

No. 415-2017

IN THE
SUPREME COURT OF THE UNITED STATES

APRIL TERM, 2017

DAVID R. TURNER

Petitioner,

v.

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

Respondent.

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

BRIEF FOR THE PETITIONER

Attorneys for the Petitioner

..... Team Number: 9

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QUESTIONS PRESENTED

- I. Did the Tourovia Court of Appeals err as a matter of law by holding that Pastor Turner's contract and retaliatory discharge claims fell under the ministerial exception when the claims are secular in nature and could have been adjudicated based on neutral principles of law?

- II. Did the Tourovia Court of Appeals err as a matter of law by upholding the Church's 12(b)(6) Motion to Dismiss when Pastor Turner's complaint pled plausibility and was based wholly on neutral principles of law?

JURISDICTIONAL STATEMENT

The State of Tourovia Supreme Court (“trial court”) had jurisdiction because Pastor Turner brought claims for retaliatory discharge under Section 740 of the State of Tourovia Labor Law and for breach of his employment contract, because the contract was formed and pertained to his employment in Tourovia. R. at 4–5, 16. On January 20, 2015, Judge Michelle L. Hall of the State of Tourovia Supreme Court dismissed Pastor Turner’s retaliatory discharge and breach of contract claims. R. at 2. Pastor Turner, exercising his rights, appealed the trial court’s decision to the highest state court, the State of Tourovia Court of Appeals (“appeals court”), which granted review. R. at 4, 6. The appeals court affirmed the dismissal of Pastor Turner’s claims on the merits and entered its judgement on December 18, 2015. R. at 3 This Court granted certiorari for the April Term of 2017. R. at 1. Jurisdiction is proper pursuant to 28 U.S.C. § 1257(a), because Pastor Turner is appealing a final judgement rendered by the highest state court of Tourovia.

STATEMENT OF THE CASE

Statement of Facts

Pastor Turner’s status as a minister should not prevent his day in court. St. Francis Church of Tourovia (“the Church”) hired Pastor Turner to be their minister in July 2009, and his employment contract was to be renewed on a yearly basis. R. at 4. On May 16, 2012, the Church was notified that it was a beneficiary of a \$1,500,000.00 trust. R. at 4. The trust provided that half of the money was to be used for the general maintenance of the Church. R. at 5. The second half of the money was to be used for the preservation of the Church’s cemetery. R. at 5. Because Pastor Turner had worked as a financial manager before working as a minister, the Church chose him to administer the trust. R. at 5. In June 2012, a month after the Church became a beneficiary

of the trust, Pastor Turner began his third contract with the Church. R. at 4.

While fulfilling his duties, Pastor Turner discovered that the Church no longer had a cemetery fund, because it had sold the cemetery in 2009. R. at 5. Pastor Turner was concerned that it would not only be a breach of trust to take the money intended for the cemetery, but that it would also be fraud and tax evasion. R. at 5. Pastor Turner urged the Church's Board of Trustees to report to Wells Fargo Bank ("the trustee") that it no longer had a cemetery and to ask for advice on how to proceed. R. at 5. Against Pastor Turner's advice, the Church insisted that Pastor Turner request the full amount of the trust and place it in the Church's personal account. R. at 5. Acting upon his concern of illegality, Pastor Turner refused to request the money and proceeded to address his concerns with Dr. Roberta Jones, the superintendent of the Tourovia Conference of Christian Churches ("CCC"). R. at 4-5.

By October 2012, after receiving no response from either the Church or the CCC, Pastor Turner voiced his concern with Wells Fargo Bank and asked for further instructions. R. at 5. Pastor Turner also notified the IRS of the situation and tried to discuss possible solutions. R. at 4. About two weeks later, on October 16, 2012, Dr. Jones notified Pastor Turner that he was fired, approximately eight and half months before the end of his contract. R. at 4-5.

When informing Pastor Turner why he was fired, Dr. Jones told him only that the Church had "lost faith" in him as a spiritual leader. R. at 3. Pastor Turner proceeded to file a complaint against the Church, Dr. Jones, and the CCC. His complaint alleged wrongful termination based on breach of contract and retaliatory discharge claims. R. at 4-5. Pastor Turner believed that he was fired because of his refusal to participate in the church's legally questionable conduct and because of his threat to report the possible fraud and tax evasion. R. at 5. In his complaint, Pastor Turner requested monetary damages as relief for his claims. R. at 5.

Procedural History

On September 12, 2013, Pastor Turner filed a complaint in the State of Tourovia Supreme Court against the church, the CCC, and Dr. Jones. R. at 5. The complaint alleged wrongful termination based on breach of contract and retaliatory discharge after Pastor Turner reported the allegedly tortious conduct by the church. R. at 5. On March 31, 2014, the CCC and Dr. Jones filed a Motion to Dismiss for failure to state a claim upon which relief can be granted, arguing that Pastor Turner's claims were barred by the ministerial exception. R. at 5. After a hearing, Judge Michelle L. Hall issued an Order on January 20, 2015, granting the Motion to Dismiss based on the ministerial exception. R. at 5. Pastor Turner appealed the Order to the Appellate Division of the Tourovia Supreme Court. R. at 3. The Appellate Division granted his appeal and, on December 18, 2015, affirmed the Order of the trial court. R. at 3. The Supreme Court granted certiorari for the April Term of 2017. R. at 1.

SUMMARY OF THE ARGUMENT

The ministerial exception was created to protect a church's choice of minister, not to immunize it from any and all legal claims. Pastor Turner's claims are secular claims that can be resolved through neutral principles of law. Therefore, the ministerial exception does not apply. At their roots, religious organizations are societal institutions and, like all other institutions, are subject to suits involving property, torts, and criminal conduct. The ministerial exception does not prohibit applying neutral principles of law to secular conduct. Neither the establishment clause nor the free exercise clause is implicated when a court applies neutral principles of law to secular issues. To continue to ensure that the ministerial exception maintains a separation of church and state, this Court should hold that Pastor Turner's breach of contract and retaliatory discharge claims do not fall under the ministerial exception and vacate the lower court's order of

dismissal.

Pastor Turner's claims should be adjudicated because they are secular claims that can be resolved through neutral principles of law. The Tourovia Court of Appeals erred as a matter of law when it converted Pastor Turner's ordinary breach of contract and retaliatory discharge claims into religious claims prohibited by the ministerial exception. The ministerial exception is not limitless, and its scope is bound by the First Amendment. Neither Pastor Turner's contract nor retaliation claim implicate the ministerial exception, because neither claim encroaches on the rights protected by the First Amendment or infringes on the Church's choice of minister. A contract claim merely upholds a church's choice, and a retaliation claim merely protects individuals who engage in protected conduct. Moreover, Pastor Turner's claims are secular in nature and do not require any unique religious inquiry. Both claims can be resolved by neutral principles of law, grounded in conventional contract and employment law. Courts have long recognized that while religious institutions are autonomous in certain respects, their conduct does not escape neutral principles of law when tortious conduct is implicated.

Further, the First Amendment guarantees freedom of religion but not when it would violate broader societal and individual rights. Allowing organizations to create private codes of conduct based on religious preference subverts the law of the land and is at odds with the rule of law. Religious organizations are no exception. The ministerial exception should not permit a breach of contract or a retaliatory discharge claim to be dismissed by a 12(b)(6) Motion to Dismiss nor should the exception bar the present claims. Although a fact specific inquiry is necessary, Pastor Turner's claims do not require, on their face, a resolution of religious matters. Pastor Turner's claims, which were plausibly pled, may be adjudicated using neutral principles of law and therefore are not properly subject to the ministerial exception. Accordingly, the

Tourovia Court of Appeals erred as a matter of law by dismissing Pastor Turner's claims.

ARGUMENT

When a dispute is secular and can be resolved by neutral principles of law, the need for the ministerial exception is nonexistent. Although the ministerial exception protects the ability of religious institutions to select their own minister, the exception does not prevent otherwise valid suits merely because a minister and church are involved. Pastor Turner established prima facie breach of contract and retaliatory discharge claims, which can be adjudicated based on neutral principles of law. Accordingly, the Tourovia Court of Appeals erred as a matter of law when it dismissed Pastor Turner's otherwise valid claims solely because of his status as a minister. Pastor Turner's claims do not jeopardize the values protected by the ministerial exception, because neither claim infringes on the church's selection of its own minister or requires a court to undertake religious issues. Consequently, the ministerial exception does not apply. Pastor Turner has plausibly stated facts, which can be adjudicated based on neutral principles of law, upon which relief may be granted. Therefore, dismissal is inappropriate.

I. THE TOUROVIA COURT OF APPEALS ERRED AS A MATTER OF LAW WHEN IT HELD THAT PASTOR TURNER'S BREACH OF CONTRACT AND RETALIATORY DISCHARGE CLAIMS FELL UNDER THE MINISTERIAL EXCEPTION.

Courts review a 12(b)(6) Motion to Dismiss for failure to state a claim de novo. *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295 (9th Cir. 1998). And when reviewing a complaint dismissed for failure to state a claim, the facts are viewed in a light most favorable to the plaintiff, here Pastor Turner. *Fireman's Fund Ins. Co. v. City of Lodi*, 302 F.3d 928, 939 (9th Cir. 2002).

This Court has not defined the limits of the ministerial exception. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 196 (2012). This Court addressed the ministerial exception for the first time in *Hosanna-Tabor*, and held that the

exception did exist. *Id.* at 188. It clarified that the ministerial exception is grounded in the First Amendment and precludes application of some employment laws to the employment relationship between a religious organization and its minister. *Id.* But, this Court held “only that the ministerial exception bars [an employment discrimination suit].” *Id.* at 196. This Court has not extended the exception to employees alleging breach of contract or tortious conduct. *Id.* Currently, courts are divided over the limits of the exception. *Compare Petruska v. Gannon Univ.*, 462 F.3d 294, 312 (3d Cir. 2006) (holding that the ministerial exception does not protect against a contract claim that does not require an “ecclesiastical inquiry.”), *with DeBruin v. St. Patrick Congregation*, 2012 WI 94, ¶ 29, 343 Wis. 2d 83, 104, 816 N.W.2d 878, 889 (holding that the ministerial exception does protect against contract claims because any inquiry into a religious institution’s reasons for firing a minister involves an ecclesiastical inquiry).

Pastor Turner’s claims, unlike the claims in *Hosanna-Tabor*, do not require the government to determine “who will minister to the faithful.” *Id.* at 194–95. Thus, Pastor Turner’s claims, as stated, should not fall under the ministerial exception for two primary reasons. First, the claims can be adjudicated relying on neutral principles of law without implicating ecclesiastical matters. Second, the ministerial exception does not immunize churches against claims involving breach of contract and fraud.

A. The ministerial exception does not apply because Pastor Turner’s claims can be resolved without infringing on the Church’s First Amendment rights.

“[T]he scope of the ministerial exception . . . is limited to what is necessary to comply with the First Amendment.” *Bollard v. California Province of the Soc’y of Jesus*, 196 F.3d 940, 947 (9th Cir. 1999). Therefore, courts must look beyond the mere labels of the parties and evaluate whether the actual claims brought by the litigants conflict with First Amendment rights. *Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597, 619 (Ky. 2014). “[N]ot every civil

court decision . . . jeopardizes the values protected by the First Amendment.” *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 449 (1969). Where such claims are secular in nature, can be resolved by neutral principles of law, and do not infringe on a church’s choice of minister, the ministerial exception does not apply. *Id.*

1. Pastor Turner’s claims do not fall under the ministerial exception because they are secular in nature rather than purely spiritual or ecclesiastical.

The foundational question to be asked is whether the dispute is secular or based upon ecclesiastical concerns. *McKelvey v. Pierce*, 173 N.J. 26, 45 (2002). Courts may not review “purely spiritual or ecclesiastical questions.” *Watson v. Jones*, 80 U.S. 679, 710 (1871). A dispute is “purely spiritual or ecclesiastical,” “if a court determines that adjudication would require [it] to choose between competing religious visions or cause interference with a church’s administrative prerogatives.” *McKelvey*, 173 N.J. at 52. If a court determines that either is required, “then the dispute *is* truly of a *religious nature*, rather than theoretically and tangentially touching upon religion, and the claim is barred from secular court review.” *Id.* (emphasis original). But, where a religious organization claims merely “a generalized and diffuse concern for church autonomy,” such an assertion on its own, “is insufficient to trigger First Amendment protection from the operation of secular laws.” *E.E.O.C. v. Roman Catholic Diocese of Raleigh, N.C.*, 213 F.3d 795 (4th Cir. 2000).

For example, this Court in *Gonzalez v. Roman Catholic Archbishop of Manila*, held that courts must accept as conclusive a church’s determination of a candidate’s qualifications for chaplain because such determinations are “purely ecclesiastical.” 280 U.S. 1, 16 (1929). In *Gonzalez*, a guardian brought suit on behalf of a twelve-year old boy, claiming that he was entitled to a chaplain position through inheritance, according to a deed of foundation. *Id.* at 13. However, the archbishop disagreed and refused to appoint him based on the grounds that the

child was not qualified. *Id.* at 13. This Court held that it could not challenge whether the plaintiff had the necessary qualifications, because “the appointment is a canonical act” and is “purely ecclesiastical.” *Id.* at 16.

Likewise, in *Hosanna-Tabor*, this Court held that the First Amendment barred an employment discrimination suit by a minister because a church’s selection of its clergy is “strictly ecclesiastical.” *Hosanna-Tabor*, 565 U.S. at 195. In *Hosanna-Tabor*, a Lutheran church-school discharged a plaintiff because she threatened to file suit against the church, which violated Lutheran doctrine that Christians should not sue one another. *Id.* at 180. The plaintiff claimed that the religious justification was pretextual and that the Court should permit further inquiry into the church’s purported justification. *Id.* at 194. However, any such inquiry would have required a court to evaluate Lutheran doctrine. *Id.* at 205 (Thomas, J., Concurring). “If it could be shown that the belief was an obscure and minor part of Lutheran doctrine, it would be much more plausible for [the plaintiff] to argue that this doctrine was not the real reason for her firing.” *Id.* In addition to a doctrinal analysis into the centrality of the belief, a pretextual inquiry would have required resolving the degree to which violating that belief compromised the plaintiff’s spiritual function. *Id.* Accordingly, the Court refused to engage in any pretextual inquiry and instead held that the church’s decision in selecting its minister was “strictly ecclesiastical.” *Id.* at 195.

In the instant case, unlike both *Hosanna-Tabor* and *Gonzalez*, this Court is not required to resolve the qualifications of a chaplain or religious doctrine to determine whether the Church retaliated against Pastor Turner and breached its employment contract. Significantly, in both *Hosanna-Tabor* and *Gonzalez*, the Court would have been mired in religious doctrine if it had attempted to determine whether the religious organizations’ actions were justified. Both cases

would have required the Court to choose between competing religious views presented by the plaintiff and church. Instead, in both cases, the Court aptly avoided any such religious inquiry. However, the present case compels a different result. Here, the Court is not required to resolve any doctrinal issue to determine whether the Church breached its employment contract with Pastor Turner or retaliated against him. Although the Church may raise doctrinal questions, Pastor Turner's claims are secular because the claims on their face do not require any religious inquiry. Accordingly, the Church's claim merely presents "a generalized and diffuse concern for church autonomy" which as noted by the Fourth Circuit, "is insufficient to trigger First Amendment protection from the operation of secular laws." *Roman Catholic Diocese of Raleigh, N.C.*, 213 F.3d at 795.

2. Pastor Turner's breach of contract and retaliatory discharge claims should be adjudicated because they rely on neutral principles of law.

Churches are not above the law. *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985). If a dispute "can be resolved by the application of purely neutral principles of law and without impermissible government intrusion . . . there is no First Amendment shield to litigation, even when the dispute arises from activity that occurred in a religious setting." *McKelvey*, 173 N.J. at 52; *See Presbyterian Church*, 393 U.S. at 449.

This Court held in *Jones v. Wolf*, that the neutral principles of law approach avoids impermissible religious entanglement. 443 U.S. 595, 603 (1979). The Court reasoned that neutral principles of law are "completely secular in operation, and . . . flexible enough to accommodate all forms of religious organization and polity." *Id.* at 603. Neutral principles of law free courts from entanglement in questions of "religious doctrine, polity, and practice," because the method relies "exclusively on objective, well-established concepts . . . familiar to lawyers and judges." *Id.* Although some difficulty remains since a court is still required to examine and interpret certain

religious documents, the Court held that the neutral principles of law method is constitutionally permissible, so long as a court is not required to delve into religious controversy. *Id.* at 595.

In *Presbyterian Church*, this Court explicitly endorsed a neutral principles of law approach to resolving church related disputes. 393 U.S. at 449. This Court noted that although the First Amendment restrains judicial intervention, it does not eliminate judicial intervention. *Id.* “Civil courts do not inhibit [the] free exercise of religion merely by opening their doors to disputes involving church property.” *Id.* First Amendment concerns are only implicated where civil litigation requires a court to resolve “controversies over religious doctrine or practice.” *Id.* Applying those principles, this Court invalidated a “departure-from-doctrine” analysis used by a lower court to resolve a church property dispute. *Id.* at 450. The “departure-from-doctrine” analysis examined whether the actions of a church departed from preexisting church doctrine. *Id.* This Court reversed and remanded the dispute to be determined without deciding questions of religious doctrine. *Id.* at 449.

Correspondingly, this Court further sanctioned the neutral principles of law approach in *Maryland & Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970). There, this Court upheld the decision of a lower court resolving a church property dispute, because it was resolved by neutral principles of law and did not determine religious doctrine. *Id.* The lower court resolved the dispute on the basis of language in the church deed, terms of the church charter, provisions in the church constitution governing church property, and based on state statutes concerning church property. *Id.* Because the analysis entailed “no inquiry into religious doctrine,” the Court dismissed the appeal. *Id.* Similar to the plaintiff’s claim in *Maryland & Virginia Eldership*, Pastor Turner’s claim may be resolved using neutral principles of law. Because Pastor Turner’s complaint may be resolved by looking into the

Church's contract and the black letter of the Tourovia Labor Law, this Court will not interfere with religious doctrine by adjudicating his claims.

Both of Pastor Turner's claims may be resolved using neutral principals of law. First, to prove a prima facie retaliatory discharge claim, Pastor Turner is required only to prove these three elements under the State of Tourovia Labor Law:

In order to maintain a [retaliation] claim, the burden is on the plaintiff to show: 1) that he or she reported or threatened to report the employer's activity, policy, or practice; 2) that a particular law, rule or regulation was violated; and 3) that the violation was the kind that creates a substantial and specific danger to public health or safety.

R. at 16. Thus, Pastor Turner's retaliation claim is purely based on secular legal claims. His report to Wells Fargo Bank and the IRS and his concern that the Church had committed fraud by accepting money for a cemetery it no longer maintained is not a religious issue. Neither is it a religious issue for this Court to determine whether the Church's conduct creates a "substantial and specific danger to public health or safety." R. at 16. Rather, this is an issue of secular cognizance, not religious cognizance, whether Pastor Turner established a prima facie retaliatory discharge claim.

Second, to determine whether Pastor Turner established a breach of contract claim, he is required to prove that a contract exists, that the church breached its contractual obligations and that, as a result, he suffered damages. *See McDermott v. Clondalkin Grp., Inc.*, 649 F. App'x 263, 267 (3d Cir. 2016); *Page v. JPMorgan Chase Bank, N.A.*, 605 F. App'x 272, 275 (5th Cir. 2015); *Erikson v. BP Expl. & Prod.*, 567 F. App'x 637, 639 (10th Cir. 2014). These issues are inherently secular. Moreover, courts, unlike religious bodies, are highly trained in settling contractual and employment related disputes. Here, Pastor Turner had a yearly renewable contract, but he was prematurely fired eight and half months before the end of his

contract. R. at 4. Nothing on the face of the complaint requires a court to undertake or resolve purely doctrinal issues. Accordingly, neutral principles of law are appropriate.

Neither of Pastor Turner's claims require this Court to read, much less examine, any church doctrine. The present case closely follows this Court's decision in *Maryland & Virginia Eldership*, where this Court upheld the decision of a lower court on the basis of language in the church's documents and on state statutes concerning church property. *Maryland & Virginia Eldership*, 396 U.S. at 368. And significantly unlike *Presbyterian Church*, where a lower court relied on a "departure from doctrine analysis" to examine whether the church departed from preexisting doctrine, here, a court is not required consider any doctrine. *Presbyterian Church*, 393 U.S. at 450. This Court can resolve Pastor Turner's claims wholly based off of his contract with the church, which is not premised on religious doctrine, and the black letter of Tourovia Labor Law.

3. Courts historically have resolved employment disputes between churches and their ministers.

Dating back as early as 1799, secular courts have resolved employment related disputes involving ministers based on neutral principles of law. *Runkel v. Winemuller*, 4 H. & McH. 429 (Md. 1799). The Founding Fathers regularly differentiated between the government appointing ministers and resolving disputes regarding ministers. *Id.* (issuing a writ of mandamus reinstating Reverend William Runkel as a minister). As one court posited, civil courts will not interfere with ecclesiastical matters, but will interfere "when civil or property rights are involved." *Bird v. St. Mark's Church of Waterloo*, 17 N.W. 747, 748 (Iowa 1883).

Courts historically have held that religious organizations were subject to the same obligations as secular organizations with respect to neutral laws, such as contract and employment laws. For example, the Supreme Court of Massachusetts affirmed that "[r]eligious

societies are left at liberty to make such contract, and for such term of time as shall be agreed between them and their minister; but the contract once made, it is subject to all such rules of law as govern other engagements.” *Avery v. Inhabitants of Tyringham*, 3 Mass. 160, 169 (1807); *see also Williams v. Town of N. Hero*, 46 Vt. 301, 317 (1873). Further, this Court implicitly recognized that neutral principles of law could be used to resolve church disputes dating as far back as 1871. *Watson*, 80 U.S. at 714. This Court reasoned that neutral principles of law allow courts to satisfactorily resolve church disputes where a court is not required to resolve purely spiritual or ecclesiastical concerns. *See id.* at 710, 714.

Therefore, judicially resolving Pastor Turner’s claims is consistent with the historical understanding of the First Amendment. Barring Pastor Turner’s claims is unnecessary, because neither of his claims implicate the values protected by the First Amendment, and is inconsistent with two centuries of legal precedent.

B. Pastor Turner’s claims do not fall under the ministerial exception because the exception is inapplicable to claims based on voluntary contract or fraud.

As previously illustrated, courts historically have held that religious organizations are subject to the same obligations under neutral laws as secular organizations. *Avery*, 3 Mass. at 169; *Williams*, 46 Vt. at 317. Thus, historically, the First Amendment does not eliminate Pastor Turner’s ability to pursue his contract claim in court. *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354, 1359 (D.C. Cir. 1990). Neither should the First Amendment prevent a retaliatory discharge when it contains allegations of fraud that would affect good societal order. *Gonzalez*, 280 U.S. at 16–17. Even if other claims might be prohibited by the ministerial exception, claims based on voluntary contract and fraud require a different analysis. Both contract and fraud have independent and compelling reasons why the ministerial exception should not bar Pastor Turner’s claims at the outset.

1. Resolving a contractual dispute does not require a court to determine who will minister to the faithful because the court is merely enforcing a church's voluntarily entered into agreement.

This Court has long recognized that churches are subject to their valid contracts. *Watson*, 80 U.S. at 714; *see also Jones*, 443 U.S. at 606 (noting that courts may always resolve contracts governing “the manner in which churches own property, hire employees, or purchase goods.”). Accordingly, churches are held to their contracts just as any other organization or person would be. *See Watson*, 80 U.S. at 714. Churches are free to enter into contracts, and the court is free to enforce them. *See Minker*, 894 F.2d at 1359. This Court should adopt the approach delineated by *Minker* and *Kirby*, because contracts are private agreements that do not undermine a church's choice of minister.

In *Minker*, the court held that a contract claim was not barred by the ministerial exception, because it did not challenge a protected religious activity or a church's selection of its minister. *Id.* at 1361. There, a plaintiff established an oral contract through a promise made by a superintendent to provide him with a congregation in exchange for his continued work at a church. *Id.* at 1359. Although secular courts cannot burden or interfere with a church's selection of its minister, “a church is always free to [voluntarily] burden its [own] activities . . . through contracts.” *Id.* at 1359. The court reasoned that because the plaintiff's breach of contract claim, like breach of contract claims in general, could be adduced by a fairly direct inquiry, the ministerial exception was unnecessary to prevent the court from protruding into religious subjects. *Id.* at 1360. The plaintiff's claim merely required the court to evaluate whether a contract existed and what the damages would be. *Id.* at 1360. Thus, the court held that “maintaining the suit, by itself, [would] not necessarily create an excessive entanglement.” *Id.*

Further, the court held that the plaintiff's injuries could be remedied without religious

entanglement and would not intrude on a church's choice of minister. *Id.* The court reasoned that because money damages would be sufficient, the plaintiff's injury could be remedied without court oversight. *Id.* And consequently, plaintiff's claims could be remedied without excessive entanglement. *Id.* Additionally, because the remedy was limited to money damages, the court did not "see [the] potential for distortion of church appointment decisions [by] requiring that the church not make empty, misleading promises to its clergy." *Id.* In conclusion, the court held that "while the first amendment forecloses any inquiry into the Church's assessment of [appellant's] suitability for a pastorship," it does not prevent the court from determining whether such a contract exists and whether it was breached. *Id.* at 1360–61. Although the First Amendment may make the plaintiff's claims more difficult to prove, the First Amendment does not eliminate the plaintiff's "right to enforce his employment contract." *Id.* at 1361.

Similarly, the Supreme Court of Kentucky in a decision after *Hosanna-Tabor* held that the ministerial exception did not bar a state law contract claim, because contract claims do not impinge on a church's selection of its minister. *Kirby*, 426 S.W.3d at 616. The court reasoned that a contractual scenario is distinct from the ministerial exception, because in such a setting "the government is [not] inappropriately meddling in the selection of who will minister to the congregation." *Id.* Rather, the government is merely upholding the agreement of the church and its minister *Id.* The government has no role in drafting individual contracts. *Id.* Instead, contractual disputes present "a situation in which a religious institution . . . [has] voluntarily circumscribed its own conduct . . . in the form of a contractual agreement, and now that agreement, [may] be enforced according to its own terms." *Id.*

In the present case, the contract between Pastor Turner and the Church was freely entered into by both parties. R at 4. Therefore, upholding their agreement in no way limits the ability for

the Church to select its own minister. Conversely, enforcing the contract is enforcing the Church's choice of minister. It is the Church who is attempting to avoid its choice of minister. Like *Minker*, few factual details are available regarding Pastor Turner's contract with the Church. On one hand, religious questions may arise, but on the other hand, Pastor Turner may be able to prove his claims without issue. Thus, as the court noted in *Minker*, the speculative nature of the analysis demonstrates why it is inappropriate to dismiss Pastor Turner's claim.

Pastor Turner's ordinary breach of contract claim does not, on its face, implicate any religious doctrine. Like *Minker*, a court is merely required to determine whether such a contract exists and whether its terms were violated, causing damage. These questions, as the court reasoned in *Minker*, are straightforward and do not risk religious entanglement.

2. Pastor Turner's claims should not fall under the ministerial exception because the claims allege fraudulent activity.

This Court listed "*fraud, collusion, or arbitrariness*" as exceptions to when a court must defer to a religious tribunal. *Gonzalez*, 280 U.S. at 16–17 (emphasis added). Although in *Milivojevich*, this Court stated that the *Gonzalez* rule was dicta and eliminated the exception for arbitrariness from the rule, it did not eliminate the exception for fraud or overturn the rest of the rule. *Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 713 (1976).

In *Milivojevich*, a lower court relied on the arbitrariness exception to overturn a church's decision. *Id.* at 712. This Court concluded the arbitrariness exception from the rule is inconsistent with the "constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law." *Id.* But the Court explicitly left open the question whether "there is room for 'marginal civil court review' under

narrow rubrics of ‘fraud’ . . . when church tribunals act in bad faith for secular purposes.” *Id.* at 713.

Three years later, in *Jones*, this Court approvingly referenced the fraud exception and restated the original rule from *Gonzalez* with the updated caveat from *Milivojevich* that the arbitrariness exception is inconsistent with the First Amendment. 443 U.S. at 609 n.8. The Court restated the rule as follows: “There is no suggestion . . . that the decision of the commission was the product of ‘fraud’ or ‘collusion.’ In the absence of such circumstances, ‘the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal’” *Id.* (quoting *Milivojevich*, 426 U.S. at 713).

In the present case, because there is a suggestion that the decision was the product of fraud, this Court should not dismiss Pastor Turner’s claims. The fraud exception is consistent with the First Amendment and is supported by compelling public policy concerns. The First Amendment guarantees an absolute right to believe, but only a conditional right to act premised on “social duties” and “good order.” *Reynolds v. United States*, 98 U.S. 145, 146 (1878). Thus, “laws cannot interfere with mere religious belief and opinions, [but] they may interfere with practices.” *Id.* This Court has recognized that even when religious issues are implicated, certain governmental interests are, at times, so compelling that the government can burden religious free exercise. *See e.g., Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983) (holding that the government could deny tax benefits to Bob Jones University because “the Government has a fundamental, overriding interest in eradicating racial discrimination in education.”).

Consequently, upholding the fraud exception to the ministerial exception is consistent with this Court’s precedent that religious conduct is premised on governmental and societal concerns. As this Court noted, “where religious conduct threatens the peace, good order, and

comfort of the community it must submit to regulation.” *Cantwell v. Conn.*, 310 U.S. 296, 304 (1940). Justifications for the ministerial exception are “at their lowest ebb in circumstances where religious institutions . . . harm innocent and unconsenting third parties.” *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 451 (Tenn. 2012). Fraud is a crime that threatens the peace, good order, and comfort of the community and poses risks to third parties and society as a whole. Because the government has a compelling interest in protecting society from criminal activity, this Court should maintain and impose the fraud exception.

Pastor Turner reported the claim because he believed the Church was acting fraudulently and illegally. For that reason, the “societal interest in preventing fraud and illegal conduct should trump the ministerial exception.” R. at 13 (Marcos, J., dissenting). Otherwise, an absolute exception would allow religious organizations to retaliate against ministerial employees who “report[] criminal misconduct, testify before a grand jury or in a criminal trial, or aid law enforcement. *Hosanna-Tabor*, 565 U.S. at 195.

Consequently, this Court should recognize the validity of exceptions to the ministerial exception. The First Amendment is not limitless, and neither is the ministerial exception. Therefore, Pastor Turner’s claims should be adjudicated. The First Amendment was not meant to immunize the church against any and all claims. Pastor Turner’s claims can be resolved on neutral principles of law, and the government has a compelling interest to discourage fraud and tortious conduct, even when religious institutions may be the culprit.

II. THE COURT OF APPEALS ERRED AS A MATTER OF LAW WHEN IT GRANTED THE CHURCH’S MOTION TO DISMISS BECAUSE PASTOR TURNER’S COMPLAINT PLED PLAUSIBILITY AND ADDRESSED ONLY NEUTRAL PRINCIPLES OF LAW.

Pastor Turner’s complaint was wrongfully dismissed. Dismissal is only appropriate when the factual allegations, accepted as true, in the complaint do not state a facially plausible claim

for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The standard for plausibility is not high. Plausibility exists when a claim contains sufficient factual content, which would permit a court to believe that the defendant *might* be liable. *Twombly*, 550 U.S. at 570 (emphasis added). A claim possesses plausibility even if the judge believes that a plaintiff's chances of recovery are remote or even improbable. *Id.* at 555. Additionally, this Court has made clear that the ministerial exception is an affirmative defense, not a jurisdictional bar. *Hosanna-Tabor*, 565 U.S. at 195 n.4. Therefore, dismissal under a 12(b)(6) Motion to Dismiss is not normally permitted. *Petruska*, 462 F.3d at 303 (noting that “[t]he ministerial exception may serve as a barrier to the success of a plaintiff's claims, but it does not affect the court's authority to consider them.”). Furthermore, because all inferences are drawn in favor of the plaintiff, Pastor Turner's complaint must be examined in the light most favorable to him. *Oshiver v. Levin, Fishbein, Sedran & DeBerman*, 38 F.3d 1380, 1384 (3d Cir. 1994). Thus, the Tourovia Court of Appeals should be reversed for two reasons. First, Pastor Turner's complaint is plausible because it satisfies each required element, presenting a prima facie case for the Court. Second, the ministerial exception is inapplicable, because Pastor Turner's complaint, as stated, only relies on neutral principles of law.

A. Pastor Turner's complaint should not have been dismissed because it plausibly stated a claim for relief.

The ministerial exception is insufficient to dismiss Pastor Turner's claims. An affirmative defense, such as the ministerial exception, when presented at the pleading stage does not make a claim invalid. *Brownmark Films, LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. 2012); *Crump v. Passaic Cnty.*, 147 F. Supp. 3d 249, 259 (D.N.J. 2015). Affirmative defenses have zero effect upon a plaintiff's pleading because plaintiffs are not forced to anticipate potentially applicable defenses. *Hyson USA, Inc. v. Hyson 2U, Ltd.*, 821 F.3d 935, 939 (7th Cir. 2016); *Chi.*

Bldg. Design v. Mongolian House, Inc., 770 F.3d 610, 613 (7th Cir. 2014). The only time when an affirmative defense will bar a claim is when the plaintiff *unambiguously* fails to meet the low requirements for plausibility. *Brooks v. Ross*, 578 F.3d 574, 579 (7th Cir. 2009) (emphasis added); *United States v. Lewis*, 411 F.3d 838, 842 (7th Cir. 2005). The Fifth Circuit has expressly noted “given the nature of the ministerial exception, we suspect that only in the rarest of circumstances would dismissal under Rule 12(b)(6)—in other words, based solely on the pleadings—be warranted.” *Cannata v. Catholic Diocese of Austin*, 700 F.3d 169, 172 n.3 (5th Cir. 2012).

Courts across the nation are struggling to understand how to apply the ministerial exception. Some courts hold that the ministerial exception is not a bar to breach of contract and retaliatory discharge claims. *See Rayburn*, 772 F.2d at 1166 (noting that although Title VII claims were inapplicable in the present case, churches are not above the law and are liable for their torts); *McKelvey*, 800 A.2d at 857; *Crymes v. Grace Hope Presbyterian Church, Inc.*, No. 2011-CA-000746-MR, 2012 Ky. App. Unpub. LEXIS 564, at *4 (Ct. App. Aug. 10, 2012). However, other courts hold that suit against a church is barred in almost all forms. *Petruska*, 462 F.3d at 306; *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 953 (9th Cir. 2004); *Marshall v. Munro*, 845 P.2d 424, 428 (Alaska 1993). However, no matter the claim or the court, each case must be determined on a case-by-case basis. *McKelvey*, 800 A.2d at 844.

Pastor Turner need only show that his complaint pleads sufficient facts, taken as true, to state a plausible claim. *Twombly*, 550 U.S. at 570. Pastor Turner’s breach of contract and retaliatory discharge claims meet all of the required elements and demonstrate a prima facie case. Thus, Pastor Turner has plausibly stated a claim for relief, and his claims should not be barred solely because a church and pastor are involved.

1. Pastor Turner's breach of contract claim pled sufficient facts upon which relief may be granted.

Pastor Turner's breach of contract claim should survive a 12(b)(6) Motion to Dismiss. A breach of contract claim, although the elements vary by state, generally has three elements: (1) the existence of a contract, (2) the breach of a contractual obligation, and (3) a resultant damage. *See McDermott*, 649 F. App'x at 267; *Page*, 605 F. App'x at 275; *Erikson*, 567 F. App'x at 639. Pastor Turner has plead each of these elements sufficiently because, as this Court noted, a complaint does not need a detailed factual account in order to survive a motion to dismiss. *Twombly*, 550 U.S. at 555.

All the elements are satisfied for Pastor Turner's breach of contract claim. First, the Church admits to having a contract with Pastor Turner. R. at 4. Therefore, the first element is satisfied. Second, there was a breach of contractual obligation by the Church against Pastor Turner. R. at 4. The contract between Pastor Turner and the Church was renewable on a yearly basis. R. at 4. The first contract started on July 1, 2009, and therefore his third contract, already approved by the Church, should have ended on June 30, 2013. R. at 4. However, Pastor Turner was fired on October 31, 2012. R. at 4. Therefore, the Church breached the employment contract by firing Pastor Turner approximately eight months before his third contract expired. R. at 4. Third, Pastor Turner experienced damages. Damages for a breach of contract may be calculated by what the employee would have earned if the employer had not prematurely terminated the contract. *Zeller v. Prior Lake Pub. Sch.*, 108 N.W.2d 602, 606 (Minn. 1961). Thus, Pastor Turner should be able to claim damages for his lost salary for those eight months.

Further, if the Church wanted to dispute the damages, it is affirmatively on the Church to prove that the employee had another means of earning a wage. *Id.* A contract must be construed against the drafter. *Rory v. Cont'l Ins. Co.*, 703 N.W.2d 23, 37 (Mich. 2005). This Court must

affirmatively construe Pastor Turner's employment contract against the Church, while still drawing all inferences from the complaint in Pastor Turner's favor. *Oshiver*, 38 F.3d at 1384. Accordingly, Pastor Turner has pled plausibility for his breach of contract claim. Therefore dismissal was inappropriate.

2. Pastor Turner's retaliatory discharge claim stated sufficient facts upon which relief may be granted.

In addition to his contract claim, Pastor Turner's retaliatory discharge claim survives a 12(b)(6) Motion to Dismiss because he has pled plausibility and has stated a claim upon which relief may be granted. Tourovia's Labor Law, Section 740, lays out the elements for a retaliatory discharge claim. R. at 16. To prove a retaliatory discharge claim, three elements must be met: (1) the employee reported, or threatened to report, the employer's activity; (2) a particular law, rule or regulation was violated; and (3) the violation was the kind that creates a substantial and specific danger to public health or safety. R. at 16.

All the elements are satisfied for Pastor Turner's retaliatory discharge claim. First, within six months of being fired, Pastor Turner notified the Church that he believed that the Church was committing tax evasion and fraud. R. at 5. Upon the Church's failure to respond, Pastor Turner took further action and notified Wells Fargo and the IRS of the Church's conduct. R. at 5. Thus, Pastor Turner satisfied the first element by reporting the Church's questionable conduct.

Second, Pastor Turner vehemently believed that the Church was breaking a law by not reporting to Wells Fargo that the Church no longer operated a cemetery. R. at 5. Pastor Turner's belief that a law was being broken is sufficient to satisfy the second element of Tourovia's retaliatory discharge claim. R. at 16; *Lachance v. White*, 174 F.3d 1378, 1381 (Fed. Cir. 1999). Even if a law is not violated, an employee need only have objectively and reasonably believed that gross mismanagement has occurred. *Lachance*, 174 F.3d at 1381. Gross mismanagement

occurs when reasonable people could not debate the error of the policy. *White v. Dep't of the Air Force*, 391 F.3d 1377, 1382 (Fed. Cir. 2004). It is apparent that Pastor Turner believed that tax evasion and fraud constituted gross mismanagement because he reported the Church's conduct. R. at 5.

Third, the Church's conduct creates a substantial and specific danger to public health and safety. This Court noted that the ability to act is not absolute. *Cantwell*, 310 U.S. at 304. Certain conduct that threatens the "peace, good order, and comfort of the community" must submit to regulation. *Id.* "A variety of factors . . . [help] determine when a disclosed danger is sufficiently substantial and specific to warrant protection . . . One such factor is the likelihood of harm resulting from the danger." *Chambers v. Dep't of Interior*, 515 F.3d 1362, 1369 (Fed. Cir. 2008). A second important factor considers when the harm may occur. *Id.* In Pastor Turner's situation, he believed that the Church was going to use the money for purposes other than those for which it was donated, despite the potential illegality of that conduct. R. at 5. The money was donated, in part, with the faith that it would be used to help the Church with its cemetery. R. at 5. Because the Church no longer possesses the cemetery, a substantial and specific harm resulted to the donor when the Church accepted the money. Additionally, there is danger in allowing entities, even religious institutions, to take donated money in bad faith because it threatens the "good order" of the community. Further, a broad ministerial exception that bars all retaliatory discharge claims threatens the "good order" of the community and places society at large in danger. If such an expansive exception is applied beyond the First Amendment, religious organizations would be permitted to discharge employees who aid in criminal investigations.

Thus, Pastor Turner's retaliatory discharge claim should not have been dismissed under a 12(b)(6) Motion to Dismiss claim because he has met all three elements under the *Tourovia* labor

law. Therefore, Pastor Turner's complaint is plausible because it sets forth sufficient facts for a judge to find the Church liable.

B. Pastor Turner's complaint should not be dismissed because it implicates neutral principles of law.

A church is not above the law. *Rayburn*, 772 F.2d at 1171. A court may adjudicate a claim involving a church so long as it relies upon "neutral laws of general applicability." *Employment Div. v. Smith*, 494 U.S. 872, 881 n.1 (1990). A law, which is neutral in its purpose and on its face, will be valid against secular and religious institutions alike. *Id.* The threshold question for a court to decide is whether the claim involves neutral principles of law only or implicates ecclesiastical matters. *Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328, 331 (4th Cir. 1997); *see also McKelvey*, 800 A.2d at 844. Because Pastor Turner's claims involve only neutral principles of law, they should not be barred by the ministerial exception.

1. Pastor Turner's claims are based upon neutral principles of law and do not involve church doctrine.

Despite Pastor Turner's claims arising from his termination by the Church, they do not involve ecclesiastical concerns. The ministerial exception grounded in the First Amendment is not implicated merely by the names of the parties. First, Pastor Turner's claims involve property and personal rights, which have been purposefully excluded from the protection of the ministerial exception. *See Watson*, 80 U.S. at 728. Second, a contract is a secular matter and a voluntary undertaking. *Petruska*, 462 F.3d at 310. A contract may be enforced against a church because "enforcement of a promise, willingly made and supported by consideration, in no way constitutes a state-imposed limit upon a church's free exercise rights." *Id.* Third, Pastor Turner's retaliation claim is secular because it does not involve religious matters. *Galetti v. Reeve*, 331 P.3d 997, 1002 (N.M. Ct. App. 2014). In general, retaliatory employment claims should not be a

protected employment choice.

Similar to the employee in *Kirby*, whose contractual dispute was decided by the courts, Pastor Turner's contractual claim should be mediated by the courts, too. *Kirby*, 426 S.W.3d at 597. So long as the court is not forced to pick among competing theological claims, the First Amendment does not bar contractual claims. *McKelvey*, 800 A.2d at 859. In *Kirby*, the plaintiff taught at a religious school but was fired in breach of his employment contract. *Kirby*, 426 S.W.3d at 597. The court made it clear that the breach of contract claim did not intrude upon the school's choice of minister and that the plaintiff was allowed to prove the elements for his claim using neutral principles of law because the ministerial exception is an exception, not an exemption. *Id.* at 608. Similar to the plaintiff's claim in *Kirby*, Pastor Turner's claim is that the church breached its contract. R. at 5. On its face, this Court is not required to resolve any theological issues, and it does not impinge upon a church's choice of minister.

A contractual claim merely holds a church to its word and does not "arouse concerns of government interference in the selection of its ministers." *Id.* The claim on its face did not implicate other ecclesiastical concerns. *Id.* Therefore, it was inappropriate to bar Pastor Turner's contract claim under the ministerial exception at the outset. Ultimately, "churches are organizations . . . [and] a church is always free to burden its activities voluntarily through contracts, and such contracts are fully enforceable in civil court." *Id.* at 615.

Similar to the plaintiff in *Elvig*, who was a pastor, Pastor Turner's retaliatory discharge claim involves only neutral principles of law, which cannot be barred by the ministerial exception. *See generally Elvig*, 375 F.3d at 953 (holding that although the plaintiff in *Elvig* could not bring all of her retaliatory claims, her retaliatory claim related to sexual harassment should not be barred). In *Elvig*, the plaintiff sued her church for, *inter alia*, retaliatory harassment for

reporting unacceptable sexual behavior among the church towards herself. *Id.* The court in *Elvig* held that the plaintiff's sexual retaliation claim was not barred because retaliation is not a protected church action. *Id.* at 965. The court in *Elvig* affirmed the reasoning found in *Bollard* by holding that because a church eschews promoting retaliatory conduct, a suit alleging a retaliatory claim will necessarily not delve into church doctrine. *Elvig*, 375 F.3d at 966. (In *Bollard*, the court noted that the church refused to condone unlawful behavior, and therefore, the suit would necessarily not entangle the court in ecclesiastical matters); *See Bollard*, 196 F.3d at 947. Likewise, Pastor Turner's claim against the Church alleges retaliatory discharge. R. at 5. Any concern that determining whether Pastor Turner was wrongfully discharged will constitute excessive involvement in church matters is unwarranted. Excessive involvement occurs when there is pervasive monitoring of the day to day activities of the church. *Elvig*, 375 F.3d at 967. However, this concern is not present in Pastor Turner's retaliatory discharge claim because his claim may be resolved using neutral principles of law.

Furthermore, courts have the ability to regulate discovery and permit only limited discovery. *Id.*; *Bollard*, 196 F.3d at 950. Thus, if discovery does overstep its boundaries, courts may step in and halt discovery. *Bollard*, 196 F.3d at 950. However, to bar discovery from occurring in the first place simply because a claim might implicate the ministerial exception is not the design or purpose of the exception. *Galetti*, 331 P.3d at 1002; *Kirby*, 426 S.W.3d at 608.

A breach of contract claim and retaliatory discharge claim involve only neutral principles of law. It is an overly broad statement to say that the ministerial exception covers all church activities. *Agostini v. Felton*, 521 U.S. 203, 233 (1997). "Interaction between church and state is inevitable and we [the courts] have always tolerated some level of involvement between the two." *Id.*

2. *The First Amendment does not permit the ministerial exception to be a blanket exception.*

The First Amendment does not, nor was it intended to, provide the church with blanket immunity from suits. *See Hosanna-Tabor*, 565 U.S. at 184. This Court has explicitly stated that although the freedom to believe is absolute, the freedom to act is not. *Cantwell*, 310 U.S. at 303. Rather, the impetus of the First Amendment was to guard against the possibility of the government establishing a national church. *Id.* It is easy to understand why courts have shied away from First Amendment concerns in the courtroom but that does not mean their actions are correct. *See Rayburn*, 772 F.2d at 1171. If a church can claim what amounts to absolute immunity, claims which have the right to be heard will be wrongly discarded, and citizens' rights will be rejected and sacrificed. *Cf. Elvig*, 375 F.3d at 953.

An absolute ministerial exception is not necessary to protect the religious liberty of religious organizations. Constitutional rights are often waived in contractual documents. *Kirby*, 426 S.W.3d at 607. Just as a prisoner can waive his right to jury through signing a plea deal, a church can contractually waive their right to the ministerial exception when entering voluntarily into an employment contract. *See Id.* In the objective sense, when a court does not litigate a dispute involving a church, that court is actually violating the Establishment Clause. *McKelvey*, 800 A.2d at 857. By refusing to apply neutral laws against a church, the courts are helping to promote religion above the law because this practice essentially creates an exemption for churches, which is neither constitutionally mandated nor protected. *Id.*

Pastor Turner's claims may be properly adjudicated using neutral principles of law and thus do not implicate First Amendment concerns. "[T]he First Amendment does not immunize the church from all temporal claims made against it." *Minker*, 894 F.2d at 1360. Thus, Pastor Turner's claims should be properly adjudicated and not presumptuously dismissed. This will

ensure that individual rights are not forfeited to provide an unconstitutional blanket protection to the church.

CONCLUSION

The ministerial exception was not created to immunize the church from any and all claims, especially in circumstances where there is alleged tortious conduct. This Court should hold that (1) Pastor Turner's claims do not fall under the ministerial exception, and (2) dismissal of Pastor Turner's claims is inappropriate. Therefore, this Court should reverse the State of Tourovia Court of Appeals's decision and vacate the order of dismissal.

Respectfully submitted,

/s/ Team 9
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