National Moot Court Competition in Law & Religion

In the

Supreme Court of the United States

April Term, 2017

No. 415-2017

DAVID R. TURNER
Petitioner-Appellant,

vs.

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

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

BRIEF FOR RESPONDENTS

TEAM 22

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QUESTIONS PRESENTED

I. Does 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?

II. Do complaints alleging wrongful termination by a minister are subject to Federal Rule of Civil Procedure 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?

JURISDICTIONAL STATEMENT

The Court of Appeals holds jurisdiction under 28 U.S.C. § 1291. The date of the State of Tourovia Appellate Court, Second Department, decision was January 21, 2015, and the Order of the trial court was affirmed by the Appellate Division of the Tourovia Supreme Court on December 18, 2015. David R. Turner (hereinafter "Petitioner), filed a petition for Writ of Certiorari to the Tourovia Court of Appeal, and the Supreme Court of the United States granted the petition on an unknown date. The Court's jurisdiction rested on 28 U.S.C. § 1254(1).

STANDARD OF REVIEW

The Tourovia Court of Appeals cited the correct standard of review. The standard of review for granting a 12(b)(6) motion in Tourovia courts is well-settled. R.P. 7. The Court reviews an order granting a motion to dismiss *de novo* because a constitutional interpretation is a question of law. The Court should assume the truth of the well-pleaded factual allegations of the complaint, including the reasonable inferences that may be drawn from those allegations; however, only a complaint that states a plausible claim for relief will survive a motion to dismiss. R.P. 7, citing *Bell Atlantic Corp v. Twombly,* 550 U.S. 544, 551 (2009).

STATEMENT OF THE CASE

On July 1, 2009, St. Francis Church of Tourovia (herein "St. Francis" or "the Church") hired Petitioner, as pastor. R.P. 4. As part of his pastorship, Petitioner was subject to a yearly employment contract. R.P. 4. Prior to termination, Petitioner's contract was renewed three times, and the term of his contract, each time, was designated as July 1 through June 30th. R.P. 4.

On May 16, 2012, St. Francis was informed that it was scheduled to receive a bequest from the Thomas Trust in the amount of $1,500,000.00. R.P. 5. The trust provided that one half

of the bequest was to be used for the general operation and maintenance of the Church ($750,000), while the other half was to be used for the upkeep of the Church's cemetery ($750,000). R.P. 5. The St. Francis congregation chose Petitioner to administer the bequest due to the 25 years of prior experience working as a financial manager for IBM Corporation and then as the Treasure and Chief Financial Officer of another regional office of the Tourovia Conference of Christian Churches (herein "CCC"). R.P. 5.

The St. Francis Church sold its cemetery in 2009 and no longer maintained a cemetery fund. R.P. 5. Petitioner determined it would be a breach of trust for the Church to accept the portion of the bequest relating to the upkeep of the cemetery. R.P.5. Petitioner took it upon himself to advise the Church's Board of Trustees to notify Wells Fargo Bank (which was served as trustee of the Thomas Trust) that the Church no longer owned the cemetery and to ask the bank for financial guidance. R.P.5. The Vice Chairman of the Board of Trustees instructed Petitioner to request the full amount of the bequest ($1,500,000.00) from the bank and deposit it into the Church's general operating account. R.P. 5.

Petitioner refused to follow the instructions given by the Vice Chairman of the Board of Trustees and in August 2012, and took his concerns to Reverend Dr. Roberta Jones, the Superintendent of the Tourovia CCC. R.P. 5. In early October of 2012, Petitioner, upon determination that the CCC and the Church trustees had no intention of informing Wells Fargo that they no longer had ownership of the cemetery, individually contacted Wells Fargo and asked for guidance. R.P. 5. The Church was unaware of the Petitioner's communication with Wells Fargo. Petitioner left a message for the bank representative, and contacted the IRS to inform them of the situation and to discuss any possible tax consequences. R.P. 5. However, Petitioner was unable to reach the appropriate party.

On October 16, 2012, Dr. Jones notified Petitioner that his pastorship with the St. Francis church was terminated, effective October 31, 2012. R.P. 5. Respondents informed Petitioner that the Church was "transitioning." R.P. 4. The Church did not want the Petitioner to be a pastor during this transition. Additionally, the Church informed the Petitioner, the Church "lost faith in in Petitioner's spiritual leadership." *Id.* Approximately a year later, September 12, 2013, Petitioner filed a Complaint in the State of Tourovia Supreme Court against St. Francis, the CCC, and Dr. Jones. R.P. 5.

On March 31, 2014, the OCC and Dr. Jones filed a Motion to Dismiss Petitioner's September 12, 2013, Complaint, claiming the First Amendment's ministerial exception barred the lawsuit for failure to state a cognizable claim. R.P. 5. A hearing was held on January 20, 2015, with the Honorable Michelle L. Hall presiding over the matter. R.P. 6. On January 21, 2015, Judge Hall issued an Order granting the CCC and Dr. Jones's Motion to Dismiss. R.P. 6. The Order included Judge Hall's finding that Petitioner's claims were substantially connected to Church governance. *Id.* This and would require the court to review of the Church's motives for the discharge, which are precluded by the ministerial exception. *Id.* On December 18, 2015, the Order of the trail court was affirmed by the Appellate Division of the Tourovia Supreme Court. *Id.*

SUMMARY OF THE ARGUMENT

This Court should affirm the lower court decision for the following two reasons: (1) The ministerial exception applies, and therefore Petitioner's claims are barred; and (2) St. Francis Church of Tourovia, the Tourovia CCC, and Reverend Dr. Jones (hereinafter "Respondents") Motion to Dismiss should be granted because Petitioner failed to state a claim upon which relief

can be granted because secular courts cannot permit relief without violating the Religion Clauses in the First Amendment.

First, the Religion clauses of the United States Constitution, including the Establishment Clause and the Free Exercise Clause, bar civil courts from performing inquiry into matters that involve Church governance. Secular courts cannot entangle themselves in these matters, and in doing so they'd be intruding into ecclesiastical matters and would thereby be violating the separation of church and state. A court's interference into these matters deprive the church of control in choosing who will lead and personify the Church's beliefs. A theme that is intended to be precluded under the ministerial exception.

Second, Petitioner cannot plausibly state a claim for which relief can be granted without substantially entangling the secular courts into the Church's governance, and thus, this claim is barred by the ministerial exception. The need for discovery is improper as any pre-discovery before a ruling on the motion to dismiss would require the Court to determine whether the Church lost faith in Petitioner's spiritual leadership. As the Church was already transitioning its' mission, any determination from secular courts as to why Petitioner was really fired would violate the Establishment Clause. Therefore, we respectfully request this Court to affirm the lower court's decision in granting the motion to dismiss to adhere to the central theme in the United States Constitution: separation of church and state.

ARGUMENT

I. THE TRIAL COURT CORRECTLY FOUND THAT THE FIRST AMENDMENT'S MINISTERIAL EXCEPTION BARRED THE PLAINTIFF'S COMPLAINT

This case concerns whether secular courts are permitted to inquire into church autonomy. The ministerial exception applies because Petitioner is a church employee, and Respondents are

a church. Furthermore, the purpose of the ministerial exception is to allow religious institutions to freely govern themselves on all matters related to ecclesiastical concerns. Petitioner alleges wrongful termination from the religious governance of the church based on breach of contract and retaliatory discharge. Accordingly, this Court should affirm both the Tourovia Supreme Court and the Tourovia Court of Appeals, because both courts properly decided that secular courts are precluded from adjudicating such matters since ecclesiastical matters are involved.

A. The Ministerial Exception bars claims brought by an employee of a religious organization when the claims are related to employment within the organization because this interferes with the organization's First Amendment right to govern.

The church autonomy doctrine and the ministerial exception are not independent legal theories; the latter is a particular implementation of the former. *Bryce v. Episcopal Church Diocese of Cob.*, 289 F.3d 648, 656 (10th Cir. 2002). This Court has long-recognized the "ministerial exception grounded in the First Amendment that preclude[d] legislation to [any] claims concerning the employment relationship between a religious institute and its ministers." R. at 7 citing *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, (2012). The ministerial exception was first established in *McClure v. Salvation Army,* 460 F.2d 553 (1972*),* which stated that "[a]s long as the employment decision about the employee's attitude, ability or competence to carry out his or her role is based on church doctrine, any decision of the church is beyond [the] court [to] challenge." *McClure*, 460 F.2d at 560.

The Court's opinion in *Hosanna-Tabor* demonstrated the nature of any inquiry a secular courts make determined whether the ministerial exception applied. *Hosanna-Tabor*, 565 U.S. at 172. The Court in *Hosanna-Tabor* reasoned that "[It] is impermissible for the government to contradict a church's determination of who can act as its ministers." Essentially, this Court determined that any church is free to choose who may or may not be involved in furthering the

church's mission. *Id*. This is further emphasized in Justice Alito and Justice Kagan concurrence. "[The applicability of the ministerial exception depends not on an individual's "ordination status or formal title." *Id* at 178. It is the functional status of the employee that exempts the church from any discrimination during the employment process. *Id*.

Secular courts must immediately determine whether the employee is a minister or whether the position is related to ecclesiastical matters prior to any investigation of the employee's complaint. *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 708-09 (1976). If the Church employee's primary duties consist of "teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship, he or she should be considered ministerial or ecclesiastical." *Id*. at 708. This provided a basic framework for courts to implement during the employment status of any church employee because it shows whether a position is entitled to Constitutional protection from state interference.

The ministerial exception will apply only if: (1) the defendant is a church; and (2) the plaintiff is a minister. *Hosanna-Tabor* 565 U.S at 172. In such a situation, any employment decision by a secular court may not interfere with the internal governance of the church because such an interference would deprive the church of control in choosing who to personify its beliefs. R. at 7; *Hosanna-Tabor*, 565 U.S. 172. This case is similar to *Hosana* because the organization is classified as a church. Additionally, no dispute existed in the Petitioners position as a pastor. Thus, under the *Hosanna-Tabor* test, Respondent is a church, and Petitioner is a minister. In the present case, the courts properly granted the Motion to Dismiss because Petitioner's claims fall within the ministerial exception because both elements of the *Hosanna-Tabor* test have been satisfied. R. at 7.

B. Applying Labor Law, Section 740 Violates the Church's First Amendment Rights Because That Would Relate Directly to Internal Church Governance

"Congress shall make no law respecting an *establishment* of religion, or prohibiting the *free exercise* thereof." U.S. Const. amend. I. The primary purpose in creating the religion clause of the United States Constitution, was to protect the church from government interference and influence in church matters. One of our core founding principles is the freedom of religion. Our country's founding religious civil liberties are a fundamental right of all Americans. Additionally, the intention of the Establishment Clause, by the Founding Fathers, was to protect the sanctity of the church from government entanglement. The "crucial significant to [the] freedom ascribed to religion" is the religious organizations ability to select and terminate ministers. Mark E. Chopko & Marissa Parker, *Still a Threshold Question: Refining the Ministerial Exception Post-Hosanna Tabor,* 10 First Amend. L. Rev. 233 (2012); R. at 8.

The Free Exercise Clause and The Establishment Clause, both, supplement one another to guard against "[a] union of government and religion," which Justice Hugo Black noted, "destroy[s] government and degrade[s] religion." *Engel v. Vitale*, 370 U. S. 421, 431 (1962). The intention of the Clauses was to complement one another to bar the government from interfering with the decision of a religious group to fire one of its ministers. *Hosanna-Tabor*, 565 U.S. at 172. Nevertheless, the application of both clauses can be distinguished from one another. The Establishment Clause prevents the government from appointing ministers, mandating a separation between church and state, while the Free Exercise Clause prevents the government from interfering with the freedom of religious groups to select their own. *Id*. at 173. The Court in *Hosanna-Tabor* framed the First Amendment issue in a religious-employment lawsuit as "whether the Establishment and Free Exercise Clauses of the First Amendment bar such an action when the employer is a religious group and the employee is one of the group's ministers."

Hosanna-Tabor, 565 U.S. at 172. Similarly, this Court should frame and uphold the *Hosanna-Tabor* Court's analysis because both the Establishment Clause and Free Exercise Clauses bar Petitioner's action.

i. The Establishment Clause of the First Amendment prohibits excessive government entanglement with religion

As the Supreme Court recognized in *Lemon v. Kurtzman*, the Establishment Clause restricts governmental interference with church autonomy by limiting entanglement between church and state. *Lemon v. Kurtzman,* 403 U.S. 602 (1971). Courts adjudicating on matters involving the application of the ministerial exception frequently have held that the Establishment Clause mandated the exception to avoid both substantive entanglement—"where the government is placed in the position of deciding between competing religious views—and procedural entanglement—"where the state and church are pitted against one another in a protracted legal battle." *Petruska v. Gannon Univ.,* 462 F.3d 294, 311 (3d Cir. 2006). Procedural entanglement alone would likely not suffice in justifying the ministerial exception because it potentially exists in every lawsuit against a religious organization where the government is a party. However, courts have explained that in cases involving the ministerial exception, procedural entanglement exacerbates substantive entanglement. *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 957 (9th Cir. 2004).

In *Lemon,* taxpayers challenged state statutes in Pennsylvania and Rhode Island that provided aid to private elementary and secondary schools, including religious schools. *Lemon v. Kurtzman*, 403 U.S. 602 (1971). This Court held that the statutes violated the Establishment Clause because they fostered excessive government entanglement with religion. *Lemon*, 403 U.S. 602. The *Lemon*, this Court developed a three-prong test, which has become the test all courts succeeding *Lemon* have used to determine whether a governmental action violates the

Establishment Clause. *Id*. The Lemon test has been adopted by many courts and should be the test applied to the present case. In 2000, this Court stated that "we assess Establishment Clause cases by reference to the three factors first articulated in *Lemon v. Kurtzman*, which guides the general nature of our inquiry in this area." *Santa Fe Independent School District v. Jane Doe*, 530 U.S. 290, 314 (2000).

Under the *Lemon* test, a valid governmental action must satisfy *all* three prongs of the test. The *Lemon* test, a conjunctive test, determines whether a governmental action violates the Establishment Clause by asking three questions: (1) does the law have a secular legislative purpose; (2) is the primary effect either to advance or inhibit religion; and (3) does the law foster an excessive government entanglement with religion. *Lemon*, 403 U.S. at 612-13. If any of these three requirements are not satisfied, the law violated the Establishment Clause. *Lemon*, 403 U.S. at 612-13.

This Court applied the *Lemon* test when a Kentucky legislature passed a law requiring that a copy of the Ten Commandments must be posted on the walls of public classrooms statewide. *Stone v. Graham*, 449 U.S. 39 (1980). The law also stated that, "No public funds were to be diverted for this purpose as the materials would all be privately donated." *Stone*, 449 U.S. 39, 44. Below the last commandment on each poster the following words were printed: "The secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the Common Law of the United States." *Id*. at 45. This Court held that despite the footnote and legislative history, which purported to enact the law for secular purposes, mere recitation of a secular purpose is insufficient to disprove the first prong of the *Lemon* Test. Thus, the law violated the Establishment Clause. *Id*. at 45. In the instant case, Section 740 applied to all employer activity required the plaintiff to show how his or her

employer violated the Labor Law. R. at 16. Accordingly, this Court should find that the State of Tourovia did not meet the requirement of the *Lemon* test.

In *Lee v. Weisman*, this Court visited the issue of prayer in the public-school context. *Lee v. Weisman*, 505 U.S. 577 (1992). Rabbi Solomon had been asked to give the invocation and benediction at the graduation. *Lee,* 505 U.S. 577. He was provided with guidelines from the school for leading the attendees in a nonsectarian prayer. *Id.* at 577. Although the attendance was formally "voluntary," the Court held it to be obligatory as a significant occasion in one's life. *Id.* at 587. This Court held the mandated prayer violated the second prong of the *Lemon* test because this Court found the primary effect was the advancement of religion *Id.* at 587.

Here, the Labor Law is intended to protect both public and private employees. R. P. 16. Petitioner would not fall within a private or public employee because he was an employee of Respondents. Section 740 does not "advance or inhibit religion". However, since the law applies to everyone, application of the law to an employee-employer of the church, specifically, a pastor or minister, would inhibit religion, and therefore would violate the Establishment Clause. Finally, the "excessive entanglement" prong of the *Lemon* test applied to inquiries in a determination of the validity of programs of government aid to religiously-affiliated institutions under the Establishment Clause. *Lemon v. Kurtzman*, 403 U.S. 602. In *Estate of Thornton v. Caldor,* various religious groups of Connecticut petitioned the state legislature to enact a law protecting their rights to observe the Sabbath without fear of repercussion from employers who would have them work on those days. *Estate of Thornton,* 472 U.S. 703, (1984). Such a law required the state to decide which religious activities constituted observance of a Sabbath and which did not. This is why the passage of this law ran the risk of excessive governmental

entanglement. Therefore, the law risks running afoul of the third prong of the *Lemon* Test which prohibits excessive governmental entanglement. *Id.* at 704-705.

Similarly, Tourovia Labor Law, Section 740 can be interpreted as giving aid to any employee, including church employees, as no restriction are written that will permit employers to any exceptions. The aid itself requires the Court to assess Respondents' conduct and judgment to determine whether they breached their conduct and violated the Labor Law. This kind of assessment goes outside of the courts scope because it would excessively entangle the court into matters of the church governance. Therefore, the last prong of the *Lemon* test, as applied to the present case, results in a violation of the Establishment Clause.

ii. The Free Exercise Clause of the First Amendment prohibits any interference by the state regarding governance of the Church

The first case adopting the ministerial exception did so under the Free Exercise Clause alone. *McClure v. Salvation Army*, 460 F.2d 553, 560 (5th Cir. 1972). Other courts have adopted the ministerial exception because "[t]he choice of a minister is a unique distillation of a belief system," and "regulating that choice comes perilously close to regulating belief," which would contravene free exercise rights. *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972). The Court placed great emphasis on this Court's declaration that "[F]reedom to select the clergy must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference." *Kedroff v. Saint Nicholas Cathedral of the Russian Orthodox Church*, 344 U.S. 94, 116 (1952). The Free Exercise Clause of the First Amendment protects the act of a decision rather than a motivation behind it. *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164. (4th Cir. 1985). The Court in *Rayburn,* affirmed the trial court's decision in granting the church's motion for summary judgement because the Court concluded that the suit was barred due to the interference it required with the governance of the church. *Id.* at 1169.

In *Employment Division, Oregon Department of Human Resources v. Smith*, two employees were fired from their jobs with a private drug rehabilitation organization because they ingested peyote for sacramental purposes at a ceremony of the Native American Church. *Employment Div., Dept. of Human Res. Of Oregon v. Smith,* 494 U.S. 872 (1990). In addition to being fired, they were denied unemployment benefits because the reason for their termination was "misconduct." *Smith,* 494 U.S. 872. The two employees challenged this determination regarding unemployment benefits as violating their rights under the Constitution, specifically the right to free expression of their religion. *Id.*

This Court in *Smith,* indicated that the compelling interest test may apply only in the field of unemployment compensation, and in any event, would not apply to require exemptions from generally applicable criminal laws. *Id.* at 875. Laws are "generally applicable" when they apply across the board regardless of the religious motivation of the prohibited conduct, and are "not specifically directed at religious practices. *Id.* at 876. This Court held that the Free Exercise Clause did not grant an exemption from the drug law to members of a Native American religion that used peyote in their religious services because it was a neutral law of general applicability. *Id.* at 876. The decision in *Smith* was overturned by this Court's decision in *Hosanna-Tabor*. This Court added an exception to the *Smith* decision. The Court seemed to be persuaded to void the general applicable laws to religious conduct when the prohibited activity is engaged in by a religious institution and not by an individual. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. at 172. (2012). In *Hosanna-Tabor,* the employee who suffered from narcolepsy, alleged that she had been fired in retaliation for threatening to bring a legal action against the church under the Americans with Disabilities Act. 42 U.S.C.S. § 12101 et seq.; *Hosanna-Tabor,* 565 U.S. at 172. This Court in *Hosanna-Tabor*, held that even where such law

is a “valid and neutral law of general applicability,” and even if the basis for the employment decision is not religious doctrine, the Free Exercise Clause prohibits the application of an employment discrimination law, since enforcement of the law would involve “government interference with an internal church decision that affects the faith and mission of the church itself.” *Hosanna-Tabor,* 565 U.S. at 172.

The present case resembles that of *Hosanna-Tabor*. Section 740, of the Tourovia Labor Law is a neutral law of general applicability because it prohibits an employer’s activity which may include, “discharge, suspen[sion], demot[ing], or other retaliatory employment action against an employee because that employee disclosed or threatened to disclose information to a public entity or objected to or refused to participate in an action that violated the law. R. at 16. This is analogous to the Court’s holding in *Hosanna-Tabor* since Petitioner filed an employment discrimination suit that requires the Court look further into the alleged law suit to define whether Respondents violated Labor Law, Section 740. If this Court were to addresses the violation, it would ultimately interfere with the church’s decision would to terminate Petitioner. This determination and thus violate the Free Exercise Clause. Additionally, under this Court’s precedent, there will be a violation of Respondents’ First Amendment rights under the Free Exercise as well. The Court should thereby uphold and extend the ruling in *Hosanna-Tabor* to the case at hand.

C. **This Court must accept the ecclesiastical rule decided by the Church because it concerns matters between a church and its minister**.

"Questions about ecclesiastical ruling or law that have been decided by church judicatories to which the matter has been carried, the secular courts must accept those decisions as final, and as binding in application to the case before them." *Watson* v. *Jones,* 80 U.S. 679 (1872). Although *Watson* left civil courts no role to play in reviewing ecclesiastical decisions during the Court of

resolving church property disputes, this Court, in *Gonzalez* v. *Archbishop,* first adverted to the possibility of "marginal civil court review," in cases challenging decisions of ecclesiastical tribunals as products of "fraud, collusion, or arbitrariness." *Gonzalez v. Archbishop*, 280 U.S. 1 (1929). Additionally, in *Young v. Northern Illinois Conference of United Methodist Church*, the Seventh Circuit carefully traced the path of the ministerial exception. *Young v. Northern Illinois Conference of United Methodist Church*, 21 F.3d 184 (7th Cir. 1994). However, the Seventh Circuit explained the impact that the case *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696 (1976), had in regards to the ministerial exception issue. The Seventh Circuit found that "*Milivojevich*, read in its entirety, holds that civil court review of ecclesiastical decisions of church tribunals, particularly those pertaining to the hiring or firing of clergy are in and of themselves an *'extensive inquiry'* into religious law and practice, and hence forbidden by the First Amendment." *Young*, 21 F.3d at 187. The Court then concluded that granting jurisdiction "would require [it] to cast a blind eye to the overwhelming weight of precedent going back a century to limit the scope of protection granted to religious bodies by the Free Exercise Clause." *Id.* at 188.

For civil Courts to analyze whether the ecclesiastical actions of a church administration are *arbitrary*, the Court must inquire into the procedures or ecclesiastical law that the Church administration is required to follow. However, the Court may also inquire into the substantive criteria by which the Court is required to follow when assessing questions of ecclesiastical nature. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Nevertheless, this is exactly the type of inquiry that the First Amendment seeks to prohibit. Recognition of such an exception would undermine the general rule that religious controversies are not the proper

subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of the church as it finds them. *Serbian E. Orthodox Diocese,* 426 U.S. 698.

II. THE TRIAL COURT PROPERLY GRANTED THE MOTION TO DISMISS BECAUSE THE COMPLAINT FAILED TO STATE A CLAIM THAT IS PLAUSIBLE ON ITS FACE.

To survive a Federal Rules of Civil Procedure 12(b)(6) motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a plausible claim on its face. *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570 (2007). The plausibility standard emphasized that a sufficiently plausible claim exists if the plaintiff pleads factual content that permits the Court to create a reasonable inference of liability on the defendant for any misconduct alleged. *Id.* at 570. This Court set forth two principles to determine whether a plaintiff's complaint will survive a Motion to Dismiss. *Id* at 551. First, a court must accept all the allegations, which infer legal conclusions rather than factual conclusion, in the Complaint as true. *Id* at 551. Second, only a claim that states a plausible claim upon which relief can be granted in the eyes of a reasonable jury will survive a Motion to Dismiss. *Id.* When the Court determines a pretrial motion to dismiss, the Court considers allegations in the Complaint, including facts necessarily implied from the allegations, construing such facts in a light most favorable to the pleader. *Gold v. Rowland,* 296 Conn. 186, 200-201 (2010); *Conboy v. State,* 292 Conn. 642, 652-653 (2009). The motion to dismiss admits all facts which are pleaded, invokes the existing record and must be decided on that decision alone. *Rowland,* 296 Conn at 200-201.

In the present case, Petitioner asserted that the Court should have permitted pre-discovery before granting Respondents' motion to dismiss because the Court should determine whether this case would substantially entangle the Court in religious doctrine. However, the trial court judge maintains the proper discretion to determine whether such claims, and the trial judge already

concluded that the pleaded allegations in the Complaint would substantially entangle courts into the churches governance. The Court has continuously held that any inquiry into the church's governance is considered a substantially encroachment into the church's autonomy and therefore secular courts must abstain from hearing such claims. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, at 172, (2012).

The ministerial exception is the legal doctrine invoked to protect religious institutions from the requirement of anti-discrimination law in the ministerial-employment context. This exception was first recognized by the Fifth Circuit in *McClure v. Salvation Army*, but has since been widely adopted by both state and federal courts and was established by this Court in *Hosanna-Tabor*. *McClure v. Salvation Army* 409 U.S. 896 (1972). The exception is applicable when the following two elements are established: (1) employer must be a religious institution, and (2) the employee must function as a minister. *Hollins v. Methodist Healthcare, Inc.* 128 S. Ct. 134 (2007). A religious employer is defined any entity "whose mission is marked by clear or obvious religious characteristics. *Shallensabou v. Hebrew Home of Greater Wash, Inc.* 363 F.3d 399, 310 (2004) (holding that a predominantly Jewish nursing home is a religious employer that can invoke the ministerial exception). However, the category of a ministerial employee is not limited to those who are ordained ministers. *Id* at 226. Instead, ministerial status is determined by considering the employee's function within the religious institution. *Id* at 226. Furthermore, the ministerial exception is applicable if "the employee's primary duties consists of teaching, spreading the faith, *church governance*, supervision of a religious order, or supervision of participation in religious ritual worship." *Rayburn v. Gen. Conference of Seventh-Day Adventists,* 772 F.2d 1164, 1169 (1985).

In the instant case, Petitioner's duties for the Church comprised of church governance because Petitioner was selected by the Church's board to handle a bequest. R. at 5. The Church's executive board had exclusively chosen Petitioner because the board's entrusted spiritual faith in Petitioner's abilities to carry out the duties that enhance and promote the Church's mission. R.P. 7. Petitioner and Respondents have conceded and established the two elements required for the applicability of the ministerial exception. R. at 7. The Complaint explicitly stated that Petitioner was a pastor and Respondents were a church. *Id.* Additionally, the Record demonstrates that both parties conceded to the fact that Petitioner's employment termination was made because the Church transitioned and lost faith in his spiritual leadership. *Id*. Therefore, any inquiry of secular courts into matters of church administration are moot under this Court's decision in *Hosanna-Tabor*. The concession made by both parties are binding and this Court is precluded from making a judgment on the matter because the ministerial exception elements are satisfied in this case.

A. Petitioner must face the Ministerial Exception as a challenge to his claim's because federal courts have the power to hear claims arising under Title VII of the Civil Rights Act of 1964.

Federal courts have subject matter jurisdiction to hear Petitioner's claims arising under a federal employment discrimination statute. 28 U.S.C. Section 1331. Nonetheless, the First Amendment bars a court from granting relief to a ministerial employee who asserted such claims. *Bryce v. Episcopal Church of Colo.* 289 F .3d 648, 654 (2010). "If the church autonomy doctrine applied to the statements and materials on which plaintiff based its claims, then the plaintiff's claim may not be granted relief. *Id.* Respondents contend Petitioner's failure to state a claim upon which relief can be granted was the proper outcome ordered by the lower courts. This was due to concession by both parties regarding why Respondents terminated Petitioner's employment. The Respondents stated that the Church was transitioning and had lost faith in

Petitioner's spiritual leadership. R. at 7. Any inquiry to determine whether this was or was not the proper reason of termination would entangle the Court into the church's governance, thereby creating a violation of the First Amendment.

i. A Federal Court's Subject Matter Jurisdiction Is Not Dependent on a Plaintiff's Failure to State a Claim Because the Claim is Determined by the Application of a Federal Law.

The significant distinction between subject matter jurisdiction and a failure to state a claim demonstrates why Petitioner cannot plausibly state a claim upon which the Court can grant relief. In *Petruska v. Gannon Univ.,* the Third Circuit conflated the two concepts; this Court in in *Arbaugh v. Y & H Corp.* noted the confusion between subject matter jurisdiction and failure to state a claim. *Petruska v. Gannon Univ.,* 462 F.3d 294, 311 (3d Cir. 2006); *Arbaugh v. Y & H Corp.* 546 U.S. 500, 503 (2006). This Court rationalized how Title VII actions are civil actions arising under the laws of the United states. Therefore, subject matter jurisdiction before this Court in *Arbaugh* existed pursuant to 28 U.S.C. Section 1331. *Arbaugh*, 127 S. Ct. 2098 at 503. This Court stated that Section 1331 gave the federal courts power to hear this Title VII case. *Id* at 513, ("A plaintiff properly invokes Section 1331 jurisdiction when a colorable claim 'arising under' the Constitution or laws of the United States have been pleaded").

In *Petruska,* the ministerial exception defense did not bar "the Court's very power to hear the case," but instead, the exception permitted the defendant to argue that "the First Amendment bars Petruska's claims". *Petruska,* 462 F.3d at 302-303. The exception serves as a barrier to the success of the plaintiff's claims, but it does not affect the Court's authority to consider them. *Id.* Therefore, Section 1331 permits courts to hear cases like *Petruska's* and Petitioner in the current matter. However, the First Amendment bars the Court from providing *Petruska,* or Petitioner, and in this case, any relief under Title VII. The Court in *Petruska*

properly concluded the ministerial exception gave rise to a FRCP 12(b)(6) objection, instead of a 12(b)(1) objection. *Id* at 302-303. Thus, when the ministerial exception is applicable, courts cannot decide such cases without violating the First Amendment because, the First Amendment removes such cases from the adjudicatory power of the Court, thereby acting as another limitation of federal courts, not a jurisdictional bar from hearing the suit.

In the present case, Respondents do not challenge this Court's subject matter jurisdiction discretion over Petitioner's breach of contract and retaliatory discharge claim. Rather, Respondents challenge Petitioner's ability to state a claim upon which relief can be granted under the Tourovia and Federal Rules of Civil Procedure 12(b)(6). The key fact in this case is both parties' concession to the two elements required to establish the applicability to the ministerial exception. Any adjudication of the present issue, including permission of pre-discovery to determine whether the ministerial exception is applicable, would substantially entangle secular courts into the relationship between an organized church and its ministers. This Court held in *Sherbert v. Verner,* the relationship between an organized church and its ministers is its lifeblood. The minister is the chief instrument by which the church seeks to fulfill its purpose. *Sherbert v. Verner* 374 U.S. 398 (1963). Any matters touching the relationship between a church and its minister is recognized as a prime ecclesiastical concern. *Id.* at 558-559. The selection a minister and the functions that accompany the selection of a minister are considered matters of church administration and government. *Id.*. Such functions include, but are not limited to, the determination of a minister's salary, his place of assignment, and the duty of the minister to perform such duties in furtherance of the religious mission of the church. *Id.*

Here, Petitioner's duties for the Church required Petitioner to administer the bequest in a manner that was approved by the St. Francis Board of Trustees. The Vice Chairman of Trustees

instructed Petitioner to request the full amount of the bequest from and bank and deposit it into the Church's general operating account. R.P. 5. Petitioner refused to follow such instructions. Petitioner's communication with Wells Fargo Bank and the IRS, without the consent of the Board of Trustees further demonstrated Petitioner's lack of compliance with the instructions and procedures set forth by the St. Francis Board of Trustees. Therefore, the present claim is barred under an objection to Petitioner's claims because the ministerial exception is applicable, precluding Courts from any entanglement into the church's governance.

B. This Court must dismiss Petitioner's case because his pleading is sufficient to establish the applicability of the Ministerial Exception since both parties conceded that Petitioner is a ministerial employee and Respondents represent a church.

Under the Federal Rules of Civil Procedure, the pleader must plead a complaint with sufficient facts that a reasonable jury would plausibly concluded the pleader is entitled to relief. *Federal Rules of Evidence 8(b).* The ministerial exception "forecloses any inquiry into the church's assessment of [Petitioner's] suitability to hold a ministerial-type position, even for the purposes of showing it to be pre-textual. *Minker v. Baltimore Annual Conference of United Methodist Church,* 894 F .2d 1354, 1360-1361 (1990); *Bell,* 126 F. 3d at 331-332 (declining to resolve contention that challenged action was a result of improper focus on plaintiff's personal life or unjustified claims of misconduct; doing so "would interpose the judiciary into the … Church's decisions"). The *Free Exercise Clause* of the First Amendment protects the act of a decision, rather the motivation behind that decision. *Rayburn,* 772 F .2d at 1169. The judiciary's decision to determine whether an employment decision, between a minister and a church, was based on legitimate or illegitimate grounds without the violation of the Free Exercise Clause of the United States Constitution because the Court's determination of legitimacy in employment

termination treat into the internal management of a church. *Comb v. Central Tex. Annual Conference of United Methodist Church.* 173 F .3d 343, 350 (1999).

Beginning with this Court's opinion in *Watson v. Jones,* 80 U.S. 679 (1871), this Court began to place matters of church government and administration beyond the purview of civil authorities. *McClure,* 460 F .2d at 559. *Watson* involved a church property dispute between rival factions of the Presbyterian Church. *Watson*, 80 U.S. at 717-718. This Court affirmed a lower court's ruling enjoining one faction in a dispute by the highest ecclesiastical governing body of the Presbyterian Church. *Id* at 699-700, 727, 734-735. In *Watson,* this Court also stated that when questions of discipline, faith, ecclesiastical rule, custom or law have been decided by the highest of these church judicatories, the legal tribunal must accept such decisions as final and binding. *Id.* at 727. This Court's decision in *Watson* determined several crucial points: (1) the right to organize voluntary religious association to assist in the expression and dissemination of any religious doctrine; (2) the creation of tribunals for the decisions of converted questions of faith within the association; (3) that the ecclesiastical government of *all* the individual members is unquestioned. All the individuals that unite to such a body do so with an implied consent to this government, and are bound to submit to it. *Id.* at 728. If any individual aggrieved by one of the Church's decision could appeal to secular courts and have the decision reversed would lead to the total subversion of the religious body. *Id.* at 728-729.

In *Kedroff v. St. Nicholas Cathedral*, in another church property dispute, this Court struck down a New York statute that purported to transfer administration control of the Russian Orthodox Church in North American from the Patriarch in Moscow to church authorities selected by a convention of Russian Orthodox groups in North American. *Watson* 80 U.S. 679 (1872) citing *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94, 115-116 (1952). Under the New

York statute, the bishop appointed by the Patriarch in Moscow was denied access to the St. Nicholas Cathedral in New York. *Id.* at 96-97. This Court held that the New York statute was an unconstitutional burden on the free exercise of religion by reliance on this Court's earlier decision in *Watson. Kedroff,* 344 U.S. 94 at 116. Even though *Watson* was not decided under the *Free Exercise Clause,* the *Watson* opinion radiated a spirit of freedom for religious organizations, an independence from secular control, power to decide for themselves, free from state interference. The freedom to select clergy was a constitutional protection under the free exercise of religion against state interference. *Id.* at 116.

This Court should *not* observe Petitioner's conduct in determining whether his duties were satisfied in accordance with the Church, because such judicial adjudication is precisely what the ministerial exception was designed to prevented the Court from doing. In *Watson,* this Court properly concluded that any determination in the Church's decision that was already decided by the highest authority in the church, would be unconstitutional, as it would entangle courts into the ecclesiastical affairs of the Church. Additionally, any inquiry into the Church's reasons in Petitioner's employment termination would constitute an excessive entanglement into the Church's affairs because this Court would be determining whether the Church actually lost faith in Petitioner's spiritual leadership. This Court does not have the requisite authority to decide what the Church considers adequate spiritual leadership. Therefore, if this Court were to determine what does or does not constitute spiritual leadership, it would be entangling itself in the internal governance of the church. This type of adjudication would permit secular courts to impose authority over a Church, which has been and always should be, prohibited by the First Amendment of the United States Constitution.

CONCLUSION

Petitioner's claims should be dismissed because civil courts are barred from conducting even an inquiry into why he was terminated. Decisions of religious organizations are protected by the First Amendment, which includes the Free Exercise Clause and Establishment Clause. The government, which includes civil courts, are prohibited from interfering with the freedom of religious organizations to select and terminate their ministers or leaders. In this case, both parties have conceded that Petitioner is a minister, and Respondents represent a church. Moreover, the reason for Petitioner's termination was disclosed by Respondents; they "lost faith" in Petitioner's spiritual leadership, and Petitioner subsequently included that reasoning in his complaint. R.P. 4. Although Courts are not permitted to inquire into the motivation of a church employee's termination, in this instance the disclosed motivation derived from a religious reason, and thus falls under the protection of the First Amendment.

Additionally, Petitioner's assertion that pre-discovery should have been permitted before granting Respondents' motion to dismiss, should also be disregarded. Any inquiry into the church's governance is considered a substantial encroachment into religious autonomy and therefore, secular courts must abstain from hearing such claims. Additionally, Respondents and Petitioner together had already conceded that Petitioner was a minister and Respondents were a church, therefore, Petitioner otherwise, failed to state a plausible claim upon which relief could be granted. This concession is binding and therefore this Court is precluded from making a judgement on a matter because the ministerial exception is satisfied.

For the foregoing reasons, Respondents respectfully request that this Court affirm the Tourovia Circuit Court of Appeals.

Respectfully Submitted,

Team 22

Counsel for Respondents

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