptable behavior, the decision to report is to be protected by law. *Smith*, 494 U.S. at 890; *Listecki*, 780 F.3d at 742–43; *Hosanna-Tabor* Oral. Arg. at *5. Justice Sotomayor was insistent during the oral arguments for *Hosanna-Tabor* that when an individual reports conduct that is unacceptable to society's interests, that the individual should be protected. *Hosanna-Tabor* Oral. Arg. at *5. Moreover, this Court in *Smith* held that two individuals who ingested a controlled substance pursuant to their religious beliefs were still subject to the neutral law of the land and that "[v]alues that are protected against government interference through enshrinement in the Bill of Rights are *not thereby banished from the political process*." 494 US. at 874, 890 (emphasis added). Lastly, the *Listecki* court held that "[u]nder the Free Exercise Clause, 'neutral, generally applicable laws may be applied to religious practices . . . '" when the court resolved that a neutral bankruptcy code intended to protect creditors was applicable against a church that had allegedly fraudulently transferred fifty-five million dollars to an account with the intent to avoid paying its creditors. 780 F.3d at 734, 742–43 (citing *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2761 (2014) (quoting *City of Boerne v. Flores*, 521 U.S. 507, 514 (1997)).

Here, this Court should hold that Mr. Turner's claims based in breach of contract and retaliatory discharged should not be barred by the ministerial exception because it is in the government's interest to protect Wells Fargo Bank from being defrauded out of $750,000.00 intended to care for a cemetery that St. Francis no longer maintained. R. at 4, 5; *see Smith*, 494 U.S. at 890; *see Listecki*, 780 F.3d at 742–43; *see Hosanna-Tabor* Oral. Arg. at *5.

Society has a right to say at some point what conduct is unacceptable, even if religious, and if an individual, even a minister, reports this unacceptable behavior, the decision to report is

to be protected by law. *Smith*, 494 U.S. at 890; *Listecki*, 780 F.3d at 742–43; *Hosanna-Tabor* Oral. Arg. at *5. Protecting Wells Fargo Bank from being defrauded out of $750,000.00 intended for cemetery upkeep that St. Francis had sold in 2009 and therefore could not possibly use for the intended purpose of that portion of the Trust is exactly the kind of reporting behavior that Justice Sotomayor insisted should be protected during the oral arguments for *Hosanna-Tabor*. R. at 5; *see Hosanna-Tabor* Oral. Arg. at *5. Therefore, this Court should hold that Mr. Turner's decision not to participate in and report the fraudulent activity that St. Francis wanted to perpetrate against Wells Fargo Bank should not result in Mr. Turner having no legal recourse. R. at 5; *see Hosanna-Tabor* Oral. Arg. at *5. Moreover, just as this Court in *Smith* held two individuals who broke state law pursuant to their religious beliefs accountable to the neutral law of the land, this Court should also find that the "[v]alues that are protected against government interference through enshrinement in the Bill of Rights are *not thereby banished from the political process*" and Mr. Turner should have a legal recourse for his claims. R. at 5; *see* 494 US. at 874, 890 (emphasis added). Lastly, just as the *Listecki* court held that "[u]nder the Free Exercise Clause, 'neutral, generally applicable laws may be applied to religious practices . . . '" and held a church that intended to fraudulently transfer fifty-five million dollars to avoid paying its creditors accountable to a neutral bankruptcy code, this Court should also find that Mr. Turner's decision to refuse to comply with and indeed to report similar fraudulent activity deserves to be protected. R. at 5; *see* 780 F.3d at 734, 742–43 (citing *Hobby Lobby Stores, Inc.*, 134 S.Ct. at 2761 (quoting *Flores*, 521 U.S. at 514).

Therefore, this Court should reverse the finding of the State of Tourovia Court of Appeals and hold that Mr. Turner's claims based in breach of contract and retaliatory discharge are not barred by the ministerial exception because it is in the government's interest to protect Mr. Turner

and individuals like him that do not want to be complicit in fraud and illegal conduct. R. at 4, 5; *see Smith*, 494 U.S. at 890; *see Listecki*, 780 F.3d at 742–43; *see Hosanna-Tabor* Oral. Arg. at *5. Moreover, this Court should find that it is in the best interest of the society to protect Mr. Turner and individuals like him that go beyond deciding not to be complicit and instead choose to protect entities such as Wells Fargo Bank from being defrauded by reporting dishonest activity. R. at 4, 5; *see Hosanna-Tabor* Oral. Arg. at *5.

C. The Nature of the Petitioner's Work in Handling the Trust Falls Outside the Scope of the Ministerial Duties that Can be Protected by the Ministerial Exception.

Crucial to the ministerial exception is that one of the parties needs to be a minister and religious organizations are free and in fact protected under the U.S. Constitution to select ministers that represent the faith tenants of the organization with which that minister works. US. CONST. amend. I; *Hosanna-Tabor*, 565 U.S. at 194–95; *Kirby*, 426 S.W.3d at 615. The intent of the ministerial exception and in fact the First Amendment is to protect ecclesiastical discretion within religious organizations. US. CONST. amend. I; *Hosanna-Tabor*, 565 U.S. at 194–95; *Kirby*, 426 S.W.3d at 615. Because Mr. Turner was asked to administer the bequest specifically because of his extensive past experience as a financial manager for IBM Corporation and as the Treasurer and Chief Financial Officer of another regional office of the CCC, this Court should find that Mr. Turner's role in handling the Trust had nothing to do with him acting as a minister so as to trigger the ministerial exception. R. at 5; US. CONST. amend. I; *see Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328, 333 (4th Cir. 1997); *see Prince of Peace Lutheran Church v. Linklater*, 28 A.3d 1171, 1186 (Md. 2011).

The intent of the ministerial exception and in fact the First Amendment is to protect ecclesiastical discretion within religious organizations. US. CONST. amend. I; *Hosanna-Tabor*, 565 U.S. at 194–95; *Bell*, 126 F.3d at 333; *Linklater*, 28 A.3d at 1186. The plaintiff in *Hosanna-*

Tabor fell under the ministerial exception because her entire role in the church was as a spiritual leader for the children and any decision to fire her based on her role as a spiritual leader was protected activity for the church that the courts could not interfere with. 565 U.S. at 194–95. Additionally, the court in *Bell* held that the plaintiff's complaint that the church's decision to eliminate a ministry personally injured him fell under the bar of the ministerial exception because "[s]uch a decision about the nature, extent, administration, and termination of a religious ministry *falls within the ecclesiastical sphere that the First Amendment protects from civil court intervention*." 126 F.3d at 333 (emphasis added). Lastly, the *Linklater* court held that because the "Bishop was *merely acting in his role as Bishop* . . . the First Amendment prohibit[ed the plaintiff] from pursing any of her claims." 28 A.3d at 1177 (emphasis added).

Here, this Court should hold that Mr. Turner's claims based on breach of contract and retaliatory discharge against St. Francis should not be barred by the ministerial exception because Mr. Turner's role in handling the Trust had nothing to do with him acting as a minister so as to trigger the ministerial exception. R. at 5; US. CONST. amend. I; *see Hosanna-Tabor*, 565 U.S. at 194–95; *see Bell*, 126 F.3d at 333; *see Linklater*, 28 A.3d at 1186.

The intent of the ministerial exception and in fact the First Amendment is to protect ecclesiastical discretion within religious organizations. US. CONST. amend. I; *Hosanna-Tabor*, 565 U.S. at 194–95; *Bell*, 126 F.3d at 333; *Linklater*, 28 A.3d at 1186. Unlike the *Hosanna-Tabor* plaintiff, who was acting solely in her role as a spiritual leader in the church, here, Mr. Turner was helping St. Francis with the bequest because Mr. Turner had extensive experience handling money and, therefore, this Court should find that the ministerial exception was never triggered because Mr. Turner was not acting in his role as a minister. R. at 5; *see* 565 U.S. at 194–95. Similarly, unlike the holding in *Bell* that because the plaintiff's complaint related to a decision to eliminate a

ministry, a decision within the ecclesiastical sphere, the ministerial exception was triggered, this Court should find that that the ministerial exception was never triggered because Mr. Turner's role in handling the Trust fell outside his ecclesiastical duties. R. at 5; *see* 126 F.3d at 333. Lastly, unlike the *Linklater* court, which held that because the "Bishop was *merely acting in his role as Bishop*," that the ministerial exception barred any complaints, this Court should find that because Mr. Turner was not acting as a minister to manage the bequest, that the ministerial exception was not triggered. R. at 4, 5; *see* 28 A.3d at 1177 (emphasis added).

Therefore, this Court should reverse the finding of the State of Tourovia Court of Appeals and hold that Mr. Turner's claims based in breach of contract and retaliatory discharge are not barred by the ministerial exception because Mr. Turner's role in handling the Trust had nothing to do with him acting as a minister so as to trigger the ministerial exception. R. at 5; US. CONST. amend. I; *see Hosanna-Tabor*, 565 U.S. at 194–95; *see Bell*, 126 F.3d at 333; *see Linklater*, 28 A.3d at 1186.

II. THE LOWER COURT ERRED WHEN IT GRANTED THE APPELLEE'S 12(b)(6) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM BASED SOLELY ON THE APPLICATION OF THE MINISTERIAL EXCEPTION WITHOUT AN OPPORTUNITY FOR DISCOVERY.

A 12(b)(6) Motion to Dismiss seeks to ensure a well-pled complaint that puts the defendant on notice as to the claim upon which relief can be granted. Fed. R. Civ. Pro. 12(b)(6). At this stage a trial court must determine if it is plausible, given the facts as alleged within the complaint, that there is a sufficient claim for which the court can grant relief. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). The Ministerial Exception allows for religious institutions to raise as an affirmative defense ecclesiastical concerns as it relates to termination decisions of its ministers. *Hosanna-Tabor***,** 565 U.S. at 195 n. 4. Thus, it has been held to not act as a jurisdictional bar to all employment related lawsuits. *Jones*, 80 U.S. at 714.

Here, appellant argues that before the appellee's Motion to Dismiss is granted there needs to be discovery granted for the appellant to show that the ministerial exception does not apply in this case. R. at 9. The trial court incorrectly granted the Motion to Dismiss because the appellant did state a claim for which relief can be granted and the facts as alleged within the pleadings were ambiguous and therefore insufficient to grant a ruling on an affirmative defense.

A. The Appellant's Pleadings Have Met This Court's Well Established Standard to Survive a 12(B)(6) Motion to Dismiss Because the Complaint States a Claim To Relief That Is Plausible On Its Face.

The lower court clearly erred when it granted the appellee's motion to dismiss because the Appellant had met all the necessary pleading requirements as established under Tourovia and Federal Rules of Civil Procedure and interpretative case law. Under Federal Rules of Civil Procedure Rule 8, a plaintiff is only required to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. Pro. 8(a)(2). The rules of procedure also provide the defendant with the ability to dismiss a claim if the pleadings fail "to state a claim upon which relief can be granted." Fed. R. Civ. Pro 12(b)(6).

In order to survive a motion to dismiss the plaintiff's complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678; *see also, Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The search for plausibility requires a context-specific task requiring the court to bring its *experience and common sense* to bear upon the case at hand. *Iqbal*, 556 U.S. at 679 (emphasis added). Although the facts as alleged in the complaint must be taken as true, those facts that are simply barebone legal conclusions are not entitled to be considered as true. *Id.* at 678. This Court is not "bound to accept as true a legal conclusion couched as a factual allegation." *Id.*

A complaint is not required to provide "detailed factual allegations," instead, a complaint must simply state facts that are beyond "labels and conclusions" or a "recitation of elements" that raise a "reasonable expectation that discovery will reveal evidence" to demonstrate what is alleged within the complaint. *Twombly*, 550 U.S. at 556. Even if the facts presented demonstrate that discovering and proving those facts are improbable and that a conclusion of the case in the plaintiff's favor is remote and unlikely, nonetheless the complaint survives a Motion to Dismiss. *Id.* Moreover, as this Court held in *Swierkiewicz v. Sorema N.A.,* and reiterated again in *Twombly*, the plaintiff does not need to allege "specific facts" beyond those necessary to "state his claim and the grounds showing entitlement to relief." *Id.* at 570 (citing, *Swierkiewicz v. Sorema N.A.,* 534 U.S. 506, 514 (2002)).

Here, the Appellant has alleged in his complaint both a breach of an employment contract claim and a retaliatory discharge claim as a result of Appellee's tortious behavior. R. at 4. Most importantly, the courts below do not dismiss the complaint for failure to meet the pleading standard as set by *Iqbal* and *Twombly*. R. at 2-4; 556 U.S. at 679; 550 U.S. at 556. Instead, it dismissed the suit based upon an inappropriate analysis of the ministerial exception affirmative defense. R. at 2.

Additionally, the Tourovia Court of Appeals incorrectly applied *Iqbal* and *Twombly* because the court accepted a legal conclusion, couched as fact, as true. Indeed, the appellant in his complaint alleges that the appellee informed him that the church was "transitioning" because it had "lost faith" in his spiritual leadership. R at 4. However, the court below treated the alleged fact as legally conclusive of the appellee's decision to terminate the appellant on religious grounds. R. at 10. This is no different that the plaintiff in *Twombly* who alleged that the defendants had agreed not to "compete with one another" because although this is an alleged fact, it also equates

to a legal conclusion that in the *Twombly* case violated the law. *See* 550 U.S. at 556. The court below was under no mandate or following any type of binding legal authority when it decided to consider the alleged legal conclusion as true.

Finally, the court acted contrary to established precedent when it required the appellant to allege additional "specific facts" beyond those necessary to state his claim. *See Swierkiewicz*, 534 U.S. at 514. Because the appellant stated in his complaint a legal conclusion about the reasons the appellee terminated appellant's employment, the court suddenly pushed onto the appellant additional "specific facts" that he would need to allege in his complaint in order survive a motion to dismiss. R. at 10. Unfortunately for the appellee, requiring that appellant plead alleged facts that plausibly establish his two claims, but also show that he was not discharged from his job for purely religious purposes is directly contrary to established precedent. *See Swierkiewicz*, 534 U.S. at 514. Moreover, this Court has expressly prohibited itself from requiring additional "specific facts" in a complaint when it stated in *Jones v. Brock* that "specific pleading requirements are mandated by the Federal Rules of Civil Procedure, and not, as a rule, through case-by-case determinations of the federal courts." *See* 549 U.S. 199, 213 (2007) (quoting *Hill v. McDonough*, 547 U.S. 573, 582 (2006)).

B. Additional Discovery Will Not Burden the Appellee's First Amendment Rights.

Additional discovery will not burden the appellee's religious freedoms because discovery into the breach of contract claim and retaliatory discharge claim will result in a secular inspection that will not intrude upon ecclesiastical rules, policies or decisions. This Court has held that provisions of a religious constitution may not be immune from civil court interpretation if the analysis could be done in purely secular terms. *Jones v. Wolf*, 443 U.S. 595, 602 (1979). If the court, with an eye towards what a jury may be required to evaluate, can find that the character of

the inquiry will not necessarily lead to the evaluation of religious doctrine or the "reasonableness" of religious practice, the court may proceed with its secular inquiry. *Bollard v. California Province of the Soc'y of Jesus*, 196 F.3d 940, 950 (9th Cir. 1999). A court must look to each element of the claim and determine if further action would require the court to render religious decisions or cause interference with a church's administration. *Galetti*, 331 P.3d at 1001 (quoting *McKelvey*, 800 A.2d at 856–57).

When weighing a decision to grant discovery in the face of the ministerial exception, courts have looked to two factors including (1) the extensiveness of the inquiry into religious doctrine and administration and (2) the type of remedy requested. *Minker*, 894 F.2d at 1360; *Galetti*, 331 P.3d at 1001. In *Galetti*, the Court of Appeals of New Mexico held that a contract claim and a retaliatory discharge claim did not necessarily implicate religious concerns and therefore were incorrectly dismissed without additional time for discovery. 331 P.3d at 999. The plaintiff in *Galetti* was employed as a teacher in a religious school she was harassed by her supervisor. *Id.* Plaintiff submitted a complaint to the religious institution's governing conference, which resulted in the supervisor and others retaliating against her leading to her, resulting in her termination. *Id.* Plaintiff filed a complaint asserting breach of contract and retaliatory discharge and requested compensatory and punitive damages as a remedy. *Id.* at 999-1000. In their Motion to Dismiss defendant argued that any question regarding Plaintiff's termination would result in a religious inquiry because of the Plaintiff's ministerial position. *Id.* at 1000. Ultimately the appeals court held that monetary damages would not be an excessive interference with church operations and the breach of the contract claim did not appear to be religious in nature. *Id*. Ultimately it was the *potential* for the claim to be resolved without religious entanglements that allowed the court to conclude that the trial court erred in dismissing it. *Id.* at 1002 (emphasis added). Similarly, the

court held that the retaliatory discharge claim did not allege or implicate any necessary religious inquiry and therefore its dismissal was reversed. *Id.*

Additional case law also demonstrates that breach of contract claims can be allowed to proceed past the pleadings and summary judgment stages because those claims could potentially be resolved without any religious entanglement. *See Kirby,* 426 S.W.3d at 615 (concluding that ministerial employee's breach of contract claims survived motion for summary judgment because there is no concern about the government interfering with the selection of ministers and the contract does not involve ecclesiastical matters); *Second Episcopal Dist. African Methodist Episcopal Church v. Prioleau,* 49 A.3d 812, 817–18 (D.C. 2012) (held that the plaintiff does not connect her contract claim to matters of church doctrine or governance). Moreover, long ago this Court has held that churches are free to burden themselves through voluntary contracts that would be fully enforceable in Civil Court. *Jones*, 80 U.S. at 714.

Here, the appellant should be allowed to continue his claims because they will not result in impermissible discovery. Discovery can be very limited and direct regarding the issue of a breach of contract. *See Minker*, 894 F.2d at 1360. Additionally, the retaliatory discharge relates to a matter of tortious behavior by appellee and does not rationally relate to any religious doctrine. R. at 5. Simply calling the appellant a minister does not implicate interference with religious doctrines or administration nor does one false statement made to implicate religious doctrine, but intended to obscure the truth. R. at 4. Also, appellant's request for monetary damages does not entangle religious doctrine or force the church to employ someone as a minister in which they may not agree with or be compelled to make certain decisions about ministers that would be dictated by this court. *See Minker*, 894 F.3d at 1360.

The court below argues that the alleged contract and retaliatory discharge claims necessarily implicate an inquiry into church's discussion about their ministers, internal church governance, and their decision to terminate the appellant. R. at 8–9. However, this is an overly expansive reading of this Court's holding in *Hosanna-Tabor* because there was concern about government interference with an internal church decision that affects the faith and mission of the church itself. 565 U.S. 190. Here, this interference with a decision that affects the faith and mission of the church is avoided because the claim as alleged relates to Appellant's refusal to cooperate with tortious and potentially fraudulent behavior, which ultimately resulted in his termination. Additionally, discovery in order to determine the rationale behind the appellant's termination does not necessarily wade into a court evaluating religious doctrine. Moreover, unlike the discrimination scenario in *Hosanna-Tabor*, evaluating whether certain employees of a church advocated for the appellant to engage in fraudulent behavior and then terminated him for not doing so will not pit the court against religious institutions and their doctrine.

Even if there is a fear that there could be some interference, the court can limit discovery. As the dissent argued in their opinion below, discovery can move forward under the watchful eye of the trial justice and if it becomes clear that the claims will lead to an untenable interference with religious, doctrinal matters the court can stop all discovery and grant a motion for summary judgment. R. at 13. To allow this case to move forward past the pleadings stage will allow for the appellant to pursue his well-pleaded claims that meet the standards set forth in the Federal Rules. *See Iqbal*, 556 U.S. at 679; *see Twombly*, 550 U.S. at 556. Here, on the face of the pleadings the appellant has presented facts that allege the appellee has breached contract and engaged in tortious behavior that could be considered fraudulent. R. at 5. The appellant deserves his day in court.

As this case beings to move forward the rights of the appellee are still protected. It is no secret this court is deeply concerned about weighing in on religious matters. *See Hosanna-Tobar*, 565 U.S. at 697. However, limited discovery into the ministerial exception will allow for a less burdensome discovery process and the ability for the appellee to make a factual showing that can demonstrate that the ministerial exception applies. Ultimately, fairness and justice is served with extended discovery.

C. To Grant a Motion to Dismiss is to Continue to Treat the Ministerial Exception as a Jurisdictional Bar as Opposed to What it is, an Affirmative Defense.

In its first and to-date only case regarding the ministerial exception this Court in *Hosanna-Tabor* explicitly recognized that the that the exception was to be treated as an affirmative defense. 565 U.S. at 195 n. 4. Prior to this Court's ruling in *Hosanna-Tabor*, the United States Circuit Court of Appeals were split on the issue of whether to apply the exception as a matter of subject matter jurisdiction or an affirmative defense. *See Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 654 (10th Cir. App. 2002) (holding that raising the ministerial exception is similar to a government official's defense of qualified immunity, which is frequently asserted in a motion to dismiss under Rule 12(b)(6) or Rule 56); *see Petruska v. Gannon University*, 462 F.3d 294, 303 (3rd Cir. App. 2006) (holding that the exception acts as an affirmative defense which may serve as a barrier to the success of a plaintiff's claim, but it does not affect the court's authority to consider them); *see Bollard v. California Province of the Society of Jesus*, 196 F.3d 940, 951 (9th Cir. App. 1999) (holding that a failure to state a claim under federal law is not the same thing as failure to establish federal question jurisdiction under 28 U.S.C. 1331; any non-frivolous assertion of a federal claim suffices to establish federal question jurisdiction, even if the claim is later dismissed on the merits under Rule 12(b)(6)); *contra Hollins v. Methodist Healthcare, Inc.*, 474 F.3d 223, 225 (6th Cir. App. 2007) (holding that the ministerial exception precludes subject

matter jurisdiction over claims involving the employment relationship between a religious institution and its ministerial employees); *see Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036 (7th Cir. App. 2006).

Typically, courts are encouraged to refrain from granting Rule 12(b)(6) motions on affirmative defenses. *Brownmark Films LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. App. 2012). As a 12(b)(6) motion tests the sufficiency of the complaint, "the mere presences of a potential affirmative defense does not render the claim invalid." *Id.* Moreover, if all relevant facts are present within the four corners of the pleadings a court may properly dismiss a case on the basis of an affirmative defense through a Rule 12(c) Motion for Judgment on the Pleadings. *Id.* Importantly, it is only appropriate to dismiss on the basis of an affirmative defense when the "factual allegations in the complaint unambiguously establish all the elements of the defense." *Hyson USA, Inc. v. Hyson 2U, Ltd.*, 821 F.3d 935, 939 (7th Cir. App. 2016). Here, not only did the lower court incorrectly conclude that the complaint provided all facts necessary to establish an affirmative defense, it also dismissed the case on an improper motion.

Ultimately under *Hosanna-Tabor*, this Court abrogated the holdings in *Hollins* and *Tomic*, which dismissed plaintiff's complaint because it simply stated that the defendant was a church and the plaintiff was a minister. *See* 565 U.S. at 195 n. 4; 474 F.3d at 225; 442 F.3d at 1036. In *Hollins*, the plaintiff plead that the defendant operates its hospital "in accordance with the Social Principles of The United Methodist Church" and the plaintiff was in the hospital's pastoral education program. 474 F.3d at 224. The defendant raised on a 12(b)(1) motion that the court lacked subject matter jurisdiction because of the ministerial exception. *Id.* The Sixth Circuit succinctly stated that "in order for the ministerial exception to bar an employment discrimination

claim, the employer must be a religious institution and the employee must have been a ministerial employee." *Id.* at 225.

Although the mere mention of the ministerial exception elements resulting in a jurisdictional bar has been abrogated by the Supreme Court, the trial court treated it as such when simply upon hearing the mention of the ministerial exception elements the court barred the case from moving forward. R at 1. The trial court's treatment of the ministerial exception as a jurisdictional bar becomes more clear when one considers that the trial court in its order did not refer to it as an affirmative defense and the state's appellate courts only paid lip service to the idea that the ministerial exception acted as such. Furthermore, the trial court did not properly apply the Federal Rules of Civil Procedure when analyzing the exceptions because it granted a 12(b)(6) motion instead of dismissing on affirmative defense grounds through proper application of a Federal Rules of Civil Procedure 12(c) Motion. More importantly, the level of analysis completed in the *Hollins* case and that which was done here was about the same with no effort made to examine the issue of a potential ministerial exception beyond a brief recitation of its elements. *See* 474 F.3d at 225. Finally, a court maintaining that same type of subject matter jurisdiction analysis for the application of the ministerial exception, yet calling it an affirmative defense, does not make it so.

To be sure, complaints can certainly be dismissed if they properly alleged all elements of an affirmative defense. However, that is not the case here because the complaint has not presented all necessary elements of the affirmative defense in an unambiguous manner. *See Hyson USA Inc.*, 821 F.3d at 939. If the lower court had utilized the common-sense analysis as required under Iqbal, at the very least the factual allegation that the appellant was fired for religious reasons would be seen as ambiguous within the context of the complaint because although the statement did occur,

it was a false statement. In other words, the statement was added into the complaint to show that the appellee was partaking in further bad behavior by trying to obscure to the appellant the real rationale for his firing. Even if under the common sense, contextual analysis a court was to believe that this factual allegation should be taken as true, it is reasonable to believe that others may not, and therefore the factual allegation should be considered ambiguous. Additional discovery may go to show this, but it is certain that the complaint does not on its face unambiguously present all factual elements necessary for the ministerial exception affirmative defense.

CONCLUSION

For the aforementioned reasons, this Court should reverse the decision of the State of Tourovia Court of Appeals.

Respectfully submitted,

/s/ _____

Counsel for Plaintiff-Petitioner

Dated: March 10, 2017

APPENDIX

State of Tourovia
Labor Law, Section 740

(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 an 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:
      i. That he or she reported or threatened to report the employer's activity, policy or practice;
      ii. That a particular law, rule or regulation was violated; and
      iii. 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, of 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 costs

U.S. CONST. amend. I

> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof*; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

(emphasis added)