Case No. 415-2017

IN THE SUPREME COURT OF THE UNITED STATES

DAVID R. TURNER,
Plaintiff-Petitioner,

v.

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

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

BRIEF FOR THE DEFENDANTS-RESPONDENTS

March 10, 2017

Team #4
Brief for the Defendants-Respondents

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QUESTIONS PRESENTED

I. 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?

II. 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

A. Factual and Procedural Background

The St. Francis Church of Tourovia (hereinafter "the Church") hired David R. Turner (hereinafter "Petitioner") as a pastor on July 1, 2009. (R. 3). Petitioner's pastorship was contingent upon a yearly employment contract; this contract was renewed three times: June 2010, June 2011, and June 2012. (R. 3). All three contracts designated a specific term, which was indicated on all three contracts as July 1st through June 30th. (R. 3).

On May 16, 2012, the Church was informed that it would receive a bequest from the Edwards Thomas Trust (hereinafter "the Trust") in the amount of $1,500,000.00. (R. 4). The Trust provided one half of the money to be used for general operation and maintenance of the Church, with the other half to be used for the upkeep of the Church's cemetery. (R. 4). Petitioner was chosen by the congregation of the Church to administer the bequest. (R. 4).

Acting on his own accord, Petitioner concluded that it would be a breach of trust, possible fraud, and tax evasion, for the Church to accept the portion of the money for the cemetery. (R. 4). Petitioner told the Church's Board of Trustees to notify Wells Fargo Bank that it no longer owned the cemetery. (R. 4). The Vice Chairman of the Board of Trustees instructed the Petitioner to request the full bequest from the bank and to deposit it into the Church's general operating account. (R. 4). Petitioner refused. (R. 4). In August of 2012, Petitioner informed Dr. Jones of his conclusions. In early October of 2012, Petitioner concluded that the Church was not following his instructions, and contacted the bank and the IRS.

On October 16, 2012, Reverend Dr. Roberta Jones, superintendent of the Tourovia Conference of Christian Churches (hereinafter "CCC"), relieved Petitioner of his pastoral duties because the Church was transitioning and had lost faith in Petitioner's spiritual leadership. (R. 3, 4). Petitioner's termination became effective October 31, 2012. (R. 4).

On September 12, 2013, Petitioner filed a Complaint in the Tourovia District Court against the Church, the CCC, and Dr. Jones. (R. 3). Petitioner's Complaint alleged wrongful termination based on breach of an employment contract and on retaliatory discharge. (R. 3-4). Petitioner alleged that the Church relieved him of his pastoral duties because Petitioner threated to report and refused to participate in alleged tortious acts, including alleged fraud and tax evasion, connected with the administration of funds from the Trust. (R. 4). Petitioner requested in the Complaint that he receive monetary damages for the alleged breach of contract and the alleged retaliatory discharge claims. (R. 4). According to the Complaint, Petitioner "discovered" the Church had sold its cemetery in 2009 and was no longer maintaining a cemetery fund. (R. 4).

On March 31, 2014, the CCC and Dr. Jones filed a Motion to Dismiss Petitioner's Complaint because the First Amendment's ministerial exception barred the lawsuit for failure to state a cognizable claim. (R. 4). The District Court exercised jurisdiction pursuant to 28 U.S.C. §1257(a). (R. 4). The Honorable Michelle L. Hall held a hearing on January 20, 2015, and issued an Order granting the CCC and Dr. Jones's Motion to Dismiss on January 21, 2015. (R. 4). Judge Hall found that Petitioner's claims were fundamentally connected to issues of church doctrine and governance, which would require court review of the Church's motives for the discharge and is precluded by the ministerial exception. (R. 4-5). This appeal followed.

B. Standard of Review

Under Federal Rule of Civil Procedure 12(b)(6), a cause of action may be dismissed if the complaint fails to state a claim upon which relief can be granted. To survive a motion to dismiss under Rule 12(b)(6), the complaint must assert a plausible claim and the complaint must set forth sufficient factual allegations to support the claim. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2009).

C. Statement of Jurisdiction

This Court granted the petition for writ of certiorari on August 16, 2016 pursuant to 28 U.S.C. § 1257(a).

SUMMARY OF THE ARGUMENT

First, the Petitioner's appeal must be dismissed because his claims are barred by the ministerial exception. The ministerial exception bars civil court inquiry into any "strictly ecclesiastical" matter, including, most importantly, the selection of clergy by a religious organization. Should the suit at issue involve this specific scenario, the court's inquiry ends and the suit is barred.

Cases involving claims by third parties do not fall under the ministerial exception and are irrelevant to this case at bar. Although this case involves a state law claim, the First Amendment still applies and the *Smith* case does not.

This Court has multiple ways to resolve this case, including two tests under the ministerial exception: the deference rule and the neutral principles of law approach. The deference rule is superior and constitutionally required. It serves as a far better protection for the First Amendment. However, regardless of the "test" chosen by this Court, the Petitioner's appeal must be dismissed and the Respondent's motion to dismiss affirmed.

Petitioner's claims are barred by the deference rule because they involve claims by a minister against his former employer, a hierarchical church who already dismissed him by a decision of its tribunal. Since the hiring and firing of clergy is a strictly ecclesiastical matter and no exception, should it even exist, applies to this case, this Court must defer to the judgment of the ecclesiastical court and affirm Petitioner's termination.

Even if this Court should choose to reply on the neutral principles of law approach, the Petitioner's claims are still barred. A civil court cannot assess the Petitioner's wrongful termination claim without having to inquire and challenge the Respondent's doctrinal decision

and determine whether they actually lost faith in the Petitioner. It is impossible to apply this approach in this case. Petitioner's claims must be dismissed.

ARGUMENT

I. THE MINISTERIAL EXCEPTION PROTECTS THE CHURCH AGAINST BREACH OF CONTRACT AND RETALIATORY DISCHARGE SUITS BROUGHT BY PETITIONER, THEIR FORMER MINISTERIAL EMPLOYEE.

The ministerial exception protects the Church against the wrongful termination for breach of contract and retaliatory discharge suits brought by Petitioner, its former ministerial employee. The ministerial exception "insure[s] that the authority and control [of] who will minister to the faithful – a matter "strictly ecclesiastical" is the church's alone." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 194–95 (2012). To allow otherwise would "infringe the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments and accord the state the power to determine which individuals will minister to the faithful" in violation of the Establishment Clause. *Id.* at 188. This is what is at stake in this case. In no uncertain terms, the ministerial exception bars this court or any arm of the state from "requiring a church to accept or to retain an unwanted minister, or punish a church for failing to do so." *Id.* at 188. That is exactly what the Petitioner asks this Court to do; this Court must sternly reject such demands and affirm the district court's grant of Respondent's motion to dismiss.

Cases involving allegations of sexual assault and abuse by clergy members are irrelevant to this case. While Respondent firmly advocates that the ministerial exception applies to all ministerial employment decisions by churches, Respondents unequivocally reject its application to claims of sexual assault and abuse, especially of children. These cases are factually and legally

distinct from the case at bar. They involve claims that deal with third party harms and not decisions, rationales, or qualifications of ministerial employment by a church. *See, e.g., Smith v. O'Connell*, 986 F. Supp. 73, 77 (D.R.I. 1997) ("The dispute is not one […] between the church and its clergy or employees. Rather, it is a dispute between church officials and third persons who allege that they were seriously injured by the negligence of the church officials. Such a dispute hardly can be characterized as a dispute involving *internal* church matters."); *Doe v. Corporation of Catholic Bishop of Yakima*, 957 F. Supp. 2d 1225, 1231 (E.D. Wash. 2013); *Givens v. St. Adalbert Church*, 2013 WL 4420776 (Conn. Super. Ct. 2013); *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436 (Tenn. 2012) ("the justification for the ecclesiastical abstention doctrine are at their lowest ebb in circumstances where religious institutions or their employees harm innocent and unconsenting third parties.") (internal quotations omitted). The case at bar challenges the decision to fire the Petitioner, implicating the ministerial exception, and does not raise the specter of third party harms let alone such heinous crimes as child sexual exploitation and abuse. (R. 4). To the extent the Petitioners rely upon these cases they must be disregarded.

It is irrelevant that the state law implicated by this suit, §740, is a neutral law of general applicability. (R. 15). The Supreme Court has directly disclaimed the applicability of *Employment Division v. Smith* to ministerial exception cases. *Hosanna-Tabor*, 565 U.S. at 190; *See Emp't Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872 (1990). *Smith*'s lower scrutiny for burdens on religious activity only apply to "outward physical acts" like the use of peyote and not "internal decisions that affect the faith and mission of the church itself," including the "church's selection of its ministers." *Hosanna-Tabor*, 565 U.S. at 190. Thus, *Smith* cannot apply to any claims based on ministerial employment decisions by churches. *Id.* at 194 n.3

(noting that application of the ministerial exception would bar claims under both federal and state law); *see also Conlon v. Intervarsity Christian Fellowship/USA*, 777 F.3d 829, 836 (6th Cir. 2015) ("because the Establishment and Free Exercise Clauses apply to the States though the Fourteenth Amendment by incorporation, the federal right [to the ministerial exception] would defeat any [State] statute that, as applied, violates the First Amendment."); *Doe No. 2 v. Norwich Roman Catholic Diocesan Corp.*, 2013 WL 3871430, at 3 (Conn. Super. Ct. 2013) (distinguishing applicability of *Smith* to hiring decisions and failure to warn claims); *Erdman v. Chapel Hill Presbyterian Church*, 175 Wash. 2d 659, 676 n.9 (2012) (*en banc*) ("The Court specifically rejected the argument that the neutral principles of law approach [from *Smith*] applied in […] a church's selection of its ministers…") (internal citation omitted). Therefore, *Smith* has no bearing on the case at bar.

No matter the method used by this Court, it must rule in favor of the Respondents. The most obvious method is to apply one of the "tests" defining the application of the ministerial exception. Every jurisdiction uses slightly different tests under related yet distinct names when applying the ministerial exception. The tests most often used, regardless of the names ascribed to them by State courts, fall into two categories addressed by Supreme Court jurisprudence: the deference rule and the neutral principles of law approach. *See e.g. Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696 (1976) (deference); *Watson v. Jones*, 80 U.S. 679, 729 (1871) (deference); *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. America*, 344 U.S. 94 (1952) (deference); *Gonzales v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929) (deference); *Jones v. Wolf*, 443 U.S. 595 (1979) (neutral principles); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) (neutral principles). The Court could also dispose of this case for failure to state

a proper contract claim and for lack of subject matter jurisdiction. *See Melhorn v. Balt. Washington Conference of U.S. Methodist Church, et. al.*, 2016 WL 1065884, at 3 (Md. Ct. Spec. App. 2016); *McKnight v. Old Ship of Zion Missionary Baptist Church*, 2016 WL 4507398, at 3 (Conn. Super. Ct. 2016); *Bayner v. Archdiocese of Hartford*, 301 Conn. 759, 769, 788 n.26 (2011); *Buscetto v. Stain Bernard High Sch.*, 2014 WL 4494362, at 15 (Conn. Super. Ct. 2014); *Bourne v. Ctr. on Children, Inc.*, 154 Md. App. 42, 55 (Md. Ct. Spec. App. 2003); *D'Ulisse-Cupo v. Bd. of Dirs. of Notre Dame High Sch.*, 202 Conn. 206 (1987). Moreover, the exact case has already been addressed by a sister jurisdiction and disposed of in line with the reasoning of the court below. *See Melhorn*, 2016 WL 1065884. Petitioner's urge this Court to follow suit. Regardless of the method chosen by this Court, it can easily dispose of this case in favor of the Respondents.

As to the ministerial exception, the deference rule is constitutionally required. *See Serbian*, 426 U.S. at 721. The Supreme Court has recognized having "to predict which of its activities a secular court will consider religious" as opposed to neutral imposes a "significant burden on a religious organization." *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints v. Amos*, 483 U.S. 327, 336 (1987). The blurry line between religious and a neutral principle is being decided by a secular court, who might "not understand [a religious organization's] religious tenants and sense of mission." *Id.* This situation creates a reasonable "fear of potential liability" which "affect[s] the way an organization carries out" its mission. *Id.* In this way, the neutral principles approach itself violates the First Amendment. Therefore, this Court should apply the deference approach.

Regardless of which test this Court applies, the ministerial exception still applies to Petitioner's claims; and, therefore, the Court must affirm the grant of Respondent's motion to dismiss.

A. The deference rule of the ministerial exception bars suit in this case.

The deference rule bars Petitioner's claims. The deference rule, in accordance with "the First and Fourteenth Amendments, mandates that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them" in deciding disputes involving religious issues. *Serbian*, 426 U.S. at 709 (citing *Md. & Va. Eldership Churches of God v. Church of God at Sharpsburg Inc.*, 396 U.S. 367, 369 (1970) (Brennan, J., concurring)); *see also Watson*, 80 U.S. at 727. If the claim involves the defrockment of a priest, it is "a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals." *Serbian*, 426 U.S. at 709. For this civil court to substitute its judgment for that of the church's highest tribunal in this case would be "the fallacy fatal to [its] judgment." *Id.* at 708.

The deference rule of the ministerial exception is based upon the First Amendment and the freedom to contract. It is well established that legislation or court decision which interfere with the "appoint[ment] of clergy" essentially "prohibit the free exercise of religion" in violation of the First Amendment. *Kedroff*, 344 U.S. at 107–08; *see also Presbyterian Church*, 393 U.S. at 449 (citing *Sch. Dist. of Abington, Pa. v. Schemmp*, 374 U.S. 203 (1963)).

Moreover, the decision to join a religious organization, especially as a member of its clergy, is a voluntary agreement to be bound by the decisions of its tribunals. *Watson*, 80 U.S. at 729 ("All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it."); *see also Gonzalez*, 280 U.S. at 16 ("the decisions of the proper

church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular court as conclusive, because the parties in interest made them so by contract or otherwise."). In fact, those who consent to be bound by church's rulings only have the right "to such appeals as the organism itself provides for." *Id.* No interest of justice would be served by allowing disgruntled parties to appeal to secular courts because doing so would make the contract "a vain consent and would lead to the total subversion of such religious bodies." *Id.* For this Court to inquire into the Church's decision to fire the Petitioner not only violates the First Amendment, but also calls into question the very contract upon which Petitioner now appeals.

The Respondent meets the requirements of the deference rule. While the ministerial exception has two requirements, that the case involves suit by a minister against his church, the deference rule also requires that church to be hierarchical. *See Hosanna-Tabor,* 565 U.S. at 187; *Serbian*, 426 U.S. at 708–09; *Jones*, 443 U.S. at 602; *Watson*, 80 U.S. at 725; *see also Erdman*, 175 Wash. 2d at 682–83. If this requirement is met, the deference rule applies and civil courts must defer to the ecclesiastical tribunal. *Id.* In this case, it is undisputed that the Petitioner was a minister of the Church and has sued it. (R.6). This meets the threshold requirements for the ministerial exception and bars suit. *See Hosanna-Tabor*, 565 U.S. 171.

For the sake of meeting the deference rule, the Church is a hierarchical religious organization. There is no evidence of dispute on this point in the record. However, the record provides evidence of this fact. The Petitioner was hired by Dr. Jones, who is "the superintendent of the Tourovia Conference of Christian Churches." (R. 3). The Church is run by a Board of Trustees. (R. 4). These facts show a clear hierarchy to the Church and CCC, and the CCC decided to terminate the Petitioner's pastorship at one of their churches. (R. 4). Therefore, the

Respondents are clearly hierarchical, the deference rule applies, this Court must defer to their decision on a central ecclesiastical matter, and this Court must once more dismiss Petitioner's appeal.

There are no exceptions to the deference rule. In *Watson*, the Supreme Court hinted at a possible exception to the ministerial exception and the deference rule in cases of "fraud, collusion, or arbitrariness." 80 U.S. at 679; *see Gonzalez,* 280 U.S. at 16. Even one lower court has applied this "exception." *See Listecki v. Official Comm. of Unsecured Creditors*, 780 F.3d 731 (7th Cir. 2015). However, the most recent Supreme Court case to address this "exception" held that "this *Watson* rule was dictum only" and, thus, not binding. *Serbian*, 426 U.S. at 712. In fact, no Supreme Court case has given "consent to or [even] applied the exception." *Id.* (internal quotations omitted). The Court explicitly overruled the use of arbitrariness, due process, fundamental fairness, or impermissible objectives as "exceptions" to the rule because they are "hardly relevant to such matters of ecclesiastical cognizance." *Id.* at 715. The Court's rejection of these "secular notions" essentially kills the *Watson* "exceptions." Thus, there is no exception to the deference rule of the ministerial exception. Therefore, any claims by the Petitioner based on these "exceptions" must be rejected.

Even if this Court decides there are exceptions to the deference rule of the ministerial exception, only "fraud" and "collusion" possibly remain and neither apply in this case. This case is not about the alleged fraudulent tortious or criminal acts of the Respondents. (R. 4). This case is about the termination of the Petitioner's pastorship. (R. 4). The Petitioner makes no claim of either fraud or collusion in his wrongful termination claim for breach of contract and retaliatory discharge. (R.4). Respondents fully admit that should the Petitioner desire to inform the authorities about this alleged conduct the Court could contemplate these exceptions. However,

that is not the case at bar. Petitioner's claims do not fall under either "exception" and thus the deference rule of the ministerial exception applies; his claims must be dismissed.

Under the deference rule, the Petitioner's claims must be dismissed. This case involves a minister's suit against a hierarchical church whose tribunal made a final decision about a core ecclesiastical matter, who will represent them and spread their message. This conduct is protected by the First Amendment and the ministerial exception. The Petitioner has not alleged anything which might enable this Court to contemplate any non-existent exceptions to this rule.

Therefore, this Court must dismiss the Petitioner's appeal and affirm the district court's grant of Respondent's motion to dismiss for failure to state a claim.

B. The neutral principles of law approach to the ministerial exception also bars Petitioner's claims in this case.

The neutral principles of law approach does not save Petitioner's claims. "The First Amendment severely circumscribes the role of the civil courts may play in resolving church […] disputes." *Presbyterian Church*, 393 U.S. at 449. As required by the First Amendment, the neutral principles of law approach bars civil courts from "resolving church […] disputes on the basis of religious doctrine and practice." *Jones*, 443 U.S. at 602. While they may look to "neutral principles of law," courts may not engage in "consideration of doctrinal matters, whether the ritual and literary of worship or the tenants of faith," or any "matter strictly ecclesiastical," including the selection of ministers. *Id.*; *Hosanna-Tabor*, 565 U.S. at 194–95 (internal quotations omitted). In this case, no such neutral inquiry is possible because Petitioner's claims are entangled with core religious doctrines and practices. Thus, Petitioner's appeal must be dismissed because this Court cannot apply neutral principles of law with the specific facts of this case.

Both the Petitioner's breach of contract and retaliatory discharge wrongful termination claims concern the same factual matters and neither can be resolved by reference only to neutral principles of law. Courts that have addressed the applicability of the ministerial exception to breach of contract claims distinguish between claims for back-pay and benefits earned and claims for damages due to the impropriety of the dismissal, including wrongful termination. The Petitioner's claims are of the latter category. (R. 4). This distinction is fatal for Petitioner.

If the breach of contract claim is for money owed or benefits promised during tenure, then the ministerial exception does not apply and the courts may proceed. *See Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597, 615–16 (Ky. 2014) (enforcing contract for tenure because "the government had no role in setting the limits on how the Seminary's tenured professors may be terminated."); *Second Episcopal Dist. African Methodist Church v. Prioleau*, 49 A.3d 812, 817 (D.C. 2012). Even in *Minker v. Baltimore Annual Conference of United Methodist Church,* where the court allowed inquiry into a breach of contract claim, it only addressed the contractual promise that the church would try and place him in a suitable pastorship and explicitly barred the claim involving the reason for his dismissal. 894 F.2d 1354, 1358–60 (D.C. Cir. 1990). While informative, these cases have no bearing on the claims at bar. Unfortunately for the Petitioner, they only rely on these cases to substantiate their claim, which is a wholly different breach of contract claim.

If the breach of contract claim is for damages due to the impropriety of the dismissal or in any way questions the dismissal, for example, wrongful termination, the ministerial exception applies and the claim is barred. *Hosanna-Tabor,* 565 U.S. at 194; *see also Thibodeau v. American Baptist Churches of Conn.,* 120 Conn. App. 666, 677–78 (2010) (These claims, "regardless of their emblemata, […] inexorably entangle the courts in doctrinal disputes"

because they "necessarily require the Court to review the Petitioner's performance of [his] [ministerial] duties."); *Friedlander v. Port Jewish Ctr*,, 588 F. Supp.2d 428, 431 (E.D.N.Y. 2008), *aff'd*, 2009 U.S. App. LEXIS 21407 (2nd Cir. 2009); *Rweyemamu v. Cote*, 520 F.3d 198, 208 (2nd Cir. 2008) (citing *Natal v. Christian & Missionary Alliance*, 878 F.2d 1575, 1577 (1st Cir. 1989)). These claims and their request for damages "essentially asks the court to police the archdiocese's compliance with its own internal procedures" because they require a judgment by the court on the firing of the minister, "trespassing on sacred ground," not just the secular terms of the employment agreement. *Dayner v. Archdiocese of Hartford*, 301 Conn. 759, 786, 23 A.3d 1192 (2011); *Warnick v. All Saints Episcopal Church*, 2014 WL 11210513, at 6 (Pa. Com. Pl. 2014) (citing *Gaston v. Diocese of Allentown*, 712 A.2d 747, 761 (Pa. Super. Ct. 1998)). This is the case law that applies to Petitioner's claims and necessarily bars the claims.

Moreover, courts cannot pry into the reason for the decision to terminate the minister because it would require assessing the validity of a stated religious belief and practice. *Hosanna-Tabor*, 565 U.S. at 194-95; *see also Pardue v. Ctr. City Consortium Schs. of Archdiocese of Washington, Inc.*, 875 A.2d 669, 678 (D.C. Cir. 2005) (citing *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1169 (4th Cir. 1985) ("The Clause protects the act of a decision rather than a motivation behind it.")); *Bourne*, 154 Md. App. at 55-56 ("the court would have to make a determination regarding whether the appellant met the qualifications to act as a minister for the Church. […] the court would have to consider whether the appellant was properly performing his job […] Such determinations are clearly prohibited by the case law."). Such an inquiry is a necessary element of a retaliatory discharge wrongful termination claim, prohibiting this Court from hearing it based on the facts in this case.

Petitioner's breach of contract and retaliatory discharge wrongful termination claims require this Court to engage in an impermissible inquiry into the dismissal of a minister by a church. Petitioner was discharged as a pastor at the Church because the Church was "transitioning" and because it had "lost faith" in his spiritual leadership. (R.3). Contrary to the stated reason for his termination, the Petitioner alleges his discharge was retaliation for threat to report or participate in alleged tortious acts relating to the Trust. (R.4). The effect of Petitioner's claims is to challenge the validity of the Church's reasoning and force this Court to dispute the validity of his termination and find the reason as pretextual. Moreover, the request for damages would punish the Church for changing directions with regards to its spiritual leaders. This requires this Court to trespass into exclusively ecclesiastical matters, which is strictly prohibited by the ministerial exception. Therefore, the Petitioner's claims cannot be solved merely by reference to neutral principles of law.

Should this Court choose to apply the neutral principles of law approach to the ministerial exception, Petitioner's claims must be dismissed and the lower court's decision granting the Respondent's motion for to dismiss must be affirmed.

II. THIS COURT SHOULD AFFIRM THE PRE-DISCOVERY DISMISSAL BECAUSE PETITIONER'S CLAIMS ARE BARRED AS A MATTER OF LAW.

Religious organizations have the unquestionable right to make decisions regarding their membership. *Watson v. Jones*, 80 U.S. 679, 727 (1871). The "scrupulous policy of the Constitution in guarding against a political interference with religious affairs" prevents the government from rendering an opinion on the "selection of ecclesiastical individuals." Letter from James Madison to Bishop Carroll (Nov. 20, 1806), *reprinted in* 20 RECORDS OF THE AMERICAN CATHOLIC HISTORICAL SOCIETY 63, 63-64 (1909). The purpose of the ministerial exception, grounded in Religion Clauses of the First Amendment, is not to safeguard a church's

decision to fire a minister only when it is made for a religious reason; the exception instead ensures that the authority to select and control who will minister to the faithful, a matter strictly ecclesiastical, is the church's alone. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012).

The First Amendment gives "special solicitude to the rights of religious organizations" in the selection and termination of their own ministers. *Id*. at 189. Courts cannot overturn the decisions of ecclesiastical bodies regarding internal church governance and church discipline. *Watson*, 80 U.S. at 727 ("[W]henever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."). In addition, courts cannot adjudicate cases that would require resolution of doctrinal conflicts or interpret church doctrine. *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 720 (1976) ("[U]nder the guise of 'minimal' review under the umbrella of 'arbitrariness,' the Illinois Supreme Court has unconstitutionally undertaken the resolution of quintessentially religious controversies whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church.").

Here, Petitioner's claims have been correctly dismissed because they require secular courts to review a matter that is quintessentially protected by the First Amendment: the church-minister relationship. Petitioner claims that the religious organization breached their contract by wrongfully terminating his employment in retaliation of his conduct. In his Complaint, Petitioner also pleaded that the Church's stated reason for his discharge was motivated entirely

by reasons of faith: Dr. Jones informed Petitioner that the church was transitioning because it had lost faith in his spiritual leadership. (R. 3).

Petitioner's Complaint calls for an inquiry that is categorically forbidden by the First Amendment's Religion Clauses because it would excessively entangle the courts with religion and unduly interfere with respondents' constitutional right to make autonomous decisions regarding the governance of their religious organization. Furthermore, Petitioner's claims will require the fact-finder to intrude into the sacred precincts of the Church. The elements of those claims necessarily call for an examination of the Church's decision to terminate Petitioner's employment by assessing the credibility of the reasons given for that decision as well as the wrongfulness of the termination. The First Amendment prohibits secular courts to question matters of church's governance and discipline. Accordingly, Petitioner's Complaint was correctly dismissed. Therefore, this Court should affirm.

A. The First Amendment bars categorically Petitioner's claims because the church-minister relationship is intrinsically religious.

"The [First] Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be." *Cantwell v. State of Connecticut*, 310 U.S. 296, 303–04 (1940). "[M]atters arising out of the church-minister relationship, including church discipline, come within the category of religious belief, and thus are entitled to absolute protection." *Hiles v. Episcopal Diocese of Mass.*, 437 Mass. 505, 512 (2002) ("Our inquiry is whether Hiles's defamation claim arose from the church-minister relationship, and specifically, whether it arose from religious discipline.")

The Free Exercise and Establishments Clauses "bar the government from interfering with the decision of a religious group to fire one of its ministers." *Hosanna-Tabor*, 565 U.S. at 181. Under *Lemon v. Kurtzman*, the state action "must not foster excessive governmental

entanglement with religion." 403 U.S. 602, 612–13 (1971). Under *Hosanna-Tabor*, courts cannot adjudicate cases that would interfere with "an internal church decision that affects the faith and mission of the church itself." 565 U.S. at 190 (2012).

A case should be dismissed when it requires "extensive inquiry by civil courts into religious law and policy." *Pfeil v. St. Matthews Evangelical Lutheran Church of Unaltered Augsburg Confession of Worthington*, 877 N.W.2d 528, 541 (Minn.), *cert. denied sub nom.* 137 S. Ct. 493 (2016) (quoting *Serbian*, 426 U.S. at 709). In this domain, the church-minister relationship is "intrinsically religious." *Hiles*, 437 Mass. at 511.

In *Pfeil*, the Minnesota Supreme Court analyzed the interplay between the ecclesiastical abstention doctrine and the ministerial exception. 877 N.W. 2d at 534-35. There, the appellants sought relief for several allegedly defamatory statements made during a church disciplinary meeting. *Id*. at 531. In examining the *Hosanna-Tabor*'s ministerial exception, the court recognized that the doctrine could be treated both as an affirmative defense and as a form of abstention. *Id*. at 535.

The *Pfeil* Court rejected the case-by-case analysis reasoning that the determination whether a statement is "secular" or "religious" in that context would require interpretation of religious doctrine thereby causing an excessive entanglement with religion. *Id*. at 538-39. Accordingly, the Minnesota Supreme Court held that the First Amendment prohibited the adjudication of appellants' claims as they "would excessively entangle the courts with religion and unduly interfere with respondents' constitutional right to make autonomous decisions regarding the governance of their religious organization." *Id*. at 542. The *Pfeil* Court's key rationale for upholding the absolute bar was the concern of exacerbating a chilling effect during church disciplinary proceedings. *Id*. at 539-540, n. 11.

In *Hiles*, the Massachusetts Supreme Court upheld the dismissal of the claims brought by priest against the diocese holding that the internal discipline of clergy is quintessentially protected under the religion clauses. 437 Mass. at 510-11. There, the priest brought a defamation claim against his accuser of adulterous relationship as well as against the church leaders who pursued those charges. *Id*. at 510. In recognizing the absolute protection of the church-minister relationship pursuant to the religious clauses, the *Hiles* Court concluded that courts should refrain from adjudicating the credibility of the accusation, which was a necessary component of a defamation claim, but defer to the church's investigation and conclusions as part of its process. *Id*. at 513.

Here, this Court should uphold the absolute bar because the allegations of the Complaint indicate that this litigation would entail the governance the religious organization by inquiring on church-minister relationship. As in *Pfeil*, this case deals with the motives of Petitioner's termination as a pastor for the Church. The Complaint alleges that Petitioner was dismissed because the Church had "lost faith" in his spiritual leadership. (R. 3). The Complaint also alleges that the stated reasons were pretextual of a retaliatory discharge because Petitioner threatened to report and refusal to participate in an alleged fraud and tax evasion. (R. 4). The trial court held a hearing on this matter and found that Petitioner's claims are fundamentally connected with issues of church doctrine and governance as they would require review of the church's motives for the discharge. (R. 5). This review cannot be undertaken without unduly interfering with the religious organization's constitutional right to make autonomous decisions regarding the governance of their religious organization. Like in *Pfeil*, the risk of a chilling effect during a church disciplinary action counsels in favor of the absolute bar.

This case is also analogous to *Hiles* because it would require an inquiry in the church-minister relationship, which is quintessentially barred by the First Amendment. The adjudication of Petitioner's allegations would require an inquiry on the credibility of the motives for the discharge. This inquiry cannot be performed by a secular court without an excessive entanglement of the secular court with religious law and policy by interfering with the decision of a religious group to fire one of its ministers. In other words, the inquiry is barred by both the Establishment and the Free Exercise Clauses because the church-minister relationship is intrinsically religious. Therefore, this Court should hold that the absolute bar applies to Petitioner's Complaint.

B. Petitioner cannot prove any of its claims without intruding in the sacred precincts of the religious organization.

Some courts adopt a case-by-case, element-by-element approach when examining a 12(b)(6) challenge pursuant to the ministerial exception. *See Connor v. Archdiocese of Phila.*, 601 Pa. 577 (2009). A Rule 12(b)(6) motion tests the legal sufficiency of a complaint and requires a court to determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). "[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face." *Id*., 556 U.S. at 678. These allegations "must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2009). The allegations that are entitled to the assumption of truth are those that are factual, rather than mere legal conclusions. *Iqbal*, 556 U.S. at 678–79.

The case-by-case, element-by-element approach first identifies the elements of each of plaintiff's claims; then, it identifies any defense, including the ministerial exception; and, ultimately, it "determine[s] whether it is reasonably likely that, at trial, the fact-finder would

ultimately be able to consider whether the parties carried their respective burdens as to every element of each of the plaintiff's claims without "intruding into the sacred precincts." *Connor*, 601 Pa. at 608.

"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. Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern." *McClure v. Salvation Army*, 460 F.2d 553, 558–59 (5th Cir.), *cert. denied*, 409 U.S. 896, 93 S. Ct. 132, (1972).

> When the conduct complained of occurs in the context of, or is germane to, a dispute over the plaintiff's fitness or suitability to enter into or remain a part of the clergy [ ][ ] it is difficult to see how the forbidden inquiry could be avoided. Questions of truth, falsity, malice, and the various privileges that exist often take on a different hue when examined in the light of religious precepts and procedures that generally permeate controversies over who is fit to represent and speak for the church.

Connor, 601 Pa. at 618 (citations omitted) (modifications in the original). In *Connor*, the Pennsylvania Supreme Court held that a student who was expelled from a religious school could maintain an action for defamation based on statements made during the course of his expulsion. *Id.* at 624. In reaching that ruling, the *Connor* court announced a broader rule to govern ecclesiastical abstention cases. According to *Connor*, a court confronted with an ecclesiastical abstention issue should evaluate each individual claim brought by the plaintiffs and determine whether it is "reasonably likely" that the plaintiffs could prove each element without intruding on the "sacred precincts." *Id.*

The ministerial exception applies to contract claims challenging the church's decision to terminate the employment contract of one of its ministers. *See Bigelow v. Sassafras Grove Baptist Church*, 786 S.E.2d 358, 365 (N.C. Ct. App. 2016). In *Bigelow*, the Court of Appeals of North Carolina reviewed the dismissal of a breach of contract claim brought by a former pastor

against his church. *Id*. at 360. There, the pastor alleged that the church violated their agreement by failing to pay him compensation and benefits. *Id*. The Court of Appeals concluded that, because the pastor was not challenging the church's decision to terminate his employment, but rather, he was seeking to enforce a contractual obligation, the ministerial exception did not apply. *Id*. at 365.

"'If the church autonomy doctrine applies to the statements and materials on which plaintiffs have based their claims, then the plaintiffs have no claim for which relief may be granted.'" *Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597, 608 (Ky. 2014) (quotation omitted). In *Kirby*, the Kentucky Supreme Court reviewed the summary judgment dismissal of an action brought by a pastor against the religious organization alleging breach of contract, breach of the implied duty of good faith and fair dealing, and discrimination based on race. *Id.* at 604. In recognizing that the ministerial exception disallows "the forward progress of the particular suit," the *Kirby* court upheld the dismissal of the racial discrimination claim reasoning that "a religious institution may hold beliefs that are discriminatory under a particular anti-discrimination statute and the ministerial exception acts to protect the religious freedom of those institutions no matter how distasteful society may find it or how strong the societal interest may be." *Id.* at 613-15. Furthermore, the Kentucky Supreme Court held the breach of contract claim based on the alleged violation of the tenure policy was not barred because that the claim was not within "the ministerial exception's underlying purpose: to allow religious institutions, free from government interference, to exercise freely their right to select who will present their faith tenets." *Id*. at 615.

In this case, the ministerial exception applies to Petitioner's claims for breach of contract based on wrongful termination and retaliatory discharge. Petitioner is asking secular courts to

review the religious organization's decision for terminating his employment contract. Unlike in *Bigelow* and *Kirby* where plaintiffs' contractual claim did not involve any inquiry in the decision-making process of the religious organizations, here Petitioner's claim is not based on a contractual provision. Rather, Petitioner's breach of contract claim is based solely on the alleged wrongful termination. Thus, the inquiry is a clear intrusion in the sacred precincts of a religious organization.

Here, Petitioner's breach of contract claim is different from the same claim in *Bigelow*. Whereas Petitioner claims that the religious organization breached their contract for wrongfully terminating him in retaliation of his conduct, the *Bigelow'*s breach of contract claim was grounded on the church's failure to pay him as per contractual provision. In *Bigelow*, plaintiff did not ask the court to review the church's decision to terminate his employment; and, therefore, his breach of contract claim fell outside of the ministerial exception. Here, in contrast, Petitioner is challenging the church's decision to terminate his employment. Accordingly, Petitioner's claim falls within the jurisdiction of the ministerial exception.

Petitioner's claims clash directly with the purpose of the ministerial exception—to allow religious institutions, free from government interference, to exercise freely their right to select who will present their faith tenets. As the Kentucky Supreme Court explained in *Kirby*, in upholding the dismissal of the racial discrimination claim, the reasons and beliefs of religious organizations are not reviewable in a secular court. Petitioner's claims differ from *Kirby*'s breach of contract claim based on the alleged violation of the tenure policy. In *Kirby*, secular courts were called to interpret the tenure policy. Here, Petitioner is asking secular courts to determine whether his termination was wrongful. Accordingly, this Court should uphold the

dismissal of the Complaint because, according to the allegations therein, it is reasonably likely that Petitioner will win on the sacred precincts of the religious organization.

CONCLUSION

For all the aforementioned reasons, Respondents pray this Court to dismiss Petitioner's appeal and affirm the Respondents' motion to dismiss.

Dated: March 10, 2017

Respectfully submitted,

Team #4
Counsel for Respondents