Docket No. 415-2017

IN THE SUPREME COURT OF THE UNITED STATES

DAVID R. TURNER,

Plaintiff-Petitioner,

v.

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

Defendants-Respondents.

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

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BRIEF FOR THE RESPONDENTS

Team 3
Counsel for Respondents

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QUESTIONS PRESENTED

I. Whether the First Amendment's ministerial exception protects religious institutions by prohibiting judicial review of a church's employment decision premised on the church's ecclesiastical doctrine?

II. Whether complaints alleging wrongful termination by a minister are subject to 12(b)(6) motions to dismiss, without an opportunity for discovery, based on the application of the ministerial exception to prevent excessive government intermingling in internal church affairs?

JURISDICTIONAL STATEMENT

The judgment of the State of Tourovia Court of Appeals affirming the respondent's motion to dismiss was entered on December 28, 2015. (R. at 3). This Court granted the Petition for Writ of Certiorari, (R. at 15), and has jurisdiction under 28 U.S.C. § 1254(1) (2012).

STATEMENT OF THE CASE

Petitioner, Mr. Turner, is a former minster at the St. Francis Church of Tourovia ("St. Francis" or "the Church"). St. Francis terminated Turner's employment on October 31, 2012 for losing faith in his ability to lead the congregation. (R. at 4).

A. The Proceedings Below

Turner brought a wrongful termination claim in the State of Tourovia Supreme Court on September 12, 2013, based on breach of an employment contract and retaliatory discharge. (R. at 5). In the Complaint, Turner specifically requested relief in the form of monetary damages. (R. at 5). On March 31, 2014, St. Francis responded by filing a motion to dismiss for failure to state a claim upon which relief could be granted, claiming that the First Amendment's ministerial exception barred Turner's suit. (R. at 5). A hearing was held on January 20, 2015, and the following day the court issued an order granting St. Francis' motion to dismiss. (R. at 5–6). On December 18, 2015, that order was affirmed by the Appellate Division of the State of Tourovia Supreme Court. (R. at 6). The State of Tourovia Court of Appeals then affirmed that judgment on August 16, 2016. (R. at 4). Finally, Turner petitioned for a Writ of Certiorari, which this Court subsequently granted. (R. at 15).

B. The Factual Record

Turner was a minister at St. Francis from July 1, 2009 until his termination on October 31, 2012. (R. at 4). Prior to his employment at St. Francis, Turner worked as a financial manager for IBM for twenty-five years. (R. at 5). At St. Francis, Turner had a yearly employment contract that the Church renewed three times before his termination. (R. at 4). On May 16, 2012, St. Francis informed Turner that they were expended a bequest for $1,500,000 from the Edward

Thomas Trust ("the Trust"). (R. at 5). The Trust's bequest was to be used for St. Francis' general operation maintenance and to upkeep the Church's cemetery. (R. at 5).

Upon investigation, Turner allegedly discovered that in 2009, St. Francis sold its cemetery and no longer had a cemetery fund. (R. at 5). Turner then determined, on his own, that it would be a breach of trust to accept the portion of the Trust related to the cemetery fund. (R. at 5). Turner then called the Trust's trustee to notify them of his alleged finding and independent conclusion and to seek advice. (R. at 5). Turner also spoke with the Board of Trustees' Vice Chairman, who directed Turner to request the full $1,500,000 from the Trust. (R. at 5). Turner, however, refused to follow the Vice Chairman's direction, and then spoke to Dr. Jones, "the Superintendent of the Tourovia Conference of Christian Churches" regarding his concerns. (R. at 4–5).

Convinced St. Francis was engaged in fraud, breach of trust, and tax evasion, Turner "contacted the IRS [in early October 2012] to advise them of the situation and to discuss any possible tax ramifications, but he was unable to reach the appropriate party." (R. at 5). Nearly six months after being informed of the Trust—and after several attempts to uncover alleged fraud—Turner was terminated from his ministerial position at St. Francis. (R. at 5). When informing Turner of his termination, Dr. Jones stated that St. Francis was "transitioning" because the Church had "lost faith" in Turner's ability to spiritually lead the church. (R. at 4).

SUMMARY OF THE ARGUMENT

This Court should affirm the Court of Appeal's decision granting St. Francis's motion to dismiss for the following reasons:

First, the ministerial exception prevents a secular court from reviewing church's employment decisions that are grounded on ecclesiastical concerns. While the ministerial

exception does not bar purely secular breach of contract claims that can be adjudicated using generally applicable laws, the exception bars breach of contract claims attached to employment decisions to avoid excessive intermingling of church and state. Similarly, retaliatory discharge claims are prohibited by the ministerial exception because a court must review the ecclesiastical purpose of the church's employment decision to consider such a claim.

Second, the ministerial exception acts as an affirmative defense to an otherwise cognizable claim, barring any relief that may be sought when applicable. Turner's claim must be subject to the ministerial exception because every allegation contained in his complaint inevitably requires this Court to inquire into the Church's decision to terminate Turner: a matter strictly ecclesiastical. Because on its face Turner's suit is barred by the ministerial exception, discovery is both unnecessary, as a waste of judicial resources, and unlawful, as it would force the court to examine the Church's internal ecclesiastical decisions.

ARGUMENT

I. THE FIRST AMENDMENT'S MINISTERIAL EXCEPTION BARS MR. TURNER'S CLAIM FROM JUDICIAL REVIEW BECAUSE LONG-STANDING SUPREME COURT PRECEDENT AND LOWER COURT INTERPRETATIONS STATE THAT A CHURCH IS SOLELY IN CONTROL OF DECIDING WHO DELIVERS ITS ECCLESIASTICAL MESSAGE.

This Court should affirm the Court of Appeals' decision granting the motion to dismiss for St. Francis because the First Amendment's ministerial exception prevents a court from reviewing Turner's wrongful termination claim based on breach of contract and retaliatory discharge. The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. CONST. amend. I. Courts throughout the country have long recognized this First Amendment clause to prohibit government involvement in church employment decisions. *See, e.g.*, *EEOC v. Roman Catholic Diocese*, 213 F.3d 795, 800 (4th Cir. 2000); *Scharon v. St. Luke's Episcopal Presbyterian Hosp.*,

929 F.2d 360, 363 (8th Cir. 1991); *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1169–70 (4th Cir. 1985); *McClure v. Salvation Army*, 460 F.2d 553, 560 (5th Cir. 1972). While this Court did not officially recognize the ministerial exception until 2012, *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 196 (2012), it has long acknowledged the First Amendment's role in preventing potential government entanglement in church employment decisions.

The Court has held that there were "three main evils against which the Establishment Clause was intended to afford protection: 'sponsorship, financial support, and active involvement of the sovereign in religious activity.'" *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971) (quoting *Walz v. Tax Commission*, 397 U.S. 664, 668 (1970)). Additionally, the Court has held that the Free Exercise Clause provides "a spirit of freedom for religious organizations, an independence from secular control or manipulation," and the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952). This freedom necessarily includes the "[f]reedom to select clergy" without "state interference." *Id.* A secular court, therefore, is prohibited from reviewing a church's employment decisions to avoid excessive entanglement of government and religion. *Lemon v. Kurtzman*, 403 U.S. at 612. The entanglement sought to be prevented in these cases has two elements: one being substantive and the other procedural. *Bollard v. California*, 196 F.3d 940, 948 (9th Cir. 1999).

Substantively, courts are weary of reviewing "the clergy-church employment relationship" as it may "create[] a constitutionally impermissible entanglement with religion if the church's freedom to choose its ministers is at stake." *Id.* at 948–49. Churches must be in control of their employment decisions because who leads the church "is at the heart of its

religious mission." *Id.* Procedurally, "[i]t is not only the conclusions that may be reached [by a court] which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions." *NLRB v Catholic Bishop of Chicago*, 440 U.S. 490, 501 (1979) (emphasis added). Procedural issues are especially prevalent in employment cases because in a "lengthy proceeding," review of "[c]hurch personnel and records would inevitably become subject to subpoena, discovery, cross-examination, [and] the full panoply of legal process designed to probe the mind of the church in the selection of its ministers." *Rayburn*, 772 F.2d at 1171.

Therefore, Turner's breach of contract and retaliatory discharge allegations are prevented from moving forward as their review by this Court would violate both the substantive and procedural principals upon which the ministerial exception is grounded.

a. A breach of contract allegation attached to a wrongful termination claim is barred by the ministerial exception because it would require the Court to review a church's ecclesiastical decision.

Churches "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." *Id.* However, whenever the question before a court is one of "discipline, or of faith, or ecclesiastical rule, custom, or law" decided by a church, "the legal tribunals must accept such decisions as final," prohibiting judicial review. *Watson v. Jones*, 80 U.S. (13 Wall.) 676, 727 (1871). A court therefore has the right to review an employment contract but cannot adjudicate claims related to reasons surrounding the termination of employment. *Crymes v. Grave Hope Presbyterian Church*, 2012 WL 3236290, at *2 (Ky. Ct. App. August 10, 2012). This review would be in direct conflict to the substantive component of the ministerial exception. *Bollard*, 196 F.3d at

948–49. For this reason, the ministerial exception prevents this Court from reviewing Turner's wrongful termination claim that is premised on St. Francis losing faith in him.

Reviewing a church's decision to fire a minister for losing faith in the minister's spiritual leadership would require the Court to determine whether the church had in fact lost faith in the minister's ability to lead the congregation. This inquiry would thus involve a determination of the church's ministerial belief to decide whether the minister fulfilled or failed to meet the ecclesiastical mission of the church. This is exactly the sort of excessive government entanglement the ministerial exception was intended to prevent. Courts cannot review decisions of discipline turning on ecclesiastical rule, *Watson*, 80 U.S. (13 Wall.) at 727, because a "church must be free to choose those who will guide it on its way." *Hosanna-Tabor*, 565 U.S. at 196. The ministerial exception, however, does not bar all breach of contract claims between a church and minister.

In *Second Episcopal Dist. African Methodist Episcopal Church v. Prioleau*, 49 A.3d 812 (D.C. Cir. 2012), the court allowed review of a breach of contract claim. *Id.* at 819. In that case, Prioleau had a year-long contract of employment with the church. *Id.* Prioleau's claim, however, did not seek review of the church's decision to terminate her employment or seek reinstatement but instead sought to require the church to fulfill its obligations under the contract to pay her. *Id.* This review of the contract by the court did not require any entanglement into the church's internal decision making, and consequently could be resolved by "neutral principles of law." *Id.* Turner's case, however, cannot be resolved by applying neutral principles of law because the present case would require this Court to review St. Francis' reason for terminating Turner: for losing faith in his "spiritual leadership." (R. at 4).

In *Employment Div. v. Smith*, 494 U.S. 872 (1990), this Court held that "the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" *Id.* at 879 (quoting *United States v. Lee*, 455 U.S. 252, 263 fn.3 (1982) (Stevens, J., concurring)). In *Smith*, the Court applied the neutral principal test to determine that the use of peyote, even for religious reasons, was prohibited under Oregon law, and denied Smith's unemployment compensation claim from moving forward. 494 U.S. at 890. The neutral principal of law test, however, is inapplicable in this present case.

"*Smith* involved government regulation of only outward physical acts." *Hosanna-Tabor*, 565 U.S. at 173. This outward act of smoking peyote did not trigger the ministerial exception because "[t]here [was] no contention that Oregon's drug law represent[ed] an attempt to regulate religious beliefs, the communication of religious beliefs, or the raising of one's children in those beliefs . . . ." *Smith*, 494 U.S. at 882. The attempt to regulate a church's decision to fire a minister, however, "concerns government interference with an internal church decision." *Hosanna-Tabor*, 565 U.S. at 173. Allowing this case to proceed would allow a court to regulate "the communication of religious beliefs" by entangling itself in churches' employment decisions. *Smith*, 494 U.S. at 882.

A breach of contract claim was also allowed to proceed without violating the ministerial exception in *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354, 1361 (D.C. Cir. 1990). In that case, a pastor brought two breach of contract claims alleging: (1) that the church breached its Book of Discipline's prohibition on age discrimination and; (2) that the church breached an oral contract of employment. *Id.* at 1359. The court held that, assuming the facts as pled were true, neutral contract principals could be applied to

determine whether there was an enforceable oral contract as "such contracts are fully enforceable in civil court." *Id.* (citing *Watson*, 80 U.S. (13 Wall.) at 714). There would be no intermingling of internal church affairs to determine whether an oral contract was created.

The court was quick to acknowledge, however, that even allowing this claim to proceed under neutral principals of law opened the door "into matters of ecclesiastical policy" that could require a court to dismiss the claim should "excessive entanglement with religion" arise. *Minker*, 894 F.2d at 1360. In the present case, there is immediate entanglement with religion since this Court would be required to determine the merits of a wrongful termination claim, and a court cannot review a church's decision to fire a minister. *Hosanna-Tabor*, 565 U.S. 171, 196.

In *Minker*, even though the church had a policy against age discrimination, the court refused to even look at the Book of Discipline, stating that "[i]n determining whether the Church has discriminated on the basis of age, a court would be required to consider the religious purpose of the antidiscrimination provision and to define its limits for the Church." *Minker*, 894 F.2d at 1360. Thus, under no circumstances, even when a church has a policy against age discrimination, can a court review a church's decision to fire a minster. The First Amendment unequivocally bars "the government from interfering with the decision of a religious group to fire one its ministers." *Hosanna-Tabor*, 565 U.S. at 181.

Some courts have applied a functional test when dealing with breach of contract claims between a minister and church. *See Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597 (Ky. 2014). In *Kirby*, the church had a handbook that stated the termination of tenured professors could only occur on "three grounds: (1) moral delinquency, (2) unambiguous failure to perform the responsibilities outlined in [the Faculty] Handbook, and (3) conduct detrimental to the Seminary." *Id.* at 616 (internal citations omitted). During the economic downturn, however, the

church was required to lay off several tenured professors. *Id.* at 603. Upon his termination, Kirby brought a breach of contract claim against the church. *Id.* The court allowed the claim to go forward because it did not require "inspection or evaluation of church doctrine." *Id.* at 619. Allowing Kirby's claim to proceed was consistent with the generally applicable law doctrine of *Smith*. *Kirby* is also distinguishable from the present case.

In *Kirby*, it was never alleged that the professors were being terminated for ecclesiastical reasons. Instead, the church was reducing their tenured staff during an economic downturn to keep their doors open. *Id.* at 603. The church had even worked with its tenured staff to provide a severance package of one year's employment and salary. *Id.* These facts demonstrate that there were no ecclesiastical considerations in terminating Kirby, and therefore no excessive entanglement concerns in applying generally applicable contract law to that case. St. Francis, however, terminated Turner "because it had 'lost faith' in his spiritual leadership." (R. at 4).

Reviewing Turner's termination would require this Court to look into the validity of the Church's stated reason for firing him, which was expressly ecclesiastical. This is exactly the sort of excessive intermingling the ministerial exception was intended to prevent. *Hosanna-Tabor*, 565 U.S. at 184. While generally applicable contract laws can be applied to breach of contract claims between a minister and a church in some cases, they cannot proceed when attached to a wrongful termination claim because these claims require a court to review the merits of the church's religious decision to terminate a minister. This Court, therefore, should affirm the lower court's dismissal of Turner's claim as it is barred by the ministerial exception, which also prohibits the accompanied retaliatory discharge allegation.

b. The ministerial exception prohibits pretextual employment claims from being reviewed by a court, and retaliatory discharge claims are pretextual.

Turner's retaliatory discharge allegation is barred under Hosanna-Tabor because retaliatory claims cannot be resolved without examining the church's ecclesiastical decisions. In Hosanna-Tabor, this Court refused to allow a pretextual claim of discrimination to move forward stating that pretextual arguments "miss[] the point of the ministerial exception." *Hosanna-Tabor*, 565 U.S. at 194. "The purpose of the [ministerial] exception is not to safeguard a church's decision to fire a minster 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.* (quoting *Kedroff*, 344 U.S. at 119).

While this Court did not expressly hold that retaliatory claims are barred by the ministerial exception, *Hosanna-Tabor* supports extending the doctrine to prevent a court from reviewing pretextual claims. First, retaliatory claims are pretextual because they require a "detailed review" of the claim to determine the purpose of the church's action, which is prohibited by the First Amendment. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 718 (1976). Second, this Court recognized that the ministerial exception bars judicial review from both federal and state law retaliatory discharge claims.

In *Hosanna-Tabor*, Ms. Perich brought a claim under the Americans with Disabilities Act ("ADA") alleging that she was fired "in retaliation for threatening to file an ADA lawsuit. *Hosanna-Tabor*, 565 U.S. at 180. The ADA specifically prohibits retaliation from employers against employees for taking advantage of the Act. *Id.* at 179. Although *Hosanna-Tabor* claimed that Perich was terminated for religious reasons, Perich insisted these claims were merely pretextual and retaliatory. This Court, however, held that the ministerial exception barred an ADA retaliation claim from review. *Id.* at 196. Despite the Court's statement that "[w]e express

no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct," their ruling indicates otherwise. *Id.*

When addressing Perich's retaliation claim, the Court said that "Perich does not dispute that if the ministerial exception bars her retaliation claim under the ADA, it also bars her retaliation claim under Michigan law." *Id.* at 195 fn.3. The Court clearly intended the ministerial exception to bar all retaliatory claims when brought by a minister against a church for an employment decision. Turner's state law retaliation allegation under § 740 of Tourovia's Labor Law, therefore, is barred from review by this Court. Like *Hosanna-Tabor*, reviewing Turner's retaliation allegation would require this Court to determine "that [St. Francis] was wrong to have relieved [Turner] of [his] position, and [that] is precisely such a ruling that is barred by the ministerial exception." *Id.* at 194. Following suit, several lower courts have applied the ministerial exception to prevent state law retaliatory claims from proceeding. *See, e.g.*, *Fratello v. Roman Catholic Archdiocese of N.Y.*, 175 F. Supp. 3d 152, 162 (S.D.N.Y 2016) (holding that the ministerial exception precluded ministers from "bringing discrimination and retaliation claims" against a church); *Conlon v. Intervarsity Christian Fellowship/USA*, 777 F.3d 829, 837 (6th Cir. 2015) ("[B]ecause the Establishment and Free Exercise Clauses apply to the States through the Fourteenth Amendment by incorporation, the federal right would defeat any [state] statute that, as applied, violated the First Amendment.").

Therefore, a court cannot review the employment decisions of a church, regardless of whether the claim is premised on breach of contract or retaliatory discharge. The ministerial exception must then bar Turner's breach of contract and retaliatory discharge allegations, and this Court should affirm the lower court's dismal in accordance with long-standing precedent.

c. Applying the ministerial exception to the present case is consistent with precedent and public policy and would not create a parade of horrible because of the exception's narrow application.

The ministerial exception defines a narrow category of cases—only applying when a minister brings an employment action against a church. *Hosanna-Tabor,* 565 U.S. at 171. For those narrowly defined cases, the exception provides broad protection over a church's ecclesiastical mission. Because the exception applies narrowly, there is no potential for a parade of horribles following the ministerial exception's application to the present case.

First, the ministerial exception only applies to ministers. A minister is one who performs important religious functions, *Hosanna-Tabor*, 565 U.S. at 192, and therefore does not make anyone who works at a church a minister. "Judicial attempts to fashion a civil definition of 'minister' through a bright-line test or multi-factor analysis runs the risk of disadvantaging" religious groups with non-traditional practices or members. *Id.* at 197 (Thomas, J., concurring). The proper test is thus "whether the religious group sincerely considered the plaintiff a minister." *Cannata v. Catholic Diocese of Austin*, 700 F.3d 169, 175 (5th Cir. 2012) (citing *Hosanna-Tabor*, 565 U.S. at 197).

Under this approach, support staff, physical-plant staff, and non-academic administrators of a seminary are not ministers. *See EEOC v. Southwestern Baptist Theological Seminary*, 651 F.2d 277 (5th Cir. 1981). Additionally, teachers who only teach secular subjects at a religious school are not minsters. *See e.g.*, *Dias v. Archdiocese of Cincinnati*, 2012 WL 1068165 (S.D. Ohio Mar. 29, 2012) (holding that a technology coordinator at a religious school was not barred by the ministerial exception). Functionally, if the plaintiff's position has no spiritual function, the ministerial exception does not apply. *EEOC v. Roman Catholic Diocese*, 213 F.3d 795, 801 (4th Cir. 2000). These tests prevent the exception from growing to bar judicial review for all claims

brought by church employees. For example, by only pertaining to ministers, the exception still allows suits by third parties for claims such as fraud to proceed. *Listecki v. Official Comm. of Unsecured Creditors*, 780 F.3d 731, 744 (7th Cir. 2015).

Second, the ministerial exception does not apply to several types of claims. As discussed above, for example, the ministerial exception does not apply to contract claims that do not turn on religious questions. *See Jones v. Wolf*, 443 U.S. 595 (1979) (contract of property disputes on which legal documents resolve the issue without reviewing church doctrine went forward); *Petruska v. Gannon University*, 462 F.3d 294, 310 (3d Cir. 2006) (distinguishing secular contact claims from discrimination claims and demonstrating that secular contract claims can move forward without triggering the ministerial exception); *Minker*, 894 F.2d at 1361 (discussing that review to determine whether an oral contract for employment was formed could proceed); *Prioleau*, 49 A.3d at 819 (allowing application of generally applicable contract laws to determine if a church breached a contract to pay the minister).

Additionally, claims by a minister alleging hostile work environments have been allowed to proceed. *Elvig v. Calvin Presb.*, 375 F.3d 951 (9th Cir. 2004) (citing *Bollard*, 196 F.3d at 949–50)). A minister can also demonstrate that he or she was subjected to sex-based harassment by his superiors, and that the harassment was severe enough or so pervasive to be actionable under Title VII. *See Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998). "[T]he ministerial exception has been around in the lower courts for 40 years," and throughout that time its presence has not created "dire consequences" that should prevent this Court's application of the doctrine. *Hosanna-Tabor*, 565 U.S. at 196. Under *Smith*, claims like those discussed above, as well as criminal prosecutions, would not be restricted because claims that do not intermingle with religious questions can be reviewed under generally applicable law. *Id.*

Therefore, because Turner's breach of contract and retaliatory discharge allegations would require this court to get involved in the internal decision-making process of the church, generally applicable laws cannot apply, and the ministerial exception requires this Court to affirm the lower court's dismissal of Turner's claim.

II. THIS COURT SHOULD AFFIRM THE JUDGMENT OF THE LOWER COURT BECAUSE THE MINISTERIAL EXCEPTION BARS DISCOVERY OF ECCLESIASTICAL MATTERS AND REQUIRES A 12(B)(6) MOTION TO DISMISS.

This Court should affirm the Court of Appeals' decision because the ministerial exception prevents judicial review of a church's ecclesiastical decisions, and discovery would create excessive intermingling between church and state. As this Court noted in *Hosanna-Tabor*, "the Free Exercise Clause prevents [secular courts] from interfering with the freedom of religious groups to select their own [ministers]." 565 U.S. at 184. This is precisely the issue at bar in today's case: Turner is asking the Court to interfere in St. Francis' decision to terminate him because they had "lost faith" in his spiritual leadership. (R. at 4). The reasoning for the ministerial exception, however, "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." 565 U.S. at 194–95 (internal citations omitted). The ministerial exception therefore "operates as an affirmative defense to an otherwise cognizable claim" and requires that a motion to dismiss be granted where it specifically applies to bar the plaintiff from relief. *Id.* at 195 n.4. This application of the ministerial exception is consistent with the procedural aspect of the exception that protects churches "from the process of inquiry leading to findings and conclusions." *Catholic Bishop of Chicago*, 440 U.S. at 501. Because the ministerial exception

applies to the present case, Turner has not stated a claim upon which relief can be granted, and this Court should affirm the lower court's decision.

a. The Court cannot proceed to discovery where it is clear on its face the ministerial exception applies to bar relief for a claim.

In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), this Court held that the standard of review for the grant of a motion to dismiss requires a court to assume the truth of the factual allegations contained in the complaint. *See id.* at 551. Moreover, a court must draw any reasonable inferences from the factual allegations in favor of the party opposing the motion to dismiss. *Id.* A court does not, however, have to "accept as true a legal conclusion couched as a factual allegation." *Id.* at 555. Next, a court must determine whether the complaint contains sufficient facts to "state a claim to relief that is plausible on its face." *Id.* at 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662 (2009). If this plausibility standard is not met, a court should affirm the grant of the motion to dismiss.

Even accepting the allegations in the complaint as true, there is simply no plausible claim for relief in the present action for wrongful termination. Under the ministerial exception, contained within both the First Amendment of the U.S Constitution and Section vi of the Tourovia Constitution, "a court lacks jurisdiction to intrude into matters of a church's self-governance." *Herzog v. St. Peter Lutheran Church*, 884 F.Supp.2d 668, 671 (N.D. Ill. 2012). Since the wrongful termination claim—on its face—would require this Court to examine whether the Church's reasoning in terminating Turner was in fact wrongful, the ministerial exception must apply.

This examination into the Church's decision-making process for firing a minister goes to the very heart of its self-governance, and this Court has held that secular courts have no right to interfere in such matters. *See Hosanna-Tabor*, 565 U.S. at 188–89. This is especially true

because Turner concedes that the Church gave a purely ecclesiastical reason for his termination. This Court, therefore, can easily infer that any discovery in this case would inevitably require an inquiry into the Church's ecclesiastical doctrine. Where that is the case, the ministerial exception bars both the inquiry and the relief sought by the claim. As such, it is necessary for this Court to affirm the lower court's grant of the motion to dismiss since Turner cannot "state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6) (emphasis added). To hold otherwise would require the Court and all participating parties to waste precious resources continuing to litigate a case where, by definition, the appellant cannot prevail.

This Court has a judicial duty under the Federal Rules of Civil Procedure "to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. It should do so here by affirming the decision of the Court of Appeals.

b. Under extremely similar facts, many other courts have held that complaints by ministers alleging wrongful termination are subject to 12(b)(6) motions based solely on an application of the ministerial exception.

Jurisdictions throughout the country have applied the ministerial exception to wrongful termination claims and granted 12(b)(6) motions. In determining whether the ministerial exception applies to bar a claim from proceeding to discovery, the Pennsylvania Supreme Court has outlined an intuitive and straightforward test that this Court may likewise choose to follow. *See Connor v. Archdiocese of Philadelphia*, 975 A.2d 1084 (Pa. 2009). In Connor, the procedure stated that the court must:

> (1) examine the elements of each of the plaintiff's claims; (2) identify any defenses forwarded by the defendant; and (3) determine 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."

Id. at 1103 (citation omitted). Under this test, the motion to dismiss must be upheld because the facts alleged in the complaint clearly indicate that an examination of any allegation would necessarily intrude into the church's self-governance.

In examining situations analogous to the present case, several courts have held that application of the ministerial exception bars further discovery. The Court of Special Appeals of Maryland in *Melhorn v. Baltimore Washington Conference of the United Methodist Church*, 2016 WL 1065884 (Md. Ct. Spec. App. March 16, 2016), for example, held that application of the ministerial exception barred pre-dismissal discovery because the complaint "was sufficient on its face to demonstrate that the claims were precluded." *Id.* at *3.

In *Melhorn*, the appellant was hired subject to a yearly employment contract by a church. *Id.* at *1. That yearly contract was renewed on three separate occasions, *id.*, precisely like Turner's contract in the case at issue. (R. at 4). Finally, in *Melhorn*, the appellant's pastorship was terminated a few months into the third year of employment because the church that "had 'lost faith' in his spiritual leadership." *Melhorn*, 2016 WL 1065884 at *1. This is again factually identical to Turner's termination. (R. at 4).

The similarities between Turner and the minister in *Melhorn* continue to compound. For example, following his termination, the minister in *Melhorn* brought a wrongful termination charge "based on [his] refusal to commit certain unlawful acts in connection with the administration of funds from [a trust]." *Melhorn*, 2016 WL 1065884 at *1. That trust had scheduled a bequest to be given to the church, one half of which was to be used for the church's general maintenance and operation, and the other half of which was to be used specifically for the church's cemetery. *Id.* Like in the case at bar (R. at 5), however, the church no longer maintained a cemetery. *Melhorn*, 2016 WL 1065884, at *3. Thus, the minister allegedly asked

the church's Board of Trustees to inform the bank that the bequest was too much, but the Board instructed the minister to continue with a request for the full amount. *Id.* Two months after the minister refused to comply with the Board's instructions, he was terminated. *Id. Melhorn* virtually mirrors Turner's situation in the case at bar.

In *Melhorn*, the court determined that the lower court's grant of a motion to dismiss was proper because it "could not have heard the appellant's wrongful discharge claim without having to make a determination as to whether the appellant was terminated in retaliation for refusing to obey the [Board's] instruction," or if the cause was, in fact, that "the church had 'lost faith' in his spiritual leadership." *Id.* at *5. The court then held that "[s]uch a determination is of the precise type that the ministerial exception precludes secular courts from making." *Id.* Likewise, the court stated that the case should not be allowed to progress to discovery because "the church has said all along that its decision to terminate the appellant's employment was motivated entirely by reasons of faith . . . [and] [t]herefore, discovery was not necessary for the circuit court to properly determine that the appellant's claim was barred by the ministerial exception." *Id.*

Melhorn is consistent with the fundamental idea that the ministerial exception serves a procedural purpose to prevent the type of judicial review, like discovery, that would "probe the mind of the church in the selection of its ministers." *Rayburn*, 772 F.2d at 1171. For these reasons, this Court should affirm the lower court's decision, because Turner has conceded that the reason the Church terminated his employment was for religious reasons. (R. at 4). Thus, Turner's claim for wrongful termination is barred.

Melhorn only dealt with a wrongful termination claim, 2016 WL 1065884 at *1, whereas Turner claims wrongful termination based on breach of contract and retaliatory discharge. (R. at 5). Despite this difference, this Court should not view the claims independently and allow the

breach of contract claim to progress to discovery. This would fail to consider that the Complaint itself alleges one claim—wrongful termination—that is based on breach of contract and retaliatory discharge. (R. at 5). Therefore, the breach of contract and retaliatory discharge allegations are instead inevitably attached to the greater wrongful termination claim, and cannot be considered without ultimately inquiring into the cause given for the minister's discharge.

Several other courts have followed this logic and only considered a breach of contract allegation if it was in fact separate from any termination decisions. For example, the court in *Crymes v. Grace Hope Presbyterian Church*, 2012 WL 3236290 (Ky. Ct. App. August 10, 2012) ultimately allowed a minister's breach of contract claim to move past a motion to dismiss, but did so only because it was "undisputed that [the appellant was] not contesting [the church's] termination of him as pastor." *Id.* at *2. Instead, the appellant was "merely seeking compensation for unpaid salary and benefits allegedly owed to him for work performed prior to his termination." *Id.* The court recognized, however, that "the termination or discipline of a pastor is normally viewed as constituting an ecclesiastical matter over which the judiciary possesses no jurisdiction," and thus it would have barred the breach of contract claim had it required an inquiry into the minister's termination. *Id.*

Unlike *Crymes*, Turner's claim contains no indication that the breach of contract allegation deals exclusively with secular issues. Indeed, the Complaint states that "the appellant request[ed] relief in the form of monetary damages," instead of any unpaid wages or benefits accrued prior to his termination. (R. at 5). Thus, on its face, Turner's allegations must be viewed as "directly related to the termination of [the] pastor," which the ministerial exception bars. *Crymes*, 2012 WL 3236290, at *2.

Even if this Court should decide that the breach of contract and retaliatory discharge allegations could be considered separately from the wrongful discharge claim, each should still be barred under the ministerial exception, since each relates back to the same nucleus of operative facts surrounding the church's various employment decisions. In *Prince of Peace Lutheran Church v. Linklater*, 28 A.3d 1171 (Ct. App. Md. 2011), for example, the court individually examined all sixteen allegations in the complaint, including breach of contract and retaliatory discharge. *Id.* at 1189. The court, however, refused to allow either to proceed past the motion to dismiss and into discovery because each "would necessarily involve judicial inquiry into church governance, and such inquiry is prohibited by the First Amendment." *Id.* For retaliatory discharge in particular, the court held that its analysis would involve "an inquiry into the various employment actions taken by the Church, and would therefore 'encroach on the ability of a church to manage its internal affairs.'" *Id.* (quoting *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 460 (D.C. Cir. 1996)). For the breach of contract allegation, the court held that it would "involve an inquiry into matters of church governance and discipline." *Linklater*, 28 A.3d 1171 at 1189.

Likewise, Turner's breach of contract and retaliatory discharge allegations would inevitably involve distinct inquiries into church governance because each arises from Turner's wrongful termination claim against the Church. Therefore, each individual allegation would involve some inquiry into the reason behind his termination to determine whether relief is warranted. That analysis, however, strikes at the heart of the ministerial exception. As the Wisconsin Supreme Court held in *DeBruin v. St. Patrick Congregation*, 816 N.W.2d 878 (Wis. 2012), "the First Amendment gives [a church] the absolute right to terminate [a minister] for any reason, or for no reason, as it freely exercises its religious views." *Id.* at 888. Additionally, "[i]t

is the decision itself, i.e., who shall be the voice of [the church], that affects the faith and mission of the church." *Id.* Given that both Turner and the Church agree that the Church's reason for termination was that it had "lost faith" in Turner's spiritual leadership, this Court needs not look any further than the Complaint to determine that the ministerial exception bars any plausible claim for relief stemming from that decision. (R. at 4).

Therefore, the lower court's decision should be affirmed because it properly applied the ministerial exception to prevent secular judicial review of the Church's ecclesiastical employment decision to terminate Turner. Because Turner's breach of contract claim cannot be adjudicated using generally applicable laws as it inevitably requires government intermingling in church doctrine, the ministerial exception applies. Similarly, Turner' retaliatory discharge claim was properly barred by the ministerial exception because a court would be required to review the ecclesiastical purpose of the church's employment decision to consider such a claim. Moreover, the lower court properly applied the ministerial exception as an affirmative defense to bar Turner's claim for the reasons stated above. The ministerial exception applied to Turner's suit on its face, because a court must consider all well pled allegations in a complaint as true, *see Twombly*, 550 U.S. at 555, discovery was both unnecessary, as a waste of judicial resources, and unlawful, as it would force the court to examine the Church's internal ecclesiastical decisions.

Therefore, the lower court's decision barring Turner's wrongful termination claim against St. Francis should be affirmed because the First Amendment's ministerial exception bars secular judicial review in matters that are strictly ecclesiastical; and there is no decision more foundational to a church's religious and ecclesiastical mission than those related to who will spiritually lead and guide a church.

CONCLUSION

For the foregoing reasons, this Court should find for St. Francis and affirm the Court of Appeals' decision.

Dated: Mar. 10, 2017

Respectfully submitted,

Team 3

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