No. 415-2017

IN THE

SUPREME COURT OF THE UNITED STATES

April Term, 2017

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David R. TURNER,

Petitioner,

v.

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

Respondent.

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ON WRIT OF CERTIORARI
TO THE TOUROVIA COURT OF APPEALS

BRIEF FOR THE RESPONDENT

Team 19

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Questions Presented

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

(2) Whether complaints alleging wrongful termination by a minister are subject to 12(b)(6) Motions to Dismiss for failure to state a claim, without an opportunity for discovery, based solely on the application of the ministerial exception to lawsuit?

STATEMENT OF THE CASE

This case comes on appeal from the State of Tourovia Court of Appeals and concerns whether a constitutional exception known as the "ministerial exception" should be applied in this case, barring the petitioner from recovering damages and whether the petitioner was entitled to discovery before summary judgment was entered against him.

I. STATEMENT OF THE FACTS

David R. Turner (hereinafter "Mr. Turner" or "petitioner") was hired by St. Francis of Tourovia (hereinafter the "church" or "respondent") to be their pastor. R. at 4. This relation was continued from 2009 until 2012 when St. Francis informed Mr. Turner that his services were no longer required because the church had "lost faith" in his spiritual leadership and was thus "transitioning" to a new pastor. R. at 4. Six months before this termination Mr. Turner had become aware of a bequest that was going to be made available to St. Francis in the form of a trust (hereinafter the Edward Thomas Trust) in the amount of 1,500,000 dollars. R. at 5. Because of Mr. Turner's past experience he was designated to handle the bequest. R. at 5. Because Mr. Turner disagreed with the church on how the bequest was to be administered he contacted the bank that managed the bequest as well as the IRS. Mr. Turner discussed the matter with Dr. Jones superintendent of the Tourovia Conference of Christian Churches (hereinafter CCC) On October 16, 2012 Mr. Turner was notified that his pastorship had been terminated effective October 31, 2012. R. at 5.

II. PROCEDURAL HISTORY

Because based on the above circumstances Mr. Turner filed a Complaint in the State of Tourovia Supreme Court on September 12, 2013 against St. Francis, the CCC and Dr. Jones. R. at 5. The complaint alleged wrongful termination based on breach of an employment contract

and retaliatory discharge because of the Petitioner's threat to report and refusal to participate in certain tortious acts, including alleged fraud and tax evasion connected with the administration of funds from the Edward Thomas Trust. R. at 5. The complaint requested relief in the form of monetary damages. R. at 5.

On March 31, 2014, the CCC and Dr. Jones filed a Motion to Dismiss Mr. Turner's September 12, 2013 complaint claiming that the First Amendment ministerial exception barred the lawsuit for failure to state a cognizable claim. R. at 5. A hearing was held on January 20, 2015 presided over by the Honorable Michelle L. Hall. R. at 6. Judge Hall Granted the order to dismiss because "the appellant's claims are fundamentally connected to issues of church doctrine and governance and would require the court to review the church's motives for the discharge, which is precluded by the ministerial exception." R. at 6. The order of the trial court was affirmed by the Appellate Division of the Tourovia Supreme Court on December 18, 2015. On August 16, 2016 the State of Tourovia Court of Appeals also affirmed the ruling of the State of Tourovia Supreme Court. This Court granted a Writ of Certiorari in this case.

SUMMARY OF ARGUMENT

I. The Ministerial Exception Should Be Applied In This Case

The First Amendment requires that "congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 181 (U.S. 2012). This Court has held that this requirement allow churches an "independence from secular control or manipulation" *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (U.S. 1952). Most recently in *Hosanna-Tabor* this Court held that the First Amendment via the ministerial exception "Bar[s] the government from interfering with the decision of a religious group to *fire* on of its ministers" *Hosanna*, 565 U.S. at 181 (Emphasis Added). In this case both sides have conceded that the ministerial exception might apply in this case the question before the court is should it apply. We respectfully request that the court find that it does.

The Court has historically protected the church from government and Court interference in internal disputes. With regard to internal church disputes regarding property this Court said in *Watson v. Jones* that when questions of discipline faith etc. are decided by the highest church "judicatories" then those decisions are binding on civil courts. *Watson v. Jones*, 80 U.S. 679, 727 (U.S. 1872); see also *Kedroff*, 344 U.S. at 95-97, 114-115. One of the earliest church employment cases that this Court dealt with was *Serbian v. Milivojevich*. In that case which dealt with the dismissal of a bishop the Court held that if extensive inquiry into religious law and polity to decide the dispute civil courts are to be bound by the highest ecclesiastical tribunal. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709 (U.S. 1976).

This Court adopted the ministerial exception in *Hosanna-Tabor* and held that it barred a ministers claim for retaliation and anti-discrimination claim under the ADA. Because this case is

also about the employment of a minister and would require the same extensive inquiry this court found unacceptable in *Hosanna-Tabor* the Court should extend the ministerial exception to apply in this case. Although the Court expressly limited its holding in Hosanna-Tabor the claims in this case are very similar. Both claims involve the termination of employment for allegedly bad reasons requiring damages, *firing*. Thus wrongful termination and retaliation breach of contract claims should fall under this rule just as much as an employment discrimination claim.

In addition the concerns that this court had about churches being required to retain an "unwanted minister" and having the freedom to select a minister who will personify the churches beliefs are also present in this case. Whether the claim is under the ADA or breach of contract the issue is still the employment of a minister and thus the Court's concerns still are present here. Further a similarly extensive investigation would be required to determine if relief is warranted in a breach of contract case as an anti-discrimination case because in both cases a finding that the church acted wrongly would be required which this Court found to violate the First amendment in *Hosanna-Tabor*.

Finally if the Court decides to extend the ministerial exception it will not act as a ban on all breach of contract claims against churches by employees or otherwise. This is primarily because the ministerial exception only applies to claims between minsters and their religious employers. Thus breach of contract claims with a construction company or an employee who is not a minister would not be barred. By extending this exception ot breach of contract claims brought by a minister this Court would be protecting the freedoms guaranteed by the first amendment articulated in Hosanna-Tabor nothing more.

II. The Motion To Dismiss Was Properly Granted Prior to Discovery

On the issue of whether discovery was appropriately precluded on the base of the Ministerial Exception, this Court should in the affirmative for three reasons. (1), the motion to dismiss was proper prior to discovery due to the failure to state a valid claim for redress, (2) that discovery can be bypassed if there is no chance that the fact-finder will be able to separate the religious from the secular, and (3) that discovery in this case would necessarily be overly entangle the judiciary with the church's right to self-determination.

This Court should rule that there can be no valid claim without any proper redress. The instant case contains no valid relief, as both the main avenues of relief in the Labor Law statute are disallowed in Petitioner's situation. These two avenues would require the judiciary to supplant its will over the will of the church in one of the most sacred areas of church leadership: who speaks for and represents the congregation and the church writ large. As such, there can be no proper relief granted by this secular organization, which means that the court should dismiss the case for failure to state a claim.

Secondly, this Court should accord its ruling with the Supreme Court of Philadelphia in terms of their three part analysis of the religious nature of the case. Their test demonstrates that when the case is overwhelmingly related to the religious sphere, then the court should not be allowed to hear the case, as it would unnecessarily entangle the court in religious ideas. While this Court is obviously not required to adopt the analysis on the whole, the test already comports itself with this Court's precedent in the area. Dismissing a case prior to discovery is acceptable when the court cannot disentangle the two aspects of a church's business: secular, over which the court has complete jurisdiction, and the spiritual, over which the court has no power. This case is overwhelmingly the latter.

Finally, discovery in the instant case would obviously entangle the two realms because the church specifically stated its reasoning was spiritual in nature. To disprove this, the court would have to endeavor into religious sphere. This is an impossibility, as this Court holds as sacred the right of a church to determine its ministers and representatives. As such, for these three reasons this Court should hold that the Motion to Dismiss was correctly granted prior to discovery.

Argument

I. The "Ministerial Exception" Should Be Applied In This Case and Bar The Petitioner's Wrongful Termination and Retaliatory Discharge Claims.

The First Amendment's Free Exercise and Establishment Clauses collectively require that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." *Hosanna-Tabor,* 565 U.S. at 181. These restrictions on government action created by the Constitution have been held by this Court to allow churches "an independence from secular control or manipulation -- in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine*." Kedroff*, 344 U.S. at 116. Recently, this Court when addressing the "ministerial exception" stated that the Constitution "Bar[s] the government from interfering with the decision of a religious group to *fire* one of its ministers." *Hosanna-Tabor*, 565 U.S. at 181 (Emphasis Added). Specifically, "the Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own." *Id*. at 184.

This "ministerial exception" is implicated when the plaintiff is determined to be a minister and the plaintiff is seeking relief against his religious employer. *Id*. at 194. In this case, there is no dispute that the parties meet this criteria, as the lower court pointed out "Both parties concede that this case presents a situation where the ministerial exception might apply. The only question that remains before this Court is whether this exception applies in claims of wrongful termination or claims of retaliatory discharge based upon a breach of contract. We respectfully request this Court to find that the exception does apply.

A. This Court Has Historically Found That Courts May not Interfere With the Internal Workings of Churches Despite There Being Property or Employment Disputes Within The Church.

This Court has ruled on the issue of government interference with churches several times in the past beginning with church property disputes. In *Watson v. Jones* there was a dispute between church members over which segment of the congregation was the true Walnut Street Church. *Watson v. Jones*, 80 U.S. at 717. In deciding the issue this Court held that "whenever the questions of discipline, or of faith, […] have been decided by the highest of these church judicatories […] legal tribunals must accept such decisions as final, and as binding on them." *Id*. at 727.

The Court ruled similarly in *Kedroff v. St. Nicholas Cathedral* where the Court found that an Archbishop appointed by the head of the Russian Church had the proper right to use a New York cathedral and that a New York law finding otherwise was invalid in part because "All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed." *Kedroff*, 344 U.S. at 95-97, 114-115. These church property cases formed the backdrop for when this Court considered whether the First amendment applied to employment claims made by ministers, now commonly called the ministerial exception.

One of the earliest cases where this Court addressed an employment claim made by a minister against a church was in *Serbian v. Milivojevich*. That case dealt with a dispute regarding the suspension and removal of Dionisije Milivojevich, a Bishop of the Holy Synod of the Serbian Orthodox Church, by that church.. *Serbian E. Orthodox Diocese*, 426 U.S. at 697 - 698. While

the dispute in *Serbian* was not specifically a wrongful termination or retaliation claim as in this case the question before the Court was whether the First Amendment precluded the Court from interfering with a churches internal dispute involving employment of a minister making it relevant to whether the exception applies to the internal dispute in this case. In finding that the church's decision to remove the Archbishop stood this Court held that "where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal […] but must accept their decisions as binding on them." *Id*. at 709.

Similarly in this case there is no way for a Court to determine if petitioner was wrongly terminated or retaliated against in violation of his contract without an "extensive" look into how the church hires and terminates their ministers and the reasons behind those decisions. Such an all-encompassing look would clearly run afoul of the Court's holding above.

B. This Court Should Hold That Wrongful Termination And Retaliatory Discharge Claims Based On A Breach Of Contract Are Barred Under The Ministerial Exception Because They Would Require The Same Extensive Inquiry This Court Found Unacceptable In Hosanna-Tabor.

The Court's most recent case on this issue extended the rule of non-interference in church's employment decisions in *Serbian* by adopting the "ministerial exception" with regard to employment discrimination claims made by ministers against religious employers. *Hosanna-Tabor*. *Hosanna-Tabor*, 565 U.S. 171. Respondent is aware that this Court limited its holding in *Hosanna* to employment discrimination claims. *Id*. at 196. However, the rules laid down by this Court in *Hosanna* are very relevant to a determination in this case because the claims in *Hosanna*

are very similar to the claims in this case, namely that they all involve the termination of employment of a minister by a church and the reasons for that termination.

In *Hosanna-Tabor*, Cheryl Perich was employed by Hosanna-Tabor, a church, as a called teacher from 1999 until 2005. *Id*. at 178. In 2004 Ms. Perich became ill and was diagnosed with narcolepsy, she went onto disability leave and in January of 2005 she informed the school that she would be able to return to work next month. *Id*. She was informed by Hosanna Tabor that there was concern she would not be physically capable of returning to work that year or the next and they had already hired a replacement for the current year. *Id*. Negotiations ensued but quickly broke down with the school sending Ms. Perich a letter stating they would consider whether to terminate her at the next church meeting based on her "insubordination and disruptive behavior […] [and] the dam- age she had done to her working relationship with the school by threatening to take legal action. *Id*. at 178-179 (Internal Quotations Omitted). The EEOC and Ms. Perich brought suit against Hosanna-Tabor alleging that "Perich had been fired in retaliation for threatening to file an ADA lawsuit." *Id*. at 180. Hosanna Tabor responded by invoking the Ministerial Exception claiming that Ms. Perich was a minister fired for religious reasons. *Id*. At 180. The facts of Hosanna Tabor are very similar to this case, they both involve ministers who are found by the church where they are employed to not be compatible with their religious goals who then terminate them. *Hosanna- Tabor* 565 U.S. at 180; R. at 4-6. Another similarity is that Ms. Perich in Hosanna-Tabor Alleged retaliation in her complaint as does the petitioner in this case. *Hosanna- Tabor* 565 U.S. at 180; R. at 5. Although the retaliation in *Hosanna* was under the ADA rather than as a breach of contract and so not exactly like the retaliation in this case the claims are still very similar.

1. *The Claims In Hosanna-Tabor Are Similar To The Claims In This Case*

In analyzing *Hosanna-Tabor*, this Court made several findings which are very relevant to the present case. At the outset this court stated that "Both Religion 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 (Emphasis Added); *see also Bell v. Presbyterian Church (U.S.A.),* 126 F.3d 328, 332 (4th Cir. Va. 1997) (Holding that a breach of contract claim was barred under the First Amendment because the direction of money which lead to the termination of a minister was within ecclesiastical sphere). This case falls directly into this holding because the act which precipitated this law suit was the respondent's *firing* of the petitioner. R. at 5. Even though the wrongful termination and retaliation claims in this case are based upon a breach of contract not employment discrimination, as in *Hosanna-Tabor*, they are both involve the termination of employment for allegedly bad reasons requiring damages, *firing*. Thus wrongful termination and retaliation breach of contract claims should fall under this rule just as much as an employment discrimination claim.

2. *The Concerns the Court Had About Court Interference With Churches In Hosanna-Tabor Are Also Present In This Case.*

The Court went on to discuss the long history and broad protection that churches have been given by this Court from "secular control or manipulation" citing both Watson and Kedroff. *Hosanna- Tabor* 565 U.S at 185-186. The Court then decided that there was a ministerial exception stating:

> The Courts of Appeals have uniformly recognized the existence of a "ministerial exception," grounded in the First Amendment, that precludes application of such legislation to claims concerning the employment relationship between a religious institution and its ministers. We agree that there is such a ministerial exception. The members of a religious group put their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of

> those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments.

Hosanna- Tabor 565 U.S. at 188. The Court went on to say that the ministerial exception applied in *Hosanna-Tabor* precluding Ms. Perich from being reinstated, because it would plainly violate the first amendment, or seeking damages, because it would "operate as a penalty on the church for terminating an unwanted minister." *Id*. at 194. This sections shows the Court's concern of the influence that courts could have on who would be in charge of churches and "personify its beliefs" by awarding reinstatement or damages in employment discrimination cases. *Id*. at 188.

The same concerns that the Court had with employment discrimination claims in *Hosanna-Tabor* are also present in this case. If a church is subject to damages under a wrongful termination or retaliation claim based upon a breach of contract they are then incentivized to retain an "unwanted" minister or if they choose to breach the contract would be subject to damages which would "operate as a penalty in the church for terminating an unwanted minister." *Id*. at 188, 194. The respondent should not be penalized for terminating an "unwanted minister" nor should respondent be forced to retain him because doing so would defeat the purpose of the ministerial exception and allow the courts to have influence on the selection of ministers that this Court Prohibited in *Hosanna-Tabor*. *Id*. at 188.

The dissent in the lower Court would have this Court follow *Kirby v. Lexington Theol. Seminary* from the Supreme Court of Kentucky. R. at 11. In that case the Kentucky Supreme Court stated that because the contract entered into in that case was voluntary the courts could have jurisdiction to decide it. *Kirby v. Lexington Theol. Seminary*, 426 S.W.3d 597, 616 (Ky. 2014). However, the even if a church enters into a contract voluntarily if a court is allowed to enforce that contract via reinstatement or allow for damages the court would still be imposing a

"penalty on the church for terminating an unwanted minister" *Hosanna- Tabor* 565 U.S. at 194. Nowhere in *Hosanna-Tabor* the touchstone case does the court mention the voluntariness of Ms. Perich's contract to be relevant.

A better case for this court to consider would be *Melhorn v. Balt. Wash. Conf. of the United Methodist Church* where the Court of Special Appeals of Maryland dealt with a case whose facts are nearly identical to the case at bar. *Melhorn v. Balt. Wash. Conf. of the United Methodist Church*, 2016 Md. App. 1, 2-5 (Md. Ct. Spec. App. Mar. 16, 2016). In that case the court cited Hosanna-Tabor as well as well as Court of Appeals cases for the proposition that "religious organizations must be allowed to hire and fire their clergy without government interference." Melhorn 2016 Md. App. At 14 (Citing *Hosanna- Tabor* 565 U.S at 53).

3. *A Similar Determination To The One Prohibited In Hosanna Tabor Would Be Required To Award Damages In This Case*.

This Court also refused to award damages because such relief "would depend on a determination that Hosanna-Tabor was *wrong* to have relieved Perich of her position, and it is precisely such a ruling that is barred by the ministerial exception." *Hosanna- Tabor* 565 U.S at 194. (Emphasis Added) Similarly in this case in order to award damages this Court would have to make a determination that respondent had acted wrongly in terminating petitioner by finding that they had not complied with the contract or that there was retaliation. Such a finding is required because if respondent did not act wrongly there would be no breach of contract and no damages. Thus this case would require a finding that respondent was "wrong to have relieved [petitioner] of [his] position" which this Court explicitly stated in Hosanna-Tabor is prohibited by the ministerial exception. *Id*. at 195. Hosanna-Tabor dealt with very similar claims to this case which deal with same concerns to those faced by this Court in Hosanna Tabor and would require

a similar analysis to the one prohibited by this Court in *Hosanna-Tabor* making *Hosanna-Tabor* the proper precedent to apply.

C. This Court Should Not Apply Any Of The Gonzales Exceptions Because They Have Either Been Expressly Or Impliedly Overruled.

Since part of the present case involves a claim that the repsondent's stated reason for terminating the petition was pretextual the petitioner might try and rely on the language this Court used in *Gonzalez v. Roman Catholic Archbishop*, a case dealing with an heir claiming appointment to a clerical position, where this Court said that "In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive." *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 16 (U.S. 1929). While the Court decided in *Gonzales* that the church's decision would stand, the above statement seemed to allow for an exception to the rule laid down in *Watson* if fraud etc. could be proved. *Id*. However, because of subsequent cases this statement in *Gonzalez* has been all but overruled and should not be applied in this case.

In *Serbian v. Milivojevich* this Court considered whether any of the exceptions in *Gonzalez* applied. *Serbian E. Orthodox Diocese*, 426 U.S. at 712-713. In rejecting the application of any of the exceptions the Court began by stating that the "exception to the Watson rule was dictum only" *Id*. at 712. The Court went on to say that "no decision of this Court has given concrete content to or applied the exception." Id. (Internal Quotations Omitted). The Court ended by explicitly overruling the arbitrariness exception stating that an investigation into whether a church had arbitrarily followed its own rules would be unconstitutional under the First amendment because it would require the courts to look into "a matter which concerns theological

controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Id*. at 713-714.

Also in *Hosanna-Tabor* this Court rejected an argument that the "ministerial exception" should not apply because Hosanna-Tabor's asserted religious reason for firing Ms. Perich was pretextual stating the "Suggestion misses the point of the ministerial exception." *Hosanna-Tabor*, 565 U.S. at 194-195. The Court went on to say that "The purpose of the exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason. The exception instead ensures that the authority to select and control who will minister to the faithful--a matter strictly ecclesiastical, is the church's alone." *Id*. at 194 -195 (Internal Citation Omitted). This statement effectively overrules the remaining *Gonzalez* exceptions by moving the motivations for the church's termination of a minister out of the realm of the courts because as this court has stated the "ministerial exception" is designed to keep minister selection "the church's alone." *Id*. at 194-195.

D. Extending The Ministerial Exception To Wrongful Termination And Retaliation Claims Like Those In This Case Would Not Make The Exception A Total Ban On Breach Of Contract Claims.

While the ministerial exception should be applied in this case the respondent does not deny that a "A church is always free to burden its activities voluntarily through contracts, and such contracts are fully enforceable in civil court." *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354 (D.C. Cir. 1990) (Citing *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 714, 20 L. Ed. 666 (1871)). Extending the ministerial exception to the petitioners wrongful termination and retaliation claims will foreclose the above rule. This is the case for two main reasons.

First, extending the rule will not preclude breach of contract suits against churches to proceed if they deal with a neutral third party. For example if a church contracts with a construction company over building an extension and breaches its contract with the contractor the contractor could sue under breach of contract without running afoul of the cases cited above. Secondly, extending the ministerial exception will not preclude all breach of contract claims brought by church employees against their religious employers because for the ministerial exception to apply the plaintiff must be a minister. R. at 7. Thus all non-ministerial employees would still be able to sue under breach of contract. The reason that this extension makes sense under this Courts previous holdings is that it would allow churches to freely choose who will "personify its beliefs" as its minister nothing more. *Hosanna-Tabor,* 565 U.S. at 188.

II. The 12(b)(6) Motion To Dismiss Was Properly Granted Prior To Discovery By The Trial Court Because There Is No Valid Relief And Discovery Would Only Entangle The Judiciary With The Religious Sphere.

When choosing to deny or grant a motion to dismiss because of a failure to state a claim (FRE 12(b)(6)) the court must follow the two-pronged approach outlined in *Bell Atl. Corp. v. Twombly*, and substantiated in *Ashcroft v. Iqbal*. These two prongs are: the plausibility of the cause of action along with some substantive facts and that there is a plausible claim for relief. *Bell Atlantic v. Twombly*, 550 U.S. 544, 555-6 (2007). This Court further clarified the first prong in the latter case, stating that some facts must push the claim of action from the realm of the *conceivable* to the *plausible*. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1951 (2009) (emphasis added). On the second aspect of the test, this Court determined that the facts of the case must entitle the claimant to relief from the defendant. *Id*. at 1952. In the instant case, the Petitioner has no valid claim to relief because of the Ministerial Exception outlined above.

To apply the Ministerial Exception in this context, this Court should look towards the Pennsylvania Supreme Court. The court outlined a plan for analyzing when it is appropriate to apply said exception towards barring claims because of a 12(b)(6) motion. *Connor v. Archdiocese of Philadelphia*, 975 A.2d. 1084 (Pa. 2009). This plan includes three parts: (1) analysis of the elements of the claim; (2) examination of the different affirmative defenses brought; and (3) a final analysis of how likely it is that the fact-finder would be capable of making the determination without treading on the sacred boundaries of the church. *Id*. at 1103. The answer to the final question is resoundingly no in Petitioner's situation. Thus, the Motion to Dismiss because of Failure to State a Claim is valid and was correctly granted.

Finally, on the question of discovery, Petitioner relies upon several cases that are not analogous to his situation. Petitioner claims that discovery ought to be granted to establish a factual record, yet this would not only encourage but in fact require an in depth look into the beliefs of the church. Lower courts have continuously upheld and this Court has long advocated for the extrication of any judiciary in the affairs of a church. *See e.g. Melhorn v. Baltimore Washington Conference of the United Methodist Church et al.*, 2016 WL 1065884 (Md. Ct. Spec. App. March 16, 2016); *Crymes v. Grace Hope Presbyterian Church, Inc.*, 2012 WL 3236290 (Ky. Ct. App. August 10, 2012). Petitioner's argument that discovery should move forward is unfounded and in fact directly contradicts what this Court has stated previously that "it is self-evident that the problem of discovery abuse cannot be solved by 'careful scrutiny of evidence at the summary judgment stage,' much less 'lucid instructions to juries.'" *Twombly*, 540 U.S. at 560. Discovery, then, is not always necessary or even encouraged when the potential for infringing upon the right of a church to self-determination.

In short, there are three reasons that this Court should uphold the Court of Appeals's decision to affirm the dismissal of the case: (1) there is not a cognizable action of redress or relief for Petitioner, (2) the Ministerial Exception extends to the refusal of discovery because it is impossible for the fact-finder to extricate the secular from the religious, and (3) that discovery in this case would necessarily burden the church's right to self-determination and right to be free from governmental interference in areas of religious belief and governance.

A. No Valid Relief is Available To The Petitioner, Which Necessarily Bars His Claim And Permits A 12(b)(6) Motion To Dismiss.

Quite simply, a claim in this context would have to include relief of some kind, noted with particularity. It is not enough for a plaintiff to ask the court for anything. §740 outlines the several possible avenues of redress for those employees wrongfully discharged, indicating that reinstatement or injunction are the major reliefs. TOUROVIA LAB. LAW §740(5)(b) (2016). This Court has long held that the secular courts should not interfere with religious exercise. *Hosanna-Tabor*, 132 S.Ct. at 703. As discussed above, this exception is extended to wrongful discharge claims, as well, indicating the unwillingness of the courts to move into any discussion of religious freedom, including the right as to who represents the religion.

This desire to stay out of the hiring and firing process of a religious institution requires that the courts stay away from their relief situations granted to the employee by law. TOUROVIA LAB. LAW §740(5)(b) (2016). Granting the Petitioner his job back as a minister forces the courts to do that which this Court has expressly said it would never do, which is to meddle into religious affairs as a secular institution. *Hosanna-Tabor*, 132 S.Ct. at 703. Unfortunately for the Petitioner, this Court's rule on not interfering is now barring him from a claim against the

church. *Iqbal*, 129 S.Ct. at 1950 (holding that there must be a cognizable act of relief for the plaintiff to continue its claim).

"But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct," the plaintiff has not demonstrated a right to relief. *Id*. Such is the situation for the case at bar. Petitioner has ceded the fact that the church discharged him because they claim they had lost faith in his spiritual leadership. Further, the substantive facts provided with his claim are that the church was more interested in the money moreso than the spiritual. These facts do not move the claim across the line from *conceivable* to *plausible*. *Id*. at 1951 (emphasis added). Instead, the facts only suggest the possibility, rather than any true concrete evidence. Now, Respondent concedes that the plaintiff does not have to prove the claims prior to discovery, but the party must have had significant evidence to show that the claim is plausible rather than just suggested. *Id*. Without this evidence, there can be no claim to relief.

The Seventh Circuit also stated that dismissal is acceptable when there is no plausible claim for relief. *Hyson USA, Inc. v. Hyson 2U, Ltd.*, 821 F.3d 935, 939 (7th Cir. 2016). This case does not contain recognition or discussion of the Ministerial Exception, but it does indicate the accepted position that any claim must include a valid claim for relief, which does not exist in this case. Additionally, the relief that would be granted in this case would have to be reinstatement or reversal of the discharge. However, doing this would absolutely entangle the judiciary with the church; as stated, the general rule is to simply never mix the secular with the religious. *Hosanna-Tabor*, 132 S.Ct. at 703. Any relief given, then, would violate this set in stone rule. Even if the court accepts the claim as written, the Ministerial Exception precludes the discovery, too.

B. The Ministerial Exception Outlined Above Also Prompts The Court To Dismiss The Case Prior To Discovery Because The Fact-Finder Will Not Be Able To Separate the Secular Issues and the Religious Issues.

The Ministerial Exception works as an affirmative defense, rather than simply a jurisdictional bar. *Id*. at 709. However, there are certain situations in which cases are impossibly entangled, with no reasonable way to extricate the secular from the religious. *Connor*, 975 A.2d at 1102. In these situations, the Supreme Court of Philadelphia opted to institute a three-part analysis for whether these cases deserve to move through discovery. *Id*. at 1103. Still preserving the sacred nature of the church's area, the courts ought to focus on the ability to extricate the secular from the non-secular. *Id*. The facts of the instant case show that the court could not do so.

If this Court takes influence from the lower courts, the three-part test is: (1) analysis of the elements of the claim; (2) examination of the different affirmative defenses brought; and (3) a final analysis of how likely it is that the fact-finder would be capable of making the determination without treading on the sacred boundaries of the church. *Id*. As stated, the emphasis is truly on the last part, as the first two simply are stating the law and defenses, respectively. The development of the test lies in the necessity to protect the purview of the church from the external secular forces of government.

This test, though, is not utilized to determine whether or not a case has merit, but rather whether the judge can dismiss a case prior to discovery because of the Ministerial Exception. *Id*. When using the test, this Court should adopt with it the stance that those matters that are closely bound with religious ones are not judiciable within the secular court system. As such, this Court should determine that the test accurately and adequately applies the *Hosanna-Tabor* principle to dismissing cases prior to discovery.

The benefits of the test outlined above include the ability for the court to make its own determination about whether or not the fact-finder can truly exclude the religious information and focus solely on the secular. In essence, this is exactly what this Court and the Supreme Court has stood for in the past, stating that this exception is not a complete bar from any litigation but that the church ought to have authority over the selection of their representatives and ministers without punishment. *Hosanna-Tabor*, 132 S.Ct. at 703. The test, then, simply outlines the process by which a court should determine whether to attempt to adjudicate a particular case based on how entrenched the issues are in the religious sphere. *Connor*, 975 A.2d at 1102.

The instant case deals with matters that are purely ecclesiastical in nature. As such, the fact-finder will not be able to distinguish or extricate the secular matters from the religious. For instance, Petitioner claims that he was discharged for his failure to administer the $1,500,000 according to the church's wishes. However, this is in complete contradiction to what the church has stated, namely that he was discharged for their lack of belief in his spiritual leadership. In order to ascertain the veracity of his claim, the fact-finder(s) would inevitably have to analyze the plausibility of both possibilities. This requires in depth discussion and examination about the religious reasons that the church had for dismissing Petitioner. This leads to the disregard of *Hosanna-Tabor*'s rule on never straying into the religious thicket.

C. Discovery In This Case Necessarily Burdens The Church And Requires The Court To Merge The Secular Issues With The Religious Issues.

Petitioner relies upon several cases to suggest that this situation requires discovery to create a record so that the court will see merit from his side of the case. However, the cases on which he relies are not analogous to the instant case, and they in fact concede that situations will exist that do not allow for discovery to continue. *Minker v. Baltimore Annual Conference of*

United Methodist Church, 894 F.2d 1354 (D.C. Cir. 1990) and *Galetti v. Reeve,* 331 P.3d 997 (N.M.App. 2014).

These two cases dealt with Ministerial Exception cases that were sent back to the trial court for discovery because neither required the fact-finder to engage with the religious questions. *Id*. *Minker* dealt with a contract dispute about giving the minister an appropriate congregation. 894 F.2d at 1355. In truth, the D.C. Circuit agreed that the age discrimination claim should have been dismissed, given that it was a determination of the church, as it was a "religious matter." *Id*. at 1356. The court furthers this statement with saying that the church is free to decide who speaks for it, rather than being subject to normal employment laws. *Id*. The only claim that moved forward for discovery was that of a contract dispute. *Id*. at 1355.

The court in *Galetti* held that the breach in question "did not appear to be religious in nature." 331 P.3d at 997. It further decided that to involve itself in the instant case would be to deal with secular issues alone and not necessarily involve the court with the religious sphere. *Id*. at 998. The court argued that because the situation did not require the court to entangle the religious with the secular, the trial judge should have allowed for discovery. *Id*. at 1000. However, that is not how Petitioner's situation lies.

Petitioner's termination was, as the church said, a matter of lack of faith in his religious leadership. Because of this, there is no way that the court can endeavor into the discovery process without entangling itself into what true "religious leadership" is. Unlike either of the above cases, the court simply cannot distinguish or extricate the religious from the secular issues.

Instead, this Court should look toward *Melhorn v. Baltimore Washington Conference of the United Methodist Church* (2016 WL 1065884, (Ct. of Spec. App. of Md. 2016)), in which the court held that the issue at hand was intrinsically based on religious interpretation, just like the

D.C. Circuit held in *Minker*. Because of this, this Court should rule that the Ministerial Exception precludes discovery on the grounds that discovery would intimately entangle the secular judiciary with the religious sphere.

Conclusion

For the foregoing reasons, this Court should affirm the decision of the Court of Appeals of Tourovia and grant the Motion to Dismiss with Prejudice.

Respectfully submitted,

s/Team 19
Team 19
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