No. 415-2017

In the

Supreme Court of the United States

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DAVID R. TURNER,

Petitioner,

-against-

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

Respondents.

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

BRIEF FOR PETITIONER

TEAM 8

TABLE OF AUTHORITIES

Cases

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JURISDICTIONAL STATEMENT

The judgment of the Appellate Division of the Tourovia Supreme Court was issued on August 16, 2016, and a timely petition for certiorari was granted. The Court has jurisdiction over this case under 28 U.S.C. §1257.

QUESTIONS PRESENTED

1. Does the ministerial exception of the First Amendment preclude employee wrongful termination claims based on breach of contract and retaliatory discharge lawsuits against religious institution employers?

2. Does the ministerial exception automatically bar requests for discovery based on a 12(b)(6) motion to dismiss in a pastor's complaint alleging breach of contract and retaliatory discharge?

STATEMENT OF THE CASE

STATEMENT OF THE FACTS

After a successful career as a financial manager for IBM Corporation spanning nearly twenty five years, David R. Turner began work as the Treasurer and Chief Financial Officer of a regional office of the Tourovia Conference of Christian Churches (the "CCC"). R. at 5. Following this career transition, Turner was hired as pastor of St. Francis Church of Tourovia (the "Church") on July 1, 2009. R. at 4. The Church and Turner secured his pastorship employment by entering into a yearly employment contract for a term running from July 1, 2009 through June 30, 2010. R. at 4. At the end of each contract term for the next three years, Turner's employment contract was renewed, specifically in June 2010, June 2011, and June 2012. *Id.*

On May 6, 2012, in the final month leading up to his June 2012 employment renewal, the Church was scheduled to receive a bequest in the amount of $1,500,00.000 from the Thomas Trust. R. at 5. Based on Turner's prior finance experience, the Church selected him to administer the bequest. *Id.*

Under the terms of the bequest, the Church was required to use $750,000, or half of the bequest, for general operation and maintenance of the Church. *Id.* The Church was required to use the other half exclusively for the upkeep of the Church's cemetery. *Id.* However, Turner quickly discovered that the Church sold its cemetery in 2009 and no longer maintained a cemetery fund. *Id.* He was concerned that accepting the portion of the bequest earmarked for cemetery upkeep would be a breach of trust, and likely fraud and tax evasion. *Id.* Accordingly, Turner advised the Church Board of Trustees to notify the Thomas Trust trustee, Wells Fargo

Bank, that the Church no longer owned the cemetery, as well as to ask Wells Fargo for guidance. *Id.*

Notwithstanding Turner's warnings regarding accepting money to upkeep a cemetery that the Church did not have, the Vice Chairman of the Board of Trustees declined to follow Turner's advice. Instead, the Vice Chairman instructed Turner to request the full $1,500,000 amount of the bequest from the bank and deposit it into the Church's general operating account. *Id.*

Ethically conflicted, Turner declined to follow the order to deposit the full bequest into the general operating account and, in August 2012, again voiced his concerns about accepting the cemetery fund bequest to the CCC's superintendent, Reverend Dr. Roberta Jones. *Id.*

By early October 2012, Turner determined that the CCC and the Church's Board of Trustees had no intention of informing Wells Fargo of the situation. *Id.* As a result of this inaction, Turner contacted the trustee himself to request guidance about the situation, leaving a message for the bank representative he believed was responsible for handling the trust. *Id.* Additionally, Turner attempted to contact the appropriate party within the IRS to advise the agency of the Thomas Trust situation, and to discuss any possible tax ramifications for the parties involved. *Id.*

On October 16, 2012, shortly after Turner contacted Wells Fargo and attempted to apprise the IRS of the situation, Dr. Jones terminated Turner's pastorship, effective October 31, 2012. *Id.* It was later discovered that Dr. Jones informed Turner that the Church was "transitioning" because it had "lost faith" in his spiritual leadership. *Id.*

PROCEDURAL HISTORY

Turner filed his Complaint against the Church, CCC, and Dr. Jones in the State of Tourovia Supreme Court on September 12, 2013, alleging wrongful termination based on breach

of an employment contract and on retaliatory discharge for refusal to participate in and threat to report the Church's illegal acts, including fraud and tax evasion. R. at 5. Turner seeks relief in the form of monetary damages for the breach of contract and retaliatory discharge claims. *Id.*

On March 31, 2014, the Church, CCC, and Dr. Jones filed a Motion to Dismiss, claiming the ministerial exception fully precluded Turner's ability to state a cognizable claim. *Id.* A hearing was held on January 20, 2015, and the following day the court issued an Order granting the Motion to Dismiss, referencing the judge's finding during the hearing that any review of Turner's claims would implicate review of church doctrine. *Id.* at 5-6. The Appellate Division of the Tourovia Supreme Court affirmed the lower court's decision in its December 18, 2015 Order. *Id.* at 6.

SUMMARY OF THE ARGUMENT

Our legal system has a long history of recognizing the importance of protecting the vulnerable from the powerful. This case is about an employer attempting to use its religious status to evade the responsibilities owed to its employee and to deny the employee relief from contractual and tortious injuries suffered.

The ministerial exception to the First Amendment does not preclude employees from bringing wrongful termination claims based on breach of contract and retaliatory discharge. It is not absolute and will not serve to shield a religious institution that breaches an employee's contract that it voluntarily executed, or when it terminates his employment in retaliation. Rather, religious institutions circumscribe their own conduct when freely entering into employment contracts, seeking legal protection of the contract terms. Accordingly, when either the religious institution or the employee seeks to enforce that contract, or bring a suit related to that contract,

courts can resolve those disputes by applying neutral principles of law, as a court would in any employment contract dispute. To shield religious institutions that commit torts involving harm to third parties by refusing to enforce those contracts or preclude suit against religious institutions would unfairly favor religious institutions over other parties. The ministerial exception does not extend this far and is not an absolute bar to suit.

The ministerial exception does not warrant a motion to dismiss or denial of discovery based on this complaint, which sufficiently pleads secular contractual and tortious wrongful termination claims. The complaint is secular on its face because it alleges facts and requests remedies that do not inquiry into the Church's theological beliefs. The ministerial exception cannot support a 12(b)(6) motion based on a secular complaint. Further, the court is capable of narrowly tailoring discovery to sufficiently prevent entanglement into religious affairs, while still providing an opportunity to determine the merits of the claims. The court may also halt discovery if the process overwhelmingly infringes upon the Church's First Amendment protections. Thus, the ministerial exception cannot prevent this suit from reaching discovery.

ARGUMENT

I. THE MINISTERIAL EXCEPTION OF THE FIRST AMENDMENT IS NOT ABSOLUTE AND DOES NOT AUTOMATICALLY SHIELD A RELIGIOUS INSTITUTION THAT BREACHES AN EMPLOYEE'S CONTRACT OR RETALIATES AGAINST HIM

"[C]hurches are not—and should not be—above the law. Like any other person or organization, they may be held liable for their torts and upon their valid contracts." *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985). In *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, this Court explicitly left open the question of whether the ministerial exception bars actions by employees alleging breach

of contract or tortious conduct by their religious employers. 565 U.S. 171, 196 (2012). The Court should now find that it does not.

Claims for breach of contract and retaliatory discharge differ significantly from employment discrimination claims, as do the First Amendment concerns associated with them. Unlike federal discrimination laws, which involve interference by the state, employment contracts are predicated on the voluntary participation of churches. Further, a court can determine whether a contractual breach occurred by applying strictly secular principles of law. The tort of retaliatory discharge, unlike a personal claim of discrimination, implicates thirds parties and broader public policy concerns, both of which have historically persuaded courts to limit the protections of the First Amendment.

The ministerial exception "does not apply to *all* employment decisions by religious institutions nor does it apply to *all* claims by ministers," and thus does not serve as an absolute bar to Turner's claims. *Weishuhn v. Catholic Diocese of Lansing*, 756 N.W.2d 483, 498 (Mich. App. 2008).

A. Religious Institutions Voluntarily Circumscribe Their Own Conduct By Entering Into Employment Contracts, The Disputes Of Which Courts Can Resolve By Applying Neutral Principles Of Law

The default employment relationship in the United States is employment-at-will, meaning that both the employer and employee are free to end the employment relationship at any time. *See* 27 Am. Jur. 2d *Employment Relationship* § 9. Employers are able, but not required, to contract around this default by entering into private agreements with their employees. *Id.* Based in part on the voluntary nature of these contracts, state and federal courts, both before and after *Hosanna Tabor*, have found that breach of contract claims are distinguishable from employment discrimination claims. *See Petruska v. Gannon University*, 462 F.3d 294, 310 (3d Cir. 2006);

Minker v. Baltimore Annual Conference of United Methodist Church, 894 F.2d 1354 (D.C. Cir. 1990); *Jackson v. Mount Pisgah Missionary Baptist Church Deacon Bd.*, 2016 IL App (1st) 143045, ¶ 52 (noting that the First Amendment does not prohibit court intervention when the church fails to follow the procedures it has, itself, enacted); *Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597, 615 (Ky. 2014); *Bigelow v. Sassafras Grove Baptist Church*, 786 S.E.2d 358, 365 (N.C. Ct. App. 2016).

In creating an employment contract, a church—like any other organization—has dominion over its terms and enters into it willingly. In *Minker v. Baltimore Annual Conference of United Methodist Church,* the seminal pre-*Hosanna-Tabor* case on this issue, the D.C. Circuit found that the First Amendment did not bar a minister's claim of breach of oral contract. 894 F.2d at 1359. A church, the court found, "is always free to burden its activities voluntarily through contracts, and such contracts are fully enforceable in civil court." *Id.* In this case, the Church made a voluntary decision to offer Turner a contract making promises about the terms of his employment.

The First Amendment is not offended when "prohibiting the exercise of religion...is not the object of [governmental regulation] but merely the incidental effect of a generally applicable and otherwise valid provision." *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 878 (1990). Contract law is not a regulatory mandate from the state; the state does not require employment contracts nor does it specify their terms. *See DeBruin v. St. Patrick Congregation*, N.W.2d 878, 906 (Wis. 2012) (Bradley, J., dissenting); *Kirby*, 426 S.W.3d at 615. A church freely negotiates the terms of an employment contract and agrees to be bound by its terms. As the Third Circuit has noted, "[e]nforcement of a promise, willingly made and supported by consideration, in no way constitutes a state-imposed limit upon a church's free

exercise rights." *Petruska*, 462 F.3d at 310. An application of Tourovia's contract law to Turner's breach of contract claim therefore does not unconstitutionally burden the Church. Rather, the Church has opted to burden its own activities.

In *Kirby v. Lexington Theological Seminary*, a post-*Hosanna-Tabor* case discussing the issue at great length, the Kentucky Supreme Court found that a seminary's offer of tenure to a professor reflected the obligations that result from a voluntary transaction. 426 S.W.3d at 616. The court described the existence of the employment contract as "a situation in which a religious institution has voluntarily circumscribed its own conduct, arguably in the form of a contractual agreement, and now that agreement, if found to exist, may be enforced according to its own terms. That cannot breach church autonomy." *Id.* To the contrary, the court found, an employment contract exemplifies a church's autonomy as it reflects the church's ability to create policies that reflect its mission. *Id.*

The voluntary nature of employment contracts thus lessens many of the First Amendment concerns present in *Hosanna-Tabor*, because issues of Free Exercise do not exist when a church defines the standards by which it is judged.

In addition to a church's voluntary circumscription of its own conduct, courts have been further persuaded to allow ministerial breach of contract claims by the fact that adjudication of these claims requires an application of completely secular principles. *See Petruska*, 462 F.3d at 312; *Second Episcopal Dist. African Methodist Episcopal Church v. Prioleau*, 49 A.3d 812, 817 (D.C. 2012); *Minker*, 894 F.2d at 1360; *Kirby*, 426 S.W.3d at 618; *McKelvey v. Pierce*, 800 A.2d 840, 859 (N.J. 2002); *Galetti v. Reeve*, 331 P.3d 997, 1001 (N.M. Ct. App. 2014); *Bigelow*, 786 S.E.2d at 366.

The First Amendment does not immunize a church from all secular claims made against it. *Minker*, 894 F.2d at 1360. The immunity offered by the ministerial exception is not triggered merely because the complaint references a church or religion. *Galetti*, 331 P.3d at 1002; *Kirby*, 426 S.W.3d at 619. Rather, it applies only if a court's resolution of the claim would violate the First Amendment. *Galetti*, 331 P.3d at 1002. Therefore, courts must "look not at the label placed on the action but at the actual issues the court has been asked to decide." *Prioleau*, 49 A.3d at 816. When the issue does not involve church governance or doctrine, courts need not address the ministerial exception. Notably, post-*Hosanna-Tabor* courts have allowed ministers to pursue breach of contact claims for lost wages on past work without even referencing the *Hosanna-Tabor* decision. *See Crymes v. Grace Hope Presbyterian Church, Inc.*, 2012 WL 3236290 (Ky. App. Aug. 10, 2012); *Prioleau*, 49 A.3d 812.

Interpreting the provisions of an employment contract does not require a probe into church doctrine; rather, it applies secular legal principles. To adjudicate this case, a court need merely decide whether Turner had a valid and enforceable contract with the Church and whether the Church has broken a contractual promise. *See, e.g.*, *Prioleau*, 49 A.3d at 818; *Kirby*, 426 S.W.3d at 620. The fact that Turner's job as a minister is inherently religious in nature does not change this analysis. *See, e.g.*, *E.E.O.C. v. Mississippi Coll.*, 626 F.2d 477, 485 (5th Cir.1980) ("That faculty members are expected to serve as exemplars of practicing Christians does not serve to make the terms and conditions of their employment matters of church administration and thus purely of ecclesiastical concern"). Thus, when a church agrees to the terms of a contract and interpreting those terms involves no inquiry into church doctrine, courts must enforce those contractual promises.

If an inquiry into a specific contract does eventually cross the line into excessive entanglement in church doctrine, it could be handled as described below in Part II. However, this does not mean, and this Court should not hold, that the interpretation of an employment contract involves a *per se* finding of entanglement. Merely finding a First Amendment issue may arise does not mean that courts should not first attempt to apply neutral principles of law. *See Jones v. Wolf*, 443 U.S. 595, 604 (1979) ("On balance, however, the promise of nonentanglement and neutrality inherent in the neutral-principles approach more than compensates for what will be occasional problems in application"). Such approach would be vastly over-inclusive. By refusing to hear any breach of contract case and inquire into whether a church honored a contract, courts would dismiss many claims that have nothing to do with religion.

To hold that a church need not be held responsible "for wholly predictable and foreseeable injurious consequences of personnel decisions, although such decisions incorporate no theological or dogmatic tenets[,] would go beyond First Amendment protection and cloak such bodies with an exclusive immunity greater than that required for the preservation of the principles constitutionally safeguarded." *Smith v. Privette*, 128 N.C. App. 490, 495 (1998). The blanket immunity granted to the Church by the Tourovia Court of Appeals sweeps far broader than required for First Amendment protection and should therefore be reversed and remanded in order to apply secular state law to the breach of contract claim.

B. The First Amendment Does Not Shield Religious Institutions That Commit Torts Involving Harm To Third Parties

The dangerous public policy implications of a broad ministerial exception are clear when considered in light of torts or crimes committed by a church involving third parties. The exception affects the public interest in a way that employment discrimination does not; the reporting of these torts or crimes impacts other people and society at large based on the nature of

the acts themselves. This can be seen in the case at hand. Turner alleges that he believed the Church was committing fraud, breach of trust, and tax evasion. R. at 5. The fraud and breach of trust affect both the settlor of the trust and the Bank as the trustee. Further, tax evasion affects the United States government as well as its citizens.

As a general matter, courts have been hesitant to grant churches absolute protection from claims involving their torts or crimes against third parties. *See Illinois, ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 606 (2003) ("when nondisclosure is accompanied by intentionally misleading statements designed to deceive the listener, the First Amendment leaves room for a fraud claim"); *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 713 (1976) (holding that civil court review of a church dispute may be appropriate when the decision of a church tribunal is the product of fraud or collusion); *Donaldson v. Read Magazine, Inc.*, 333 U.S. 178, 190 (1948) (noting in a case involving censorship that the government's power to protect citizens against fraud has "always been recognized in this country and is firmly established"); *Listecki v. Official Comm. of Unsecured Creditors*, 780 F.3d 731, 742 (7th Cir.), cert. dismissed, 136 S. Ct. 581 (2015) (stating that where a church fraudulently transferred trust funds, "it is unclear whether the intrachurch doctrine is even applicable where fraud is alleged"). While in these cases it is usually the injured third party who brings suit, the courts' interest in protecting third parties is similarly applicable to a situation involving whistleblowing. In fact, courts have been unwilling to find that *Hosanna-Tabor* bars suits against churches for the tortious conduct of their ministerial employers. *See Lopez v. Watchtower Bible & Tract Soc'y of New York, Inc.,* 246 Cal. App. 4th 566, 599 (2016) (finding that there are no cases extending the ministerial exception "to preclude a third party action against a religious organization for the tortious conduct of its agents" and that such a holding

would be contrary to law); *Doe No. 2 v. Norwich Roman Catholic Diocesan Corp.,* No. HHDX07CV125036425S, 2013 WL 3871430, at *3 (Conn. Super. Ct. July 8, 2013) (finding that holding of *Hosanna-Tabor* is limited to the employment discrimination context and does not preclude negligence, reckless conduct, failure to warn, and negligent supervision claims).

This Court has traditionally weighed the protections of the First Amendment against potential harm to third parties because "[a]t some point, accommodation [of religious freedom] may devolve into 'an unlawful fostering of religion'" and violate the Establishment Clause. *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 334-35 (1987). Further, third parties have an interest in the neutral application of the law even when they are not a party to the case. *See, e.g.*, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) (religious accommodations must consider interests of third-party employees); *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005) (under RLUIPA, "courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries"); *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 709 (1985) (invalidating statute requiring employers to accommodate an employee's Sabbath observance but failing to take into account the burden the accommodation would impose on the employer or other employees); *United States v. Lee*, 455 U.S. 252, 261 (1982) (accommodating religious practice cannot be binding on others); *Wisconsin v. Yoder*, 406 U.S. 205, 230 (1972) ("This case, of course, is not one in which any harm to the physical or mental health of the child or to the public safety, peace, order, or welfare has been demonstrated or may be properly inferred").

The tort and tax law implications of this case affect parties beyond the Church and Turner. Accepting Turner's allegations as true, as the Court must under a motion to dismiss, both the settlor of the trust and the Bank have potentially been defrauded. *Ashcroft v. Iqbal*, 556 U.S.

662, 677 (2009). Further, if true, the United States government has been deprived of revenue, which affects the entire country.

The broad application of the ministerial exception as announced by the Tourovia Court of Appeals essentially immunizes church employers from claims by former ministerial employees regardless of the harm caused by the Church or its agents through a tort or crime. As Justice Sotomayor noted during oral argument in *Hosanna-Tabor*, there may be cases where societal interests, rather than internal church governance, are the bigger issue at stake. *See* Transcript of Oral Argument at 6-7. Using the example of a ministerial employee who reports sexual abuse, she asked: "Regardless of whether it's a religious belief or not, doesn't society have a right at some point to say certain conduct is unacceptable, even if religious? And once we say that's unacceptable, can and why shouldn't we protect the people who are doing what the law requires, i.e. reporting it?" *Id.*

Justice Sotomayor's concerns are well-founded. Under an absolute exception, if a ministerial employee had knowledge of child abuse by a priest, and reported that abuse, the church could terminate the employee and cite the ministerial exception as an affirmative defense for the same reasons stated by the Tourovia Court of Appeals. This issue has already arisen post-*Hosanna-Tabor*, and at least one judge has expressed hesitancy at a ministerial exception that precludes claims of retaliation for reporting crimes. *Ballaban v. Bloomington Jewish Community*, 982 N.E.2d 329, 341-43 (Ind. Ct. App. 2013) (Vaidik, J., concurring) (stating that, though the court avoided the question of whether the ministerial exception barred a retaliation claim for reporting sexual abuse, the ministerial exception does not permit a church to fire a minister for refusing to commit a criminal act). The broad ministerial exception established by the court of

appeals is therefore a dangerous and unlimited precedent that will cause harm to various parties outside any given suit.

The First Amendment "does not shield church people from any secular court consideration of what happens in church meetings just because of where it happened. If a church meeting is used as a place to plan to commit torts involving third parties…ecclesiastical abstention will not shield the occurrences in the meeting from secular court consideration." *Barrow v. Living Word Church*, No. 3:15-CV-341, 2016 WL 3976515, at *2 (S.D. Ohio July 25, 2016). This Court should reverse the Tourovia Court of Appeals and find that the ministerial exception is not so broad to preclude claims of retaliatory discharge when the terminated employee reported a tort or crime affecting a third party.

II. THE MINISTERIAL EXCEPTION DOES NOT WARRANT A MOTION TO DISMISS OR DENIAL OF DISCOVERY BASED ON A COMPLAINT THAT SUFFICIENTLY PLEADS SECULAR CONTRACTUAL AND TORTIOUS WRONGFUL TERMINATION CLAIMS.

Turner's claims are factually plausible and do not inquire into ecclesiastical matters. To survive a 12(b)(6) motion to dismiss, a party's complaint must plead sufficient facts to state a cognizable claim for which relief may be granted. *See Iqbal*, 556 U.S. at 678; *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). An affirmative defense to a cognizable claim may only be considered if "the allegations in the complaint suffice to establish the defense." *Sams v. Yahoo! Inc.*, 713 F.3d 1175 (9th Cir. 2013). The ministerial exception acts as an affirmative defense only when "the alleged misconduct is *rooted in religious beliefs*" or necessitates "adjudication of *questions of religious doctrine*." *Galetti*, 331 P.3d at 1000; *Bilbery v. Myers*, 91 So.3d 887, 890 (Fla. App. Dist. 2012) (emphasis added). Once a party satisfies the broad pleading standard, and

an affirmative defense cannot be stated, the party is entitled to discovery. *See Twombly,* 550 U.S. at 556.

The ministerial exception is not an affirmative defense and does not bar Turner's claims from reaching discovery for two reasons. First, both claims are based on the church's secular actions and do not require relief that undermines the church's autonomy. Second, courts possess the ability to confine discovery within the parameter of secular inquiries, and provide summary judgment in case discovery bridges onto religious entanglement.

A. Neither Claim On The Face Of The Complaint Clearly Requires Inquiry Into Religious Matters.

The Tourovia Court of Appeals erred in concluding that Turner's claims could not proceed without religious entanglement because it misconstrued the nature of the complaint. "Before barring a specific cause of action [under the ministerial exception], a court first must analyze each element of every claim and determine whether adjudication would require the court to...[interfere]...with a church's administrative prerogatives." *McKelvey*, 800 A.2d at 856. A court needs to also examine whether the remedies sought infringe upon the church's prerogatives. *Id.* Turner's complaint does not request the court to delve into ecclesiastical matters through its findings or remedies.

1. *The complaint does not plead facts pertaining to the Church's religious doctrine.*

At the motion to dismiss stage, a court must exclusively consider the facts alleged in the complaint and any documents attached or incorporated into the complaint. *See Brownmark Films, LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. 2012). A court must "accept as true all of the factual allegations contained in the complaint...[and] give the plaintiff the benefit of all inferences that can be derived from the facts alleged." *Newton Gregorio v. Hoover*, 2017 WL

780784, at *3 (D.D.C. Feb. 28, 2017). "The mere presence of a potential affirmative defense does not render the claim for relief invalid" if such facts are not "set forth unambiguously in the complaint." *Id.*; *Brooks v. Ross*, 578 F.3d 574, 579 (7th Cir. 2009). While the court may consider information outside of the complaint for a motion for summary judgment, it may not consider any outside information in a motion to dismiss. *Brownmark Films*, 682 F.3d at 690. Any information that is considered outside of the complaint will automatically convert into a motion for summary judgment, surpassing the motion to dismiss stage. *Id.*

Turner's complaint could not implicate the ministerial exception based on the secular actions alleged. Turner's complaint asserts two claims that do not rely on interpretations of religious doctrine or question the sincerity of the Church's beliefs. First, he alleges that the church fired him mid-year, although guaranteeing him work for the whole year via his employment contract. R. at 4-5. Second, he alleges that he was fired after attempting to report the church's fraudulent and illegal activities to the bank and the IRS. R. at 5. The Church demanded that Turner mismanage the Church's trust, despite Turner's ethical concerns. *Id.* The Church did not attempt to ground Turner's employment contract or trust management responsibilities in religious doctrine. Turner does not allege any other facts to support his claim. On its face, the complaint simply alleges secular actions used to commit secular wrongs. This interpretation of the complaint should prevail because the court is obliged to read the facts in Turner's favor. *See Newton Gregorio*, 2017 WL 780784, at *3.

Nevertheless, the Tourovia Court found the complaint facially intrusive into religious matters. R. at 8. The Tourovia Court incorrectly asserted that Turner's complaint included the Church's pretextual reason for terminating him. R. at 7. However, the record clearly reflects that the trial court relied on "the reasons stated on the record in open court" in finding for the

ministerial exception. R. at 6. Turner only alleged facts concerning the Church's objective actions toward him, demonstrating that he was not concerned with the Church's subjective reasons for firing him. R. at 5. If the trial court actually granted the motion to dismiss based on the facts alleged in the complaint, as the law instructs the court to do, then the record would reflect such fact. The trial judge granted the motion after the hearing, which introduced evidence that was not mentioned in the complaint. R. at 6. The Tourovia Court of Appeals conflates the procedures necessary for dismissal and summary judgment by relying on allegations made in the hearing and not made in the complaint. Without any religious basis in the complaint's factual allegations, the ministerial doctrine cannot stand as a defense in support of a motion to dismiss.

2. *The complaint does not seek remedies that infringe upon the Church's self-governance.*

Turner did not seek a remedy that would force the Church to reinstate him as a minister. In addition to alleging facts that do not implicate theological inquiries, the complaint must also request relief that does not infringe upon a church's governance. *See Minker*, 894 F.2d at 1360. Typically, a remedy suffices when it does not intrude into a church's employment decisions or require court oversight. *Id.*

Money damages are an appropriate remedy in disputes against a church. *See Galetti*, 331 P.3d at 1001 (establishing that money judgments do not "require excessive interference with church operation"); *McKelvey,* 800 A.2d at 859 (finding money damages does not offend the church's First Amendment protections); *Minker*, 894 F.2d at 1360 (holding that money damages do not "distort church appointment decisions"). Turner requests money damages in his complaint due to the injuries suffered from his wrongful termination. R. at 5. Thus, Turner has an adequate remedy that does not conflict with the Church's prerogatives.

This Court's precedent indicates only one scenario that finds such relief improper. In *Hosanna-Tabor*, the Court asserted that money damages acted as a penalty to the church for terminating a minister it deemed was incapable of performing her job after she was diagnosed with narcolepsy. *See Hosanna-Tabor*, 565 U.S. at 194. To contrast, this case concerns issues beyond a church's decision to fire a minister. The damages sought are not to punish the Church for terminating an upstanding employee, but to hold the Church accountable for the contract it voluntarily entered into with Turner and for unjustly penalizing him for exposing the Church's illegal actions. R. 4-5. Like this Court limited the ministerial exception's applicability to antidiscrimination suits, it's holding on money damages should also be limited to antidiscrimination cases. *Hosanna-Tabor*, 565 U.S. at 195.

B. Courts Can Sufficiently Control And Limit Discovery To Prevent Entanglement Into Religious Affairs.

Turner cannot use discovery to pry into the Church's theological affairs because the issues in this case concern the Church's secular actions and not its religious beliefs. Alternatively, the fear that discovery would encroach on ecclesiastical matters is unsubstantiated because discovery is not limitless. Trial courts have the ability to confine discovery within appropriate limits to "guard against a wide-ranging intrusion into sensitive religious matters." *Elving v. Calvin Presbyterian Church*, 375 F.3d 951, 967 (9th Cir. 2004); *Bollard v. California Province of Soc'y of Jesus*, 196 F.3d 940 (9th Cir. 1997). Further, new federal rules "limit the breadth of discovery that can occur absent court approval," especially if it "goes beyond material relevant to the parties' claims or defenses." *Elving*, 375 F.3d at 968.

Several courts have allowed limited discovery in cases against religious institutions. *See id.*; *Rayburn*, 772 F.2d at 1165; *Erdman v. Chapel Hill Presbyterian Church*, 234 P.3d 299, 305 (Wash. Ct. App. 2010), *as amended on denial of reconsideration* (July 28, 2010), *rev'd on other*

grounds, 286 P.3d 357 (Wash. 2012); *Pardue v. Ctr. City Consortium Sch. of Archdiocese of Washington, Inc.*, 875 A.2d 669, 678 (D.C. 2005). The Tourovia Court of Appeals could have easily permitted a form of discovery that would enable Turner to collect evidence relevant to his complaint, while simultaneously prohibiting any inquiry into church doctrine. In this case, discovery would encompass evidence concerning the employment contract and any oral representations made about the contract, management of the church's trust, and Turner's actions relating to the trust. The judge can strike any discovery requests that would require interpretation of the Church's governing doctrines.

Further, summary judgment is readily available for the Church if the factual record built during discovery proved the ministerial exception's applicability. Granting a motion for summary judgment is appropriate when the evidence demonstrates that a genuine issue of material fact does not exist. *See Kirby*, 426 S.W.3d at 604. The court has sufficient discretion to grant summary judgment if ecclesiastical matters overwhelm the evidence during discovery. Thus, discovery offers the Church multiple protections against religious intrusion. Given the court's discretionary control over discovery, the sheer possibility that discovery could reach beyond secular claims is not a valid reason to prevent discovery in this case.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed and this case should be remanded for discovery.

Respectfully submitted.