

In The  
**Supreme Court of the United States**

—◆—  
EDWIN R. MELHORN,

*Petitioner,*

v.

BALTIMORE-WASHINGTON CONFERENCE  
OF THE UNITED METHODIST CHURCH, *et al.*,

*Respondents.*

—◆—  
**On Petition For A Writ Of Certiorari  
To The Court Of Special Appeals Of Maryland**

—◆—  
**BRIEF FOR RESPONDENTS THE  
BALTIMORE-WASHINGTON CONFERENCE  
OF THE UNITED METHODIST CHURCH  
AND DR. KARIN WALKER IN OPPOSITION**

—◆—  
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**QUESTION PRESENTED**

The ministerial exception forbids the government from second-guessing a church's decision to hire or fire a minister. Respondents terminated Petitioner, a United Methodist pastor, because they had "lost faith" in his spiritual leadership of his congregation. In his lawsuit against the church and church authorities, however, Petitioner claims that this stated reason was pretextual and that the real reason for his discharge was that Petitioner disagreed about how to handle a bequest. Does the ministerial exception bar Petitioner's claim?

## **CORPORATE DISCLOSURE STATEMENT**

Respondent Baltimore-Washington Conference of The United Methodist Church is incorporated under Maryland law as a non-stock religious corporation and, as such, has no parent corporation or stockholders.

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## **OPINIONS BELOW**

The Order of the Maryland Court of Appeals denying certiorari (Pet. App. 30) is reported at 136 A.3d 817 (2016) (table). The Opinion of the Maryland Court of Special Appeals (Pet. App. 1-15), affirming dismissal of the Complaint, is unreported but available at 2016 WL 1065884. The Order of the Circuit Court for Baltimore County, dismissing the Complaint with prejudice (Pet. App. 16-17), is unreported.



## **JURISDICTION**

The Opinion of the Maryland Court of Special Appeals, affirming dismissal of Petitioner Edwin R. Melhorn's claims, was filed on March 16, 2016. Pet. App. 1. The Order of the Maryland Court of Appeals, denying Petitioner's petition for certiorari, was entered on May 23, 2016. Pet. App. 30. The Petition for Writ of Certiorari was filed on August 22, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).



## **STATEMENT**

Petitioner urges the Court to grant review so that it can clarify First Amendment law governing the ministerial exception. Petitioner's claims lack merit and no clarification is needed. There is no conflict or uncertainty regarding the governing rules, at least as they apply to circumstances such as those in this case: the cases uniformly hold that the ministerial exception

bars a pastor from suing his church for wrongful discharge where, as here, that claim challenges the grounds for his discharge. Deciding who will minister to a church's faithful is a "strictly ecclesiastical" matter. The First Amendment forbids secular courts from interfering with that decision.

1. Between July 2009 and December 2012, Cedar Grove United Methodist Church ("Cedar Grove") employed Petitioner as Pastor. Pet. App. 3. Pastor Melhorn's job duties and responsibilities included, among other things, leading the congregation in study and worship, delivering sermons, and performing personal, spiritual and grief counseling. Resp. Supp. Appx. ¶ 17.

On October 16, 2012, Petitioner was informed that Cedar Grove would be "transitioning," effective December 31, 2012, and that his services were no longer required. Pet. App. 3. Cedar Grove attributed its decision to the fact that it had "lost faith" in Petitioner's spiritual leadership. *Id.*

2. Petitioner thereafter filed a one-count wrongful discharge complaint in the Circuit Court for Baltimore County against three defendants: (1) Cedar Grove; (2) The Baltimore-Washington Conference of The United Methodist Church ("The Baltimore-Washington Conference"), which oversees all United Methodist congregations in most of Maryland, including Cedar Grove; and (3) the Rev. Dr. Karin Walker ("Dr. Walker"), the District Superintendent charged with supervising all congregations located within the

geographic district where Cedar Grove is located. Resp. Supp. Appx. 1-13. The Complaint acknowledged that Petitioner had been told his employment was ending because Cedar Grove had “lost faith” in his spiritual leadership. *Id.* at ¶ 31. The Petitioner alleged, however, that this reason was pretextual, and that the real reason was because Petitioner disagreed with Cedar Grove’s decision to accept certain funds earmarked for cemetery upkeep, notwithstanding that Cedar Grove had transferred the cemetery to a distinct legal entity. *Id.* The Complaint did not allege that Petitioner took his concerns to any state or federal authorities or to the trustee making the bequest. Resp. Supp. Appx. 1-13. Nor did it allege that any third party had made any allegations of wrongdoing, tortious or illegal conduct by any of the Respondents. *Id.*

All three Respondents moved to dismiss the Complaint, arguing that the ministerial exception barred Petitioner’s wrongful discharge claim because: (a) Petitioner qualified as a “minister”; and (b) his claim was the type which would substantially entangle the court in the church’s ecclesiastical decision-making and internal self-governance. After full briefing and oral argument, the trial court granted Respondents’ motions to dismiss and dismissed the Complaint with prejudice.

The trial court began by explaining that, for the “ministerial exception” to apply, the Petitioner’s “primary duties” needed to include acting as a minister. Pet. App. 19. Petitioner’s counsel conceded that Petitioner satisfied the “primary duties” test. Pet. App.

19-20. The trial court concluded that this concession, together with the allegations in the Complaint – that Petitioner’s duties included leading the congregation in study and worship, delivering sermons and performing personal, spiritual and grief counseling – satisfied the “primary duties” test. *Id.*

The trial court then analyzed whether resolving Petitioner’s wrongful discharge claim would require the secular court to assess the reasons for his termination, and found that it would. Pet. App. 20-21.

The trial court explained that, although Dr. Walker told Petitioner that the church had “lost faith” in his spiritual leadership, Petitioner was aiming to prove that the termination was due to his disagreement about how to handle a bequest. Pet. App. 24-25. According to the trial court, because resolving this dispute would require the secular court to evaluate whether the Respondents’ stated reason for termination was true, the ministerial exception precluded it from doing so. *Id.* at 24 (“The Plaintiff is asking the Court to determine whether the church’s reasons for terminating Mr. Melhorn are valid”); *id.* at 27 (“the case law prohibits this Court from . . . making the determination whether Pastor Melhorn was discharged for reasons relating to his spiritual leadership or whether it was because he didn’t want to accept the gift to the cemetery that the church no longer owned”).

3. The Maryland Court of Special Appeals affirmed. Pet. App. 1-15. The court explained that, while this Court’s decision in *Hosanna-Tabor Evangelical*

*Lutheran Church & Sch. v. E.E.O.C.*, 132 S. Ct. 694 (2012), applied the ministerial exception to the Title VII employment discrimination claim before it, the Maryland Court of Appeals (Maryland’s highest court) had “recognized a broader ministerial exception under Maryland law” that extended to wrongful discharge claims. Pet. App. 12.

The Court of Special Appeals agreed with the trial court that two elements must be present to apply the ministerial exception: (1) the employee must qualify as a minister; and (2) resolving the complaint would require the court to investigate the veracity of the religious organization’s stated reason for the termination, thereby impinging on church autonomy in selecting its own spiritual leaders. Pet. App. 9, 13.

The Maryland Court of Special Appeals found that it was “undisputed” that Petitioner qualified as a minister, thus satisfying the first element of the ministerial exception. Pet. App. 6 n.2. With regard to the second element, the court held that it was also amply satisfied because the allegations in the Complaint showed that Petitioner was challenging the reason for his termination – which was a purely ecclesiastical decision:

[T]he [trial] court could not have heard 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 Vice Chairman’s instruction regarding the portion of the bequest that was meant for the cemetery fund, or because

the church had “lost faith” in his spiritual leadership. Such a determination is of the precise type that the ministerial exception precludes secular courts from making.

Pet. App. 13.

The Court of Special Appeals thus held that the trial court properly dismissed the one-count wrongful discharge complaint as barred by the ministerial exception. Pet. App. 13.

4. The Maryland Court of Appeals denied Petitioner’s petition for a writ of certiorari without discussion. Pet. App. 30.



### **SUMMARY OF ARGUMENT**

The decision below is straightforward and unexceptional. Petitioner’s religious employer “lost faith” in his spiritual leadership and, as a result, terminated his employment. Although Petitioner maintained that this stated reason was pretextual, any inquiry into the true motive for the employer’s decision would impermissibly invade the church’s right to select its own ministers.

Petitioner nevertheless urges the Court to grant review so that it can clarify the law in this area. In doing so, Petitioner constructs a “Question Presented” that seeks review of issues that were not litigated below, and alleges a split that does not exist.

The Court of Special Appeals did not issue a sweeping ruling that it claimed applied to all tort and contract claims that a minister brings against his church. Rather, the decision was limited to wrongful discharge claims that require the secular court to investigate the veracity of the religious organization's stated reason for the termination of a minister and thus "encroach on the ability of a church to manage its internal affairs." By impermissibly framing the issue so broadly, so as to encompass issues that were not litigated or decided below, Petitioner invites the Court to do what it expressly refused to do in *Hosanna-Tabor*: issue a blanket ruling about the ministerial exception that encompasses circumstances not presented by this case.

Moreover, there is no meaningful confusion or disagreement among the lower courts on the standards that govern application of the ministerial exception. Rather, every court to consider the issue has held that the ministerial exception bars a claim that would require the court to second guess a religious institution's motivation for an employment decision involving its own minister.



## **REASONS FOR DENYING THE WRIT**

### **I. PETITIONER SEEKS AN ADVISORY OPINION**

No court below decided the issues presented in Petitioner's request for review, and any review thereof would therefore be advisory.

Petitioner constructed its Question Presented as follows:

Whether the ministerial exception of the First Amendment absolutely bars breach of contract and tortious conduct lawsuits in situations of illegal conduct or harm to third parties.

Pet. at i.

But neither the Maryland Court of Special Appeals nor the trial court rendered an opinion regarding breach of contract claims, tortious conduct lawsuits in general, or whether the ministerial exception acts as an absolute bar to either. Moreover, no third party has made any allegation against any of the Respondents of illegal conduct or harm. Thus no element of Petitioner's Question Presented reflects the litigation below.

The Maryland Court of Special Appeals affirmed the trial court's holding that "wrongful discharge claims like the appellant's are precluded by the ministerial exception under Maryland law." Pet. App. 9. In reaching that conclusion, the Court of Special Appeals

examined two factors: (1) whether the employee making the claim qualified as a “minister”; and (2) whether the claim was of the type that would substantially entangle the court in the church’s doctrinal decision-making and internal self-governance. *Id.* Finding that both elements were satisfied, the Court of Special Appeals affirmed the trial court.

Similarly, the trial court held that it was prohibited “from making the determination whether Pastor Melhorn was discharged for reasons relating to his spiritual leadership or whether it was because he didn’t want to accept the gift to the cemetery that the church no longer owned.” Pet. App. 27.

At no time did any court below render a decision regarding the applicability of the ministerial exception to a breach of contract claim or to any tort claim besides Petitioner’s solitary claim for wrongful discharge. Indeed, the courts below could not have addressed breach of contract, torts involving third parties, or any other tort against Petitioner because the Complaint included only a single count – brought by the minister alone, not any third party – for “Wrongful Discharge.” Resp. Supp. Appx. 1-13. The word “contract” does not appear in the Complaint, nor did Petitioner allege that any other type of tort had been committed against him. *Id.*<sup>1</sup>

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<sup>1</sup> At the hearing on the Motion to Dismiss, Petitioner’s counsel confirmed that there were no other claims or allegations that Petitioner could make in an effort to overcome the ministerial exception. Pet. App. 28.

Petitioner has framed the Question Presented so broadly because decisions relating to minister's suits against their churches for breach of contract are the only cases that, perhaps, leave room to argue that there is a split of authority. But Petitioner has not asserted a breach of contract claim. In short, this case is not a vehicle for the Court to address whether the ministerial exception absolutely bars breach of contract claims or tortious conduct lawsuits when no such claims were pled or adjudicated, and any opinion on those issues would perforce be advisory.

Petitioner's secondary argument, that the Court must clarify that illegal conduct or harm to third parties is not barred by the ministerial exception, is similarly unavailing. No third party has ever alleged that the Respondents engaged in any illegal or wrongful conduct. No third party has alleged any harm. Indeed, Petitioner himself has never contended that a third party complained to him about any alleged wrongdoing or any alleged injury. Nor has Petitioner alleged that he reported any illegal activity to any law enforcement or other governmental entity, nor did he identify any legal authority that might have required him to do so. Against that backdrop, Petitioner's unilateral contention that he was fired because he was seeking to avert potential harm to third parties does nothing to salvage his wrongful discharge claim; it remains a claim – by the minister alone, for alleged harm to him alone – that challenges the veracity of the church's statement that he was fired because the church lost faith in his spiritual leadership.

## II. THE DECISION BELOW WAS IN ACCORD WITH THIS COURT'S FIRST AMENDMENT PRECEDENT

Petitioner next derides a consistent line of Maryland precedent upon which the Maryland Court of Special Appeals relied, suggesting that the court reflexively “read some old cases dismissing a few wrongful discharge lawsuits and interpreted them to ban ministerial wrongful discharge suits no matter what the surrounding circumstances.” Pet. at 4. According to Petitioner, the Court of Special Appeals’ “approach was inconsistent with this Court’s fact- and lawsuit-specific approach to the ministerial exception in *Hosanna-Tabor*.” *Id.*

Petitioner is incorrect. In fact, *Davis v. Baltimore Hebrew Congregation*, on which the Court of Special Appeals relied (Pet. App. 11), was decided after *Hosanna-Tabor*, and relied upon it. 985 F. Supp. 2d 701, 710 (D. Md. 2013). Thus the Court of Special Appeals rendered its decision in light of *Hosanna-Tabor*.

Next, while the ministerial exception often requires a fact-specific analysis of whether the employee in question was a “minister,” *see, e.g., Hosanna-Tabor*, 132 S. Ct. at 707-09, Petitioner conceded the point here, obviating the need for a detailed factual analysis on that issue. Pet. App. 19-20 (“Mr. Dansicker has conceded that Reverend Melhorn – Pastor Melhorn would satisfy the primary duties test”); Pet. App. at 6 n.2 (“It is undisputed in the present case that the appellant

qualifies as a minister”). Petitioner cannot now complain that the courts below failed to conduct an analysis when his own concession and the incontrovertible facts made that analysis unnecessary.

Finally, to the extent Petitioner is arguing that the Court of Special Appeals failed to specifically analyze whether resolving his wrongful discharge claim would require the court to examine the Respondents’ reasons for his termination, or if his claim could be resolved without such an examination, this argument is also incorrect. The Court of Special Appeals noted that, to be entitled to the ministerial exception, “the claim must be the type of claim which would substantially entangle the court in the church’s doctrinal decision-making and internal self-governance.” Pet. App. 9. It found that this element was easily satisfied by the allegations in the Complaint:

[T]he [trial] court could not have heard 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 Vice Chairman’s instruction regarding the portion of the bequest that was meant for the cemetery fund, or because the church had “lost faith” in his spiritual leadership. Such a determination is of the precise type that the ministerial exception precludes secular courts from making.

Pet. App. 13.

The record thus demonstrates that the Court of Special Appeals conducted a proper analysis of the ministerial exception.

### **III. PETITIONER'S ALLEGED SPLIT IN AUTHORITY IS ILLUSORY**

Petitioner's primary argument is that state and federal courts disagree about the status of the ministerial exception and that the Court should resolve this "split in authority." Pet. at 7, 9. Petitioner's split is illusory. There is no split of authority, and certainly not on the straightforward facts and claims such as those presented here.

Petitioner first claims that "[s]everal courts have held that ministers may sue for breach of contract to receive pay and other employment benefits for completed services." Pet. at 6. While that might be true, no such claim exists in this case.

Moreover, although some courts have allowed an employee's claim for breach of contract to proceed, those claims did not constrain the church's choice of minister by subjecting the church's clergy selection process to civil judicial scrutiny; they simply required the religious institutions to honor their own, readily discernable commitments. In fact, many of the courts in the decisions relied upon by Petitioner (Pet. at 6-7) dismissed parallel termination claims, or emphasized that the breach of contract claim did not require the secular court to second-guess the ecclesiastical

decision, because the courts recognized that the ministerial exception applied to bar such claims:

- *Second Episcopal District African Methodist Episcopal Church v. Prioleau*, 49 A.3d 812, 818 (D.C. 2012) (an action for payment of undisputed wages where the plaintiff “does not claim she was wrongfully terminated or otherwise tether her contract claim to matters of church doctrine or governance”);
- *Crymes v. Grace Hope Presbyterian Church, Inc.*, No. 2011-CA-000746-MR, 2012 WL 3236290, at \*2 (Ky. Ct. App. August 10, 2012) (“the court possesses jurisdiction to adjudicate breach of contract claims for unpaid wages and benefits accruing during a pastor’s employment term but lacks jurisdiction to adjudicate any claims directly related to the termination of a pastor”);
- *Bigelow v. Sassafras Grove Baptist Church*, 786 S.E.2d 358, 365 (N.C. Ct. App. 2016) (“plaintiff’s complaint does not challenge the Church’s decision to terminate his employment, but instead seeks to enforce a contractual obligation regarding his compensation and benefits”).

Petitioner next argues that there is a “split in authority” regarding “whether breach of contract lawsuits may proceed after ministerial employees are fired.” Pet. at 7. Again, Petitioner has not asserted any breach of contract claim in this lawsuit. Moreover, as before, a review of the decisions cited by Petitioner (Pet. at 7-10) reveals that the contract claims asserted

in these cases *did not* require the court to scrutinize, let alone pass upon, the “strictly ecclesiastical” process of selecting and controlling who will minister to the faithful – a matter that is the church’s alone:

- *Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597, 601 (Ky. 2014) (“we explicitly adopt the ministerial exception as applicable to employment claims – especially discrimination claims – asserted against a religious institutional employer by an employee who is directly involved in promulgating and espousing the tenets of the employer’s faith,” but nevertheless remanded breach of contract claim because “(1) the enforcement of the contractual arrangement between the Seminary and Kirby does not arouse concerns of government interference in the selection of ministers, and (2) the contract does not involve any matters of ecclesiastical concern that would otherwise bar the suit under the ecclesiastical abstention doctrine”);
- *Cropper v. St. Augustine School*, No. 2014-CA-001518-MR, 2016 WL 98701, at \*3 (Ky. Ct. App. January 8, 2016) (allowing claim for breach of written contract to proceed because it turned on language of unambiguous agreement and did not implicate “church government, membership, discipline, or theological issues”);
- *Jackson v. Mount Pisgah Missionary Baptist Church Deacon Board*, No. 1-14-3045, 2016 WL 3569801, at \*9-11 (Ill. App. Ct. June 30, 2016) (“whether or not a civil court may exercise jurisdiction over a dispute involving a

religious organization depends on whether resolution of the claims is possible without inquiry into religious principles and doctrines. . . . In the case at bar, however, the parties agree on what law applies, *i.e.*, defendants’ bylaws, and the dispute is over whether or not defendants violated those bylaws. . . . [D]eciding whether or not defendants violated the bylaws in the present case will not require inquiry into a religious doctrine, and may be resolved using neutral principles of civil law” (citations omitted));

- *McKelvey v. Pierce*, 800 A.2d 840, 858 (N.J. 2002) (allowing inquiry into the existence of a contract with no claim for wrongful discharge and where “[n]o choice regarding McKelvey’s ordination or employment was exercised by the Diocese”).<sup>2</sup>

Petitioner next argues that other courts have rejected breach of contract claims brought by ministers,

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<sup>2</sup> The only case on which Petitioner relies that does not fit this neat pattern is *Galetti v. Reeve*, 331 P.3d 997 (N.M. Ct. App. 2014). But *Galetti* does not support Petitioner’s cause. In *Galetti*, the court acknowledged that the ministerial exception prohibits civil court review of disputes involving matters of faith, doctrine, church governance, and policy. It held, however, that the complaint, on its face, did not reveal whether adjudication of the plaintiff’s claims would “cause interference with a church’s administrative prerogatives” (which would trigger the doctrine) or if they could be resolved by the application of purely neutral principles of law (in which case they could proceed). *Galetti*, 331 P.3d at 1001. Here, by contrast, the Complaint showed that resolution of Petitioner’s claims would interfere with the internal governance of the Respondents, depriving them of control over the selection of those who would personify their beliefs.

thus allegedly evidencing a “split in authority.” Pet. at 8-9. Not so. In these cases, where plaintiffs were, essentially, asking the secular court to assess the legitimacy of the religious institution’s stated reason for termination, courts have, without fail, held that such claims are precluded by the ministerial exception:

- *DeBruin v. St. Patrick Congregation*, 816 N.W.2d 878, 882 (Wis. 2012) (“DeBruin’s complaint, which would require a state court to evaluate *why* St. Patrick terminated its ministerial employee, fails to state a claim upon which a court may grant relief”) (emphasis in original);
- *Warnick v. All Saints Episcopal Church*, No. 2011 No. 01539, 2014 WL 11210513, at \*10 (Pa. Ct. Com. Pl., April 15, 2014) (“the contract and interference with contract claims relating to All Saints’ ending Father Warnick’s full-time ministry and choosing not to give him part-time ministry are precluded from civil court analysis because of the deference rule and ministerial exception”).<sup>3</sup>

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<sup>3</sup> The only two federal decisions cited by Petitioner, *Listecki v. Official Comm. of Unsecured Creditors*, 780 F.3d 731 (7th Cir. 2015) and *Barrow v. Living Word Church*, No. 3:15-cv-341, 2016 WL 3976515 (S.D. Ohio July 25, 2016), do not support his position. *Listecki* involved a bankruptcy transfer issue, and did not require an evaluation of the reasons for a religious institution’s termination decision. In *Barrow*, the court allowed a claim for interference with plaintiff’s book deal with a publisher to proceed, with the understanding that the court must “abstain from judging the legitimacy of any Living Word decision about who is or can be a member or a clergyperson of their church or about whether it is proper to remove a person from either position on the basis of

Finally, Petitioner argues that there is a split over “pure tort cases filed by ministers.” Pet. at 10-11. But these cases involve tort allegations that have nothing to do with wrongful discharge (or any permutation relating to the plaintiff’s employment as a minister), nor were they filed by a minister. Instead, both *Doe No. 2 v. Norwich Roman Catholic Diocesan Corp.*, No. 07-cv-125036425S, 2013 WL 3871430 (Conn. Super. Ct. July 8, 2013), and *Lopez v. Watchtower Bible and Tract Soc’y of New York, Inc.*, 201 Cal. Rptr. 3d 156 (Cal. Ct. App. 2016), involved allegations of sexual abuse committed by an employee of the religious institution against a non-employee and thus have no bearing on a church’s right to select its own ministers. Here, contrary to Petitioner’s insinuation, no third party has alleged any tort against Respondents, and Petitioner’s contention that the church engaged in some form of illegal activity is not supported by any actual claims or allegations made by any third party.

At bottom, the cases relied upon by Petitioner provide no support for his argument and, in fact, are completely consistent with the rulings in this case. Petitioner has not cited a single case in which a court – state or federal – allowed a secular court to evaluate a religious institution’s stated reason for terminating a minister. Instead, the cases on which Petitioner relies uniformly apply a rule of law that is consistent with this case: the ministerial exception bars suits against

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church moral judgment of that person’s behavior.” *Barrow*, 2016 WL 3976515, at \*2.

a church where the suit challenges the church's decision to hire, to fire, and to prescribe the duties of its ministers.

Indeed, many such decisions comment on the consistency with which various other jurisdictions have applied the ministerial exception. For example, the Supreme Court of Kentucky, in applying the ministerial exception to employment claims against a religious institutional employer, explained that “we align our jurisprudence with the United States Supreme Court, *every federal circuit*, and the states that have dealt with this issue since the Supreme Court issued its opinion in *Hosanna-Tabor*.” *Kirby*, 426 S.W.3d at 601 (emphasis added). Likewise, the Supreme Court of Wisconsin recognized that “[i]t has been *universally recognized* that the First Amendment protects religious institutions’ decisions about whom to hire as ministerial employees and when to terminate their employment.” *DeBruin*, 816 N.W.2d at 887 (emphasis added). Notably, these courts reached the same conclusion, regardless of whether the case was decided pre or post-*Hosanna-Tabor*.

There is no split on application of the ministerial exception to a claim of wrongful discharge by a minister. Because this was the sole issue decided by the courts below, there is no split that is relevant to this case.



## CONCLUSION

The question presented by Petitioner does not reflect the holdings of the courts below. Application of the ministerial exception is consistent throughout the land. There is thus no compelling reason to grant the Petition. *Certiorari* should be denied.

Respectfully submitted,

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*Dr. Karin Walker*

September 26, 2016

**IN THE CIRCUIT COURT FOR  
BALTIMORE COUNTY, MARYLAND**

**EDWIN MELHORN** :  
12251 Roundwood Road, :  
Unit 605 :  
Timonium, Maryland 21093 :  
Plaintiff, :  
v. : Civil Action No.  
**CEDAR GROVE UNITED** : 03-C-13-014153  
**METHODIST CHURCH,** : (Filed Dec. 12, 2013)  
2015 Mount Carmel Road :  
Parkton, Maryland 21120 :  
SERVE ON: :  
Margaret Rosier, Resident Agent :  
17208 Prettyboy Dam Road :  
Parkton, Maryland 21120 :  
**THE BALTIMORE-** :  
**WASHINGTON CONFER-** :  
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SERVE ON: :  
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**COMPLAINT**

NOW COMES Plaintiff Edwin Melhorn, by and through his attorneys, Andrew M. Dansicker, D. H. Andreas Lundstedt, and the Law Office of Andrew M. Dansicker, LLC, and hereby files this Complaint against Cedar Grove United Methodist Church (“Cedar Grove”), The Baltimore-Washington Conference of the United Methodist Church (“Conference”), and Rev. Dr. Karen Walker (together “Defendants”) for the unlawful and wrongful discharge of Plaintiff’s employment, and in support thereof states the following:

**THE PARTIES**

1. Plaintiff Edwin Melhorn is a resident of Timonium, Baltimore County, Maryland, who was formerly employed by Defendants as Pastor at Cedar Grove from July 2009 through December 31, 2012.
2. Defendant Cedar Grove is a Methodist church incorporated in the State of Maryland and operating in Baltimore County since 1871.
3. Defendant Conference is an administrative body that oversees the various United Methodist Churches in its geographical territory and appointed Mr. Melhorn

as Pastor at Cedar Grove. The Conference is incorporated in the State of Maryland and is headquartered in Howard County, Maryland.

4. Defendant Rev. Dr. Karen Walker is the District Superintendent of the Conference and is, on information and belief, a citizen and resident of Maryland.

### **JURISDICTION AND VENUE**

5. Subject matter jurisdiction is proper in this Court pursuant to Maryland Code, Courts and Judicial Proceedings Article § 1-501, § 6-102, and § 6-103.

6. Venue is proper in this Court pursuant to Maryland Code, Courts and Judicial Proceedings Article § 6-201, because Defendants carry on regular business in Baltimore County.

### **FACTS**

#### ***Cedar Grove's Background and Appointment of Mr. Melhorn***

7. Cedar Grove was established in 1860 as United Brethren Church and merged in 1968 with the Methodist Episcopal Church to form Cedar Grove.

8. For many years, Cedar Grove owned a cemetery which it maintained and operated next to the church, but in 2009, the cemetery was incorporated as a separate non-tax exempt entity, the Cedar Grove Church Cemetery, Inc. ("CG Cemetery").

9. The purpose of the CG Cemetery was to own, operate and manage the cemetery, and consequently, Cedar Grove transferred ownership of the cemetery to CG Cemetery.

10. In July 2009, the Conference appointed Mr. Melhorn as Pastor at Cedar Grove.

11. Between July 2009 and May 2012, Mr. Melhorn was consistently praised for his service as Pastor and was never notified at any time of any problems with his conduct or performance as Pastor at Cedar Grove, either by the Conference who supervised Mr. Melhorn, the Administrative Board of the Church or by Cedar Grove's Board of Trustees.

12. Mr. Melhorn was reappointed to his assignment as Pastor for Cedar Grove in June 2010, June 2011 and June 2012 and was always praised for his excellent job performance.

**Cedar Grove Learns Of The Bequest  
From The Turnbaugh Trust**

13. On or about May 16, 2012, Cedar Grove was notified by letter from Dan Colwell, Vice President and Senior Trust & Fiduciary Specialist at Wells Fargo in Deerfield Beach, Florida, that it was a named beneficiary under the Eleanor Turnbaugh Trust ("Turnbaugh Trust") and the J. Walter Turnbaugh Trust ("Family Trust"), the trust established by her predeceased husband.

14. Wells Fargo, which was serving as personal representative of Ms. Turnbaugh's estate and trustee of both the Turnbaugh Trust and the Family Trust (together "the Trusts"), informed Cedar Grove that "your organization is scheduled to receive ten percent of the trust residue for your Cemetery Fund and another ten percent of the trust residue for the general operation and maintenance of the church."

15. The Trusts provided that the ten percent bequest for the Cemetery Fund was to be used for "upkeep of the cemetery."

16. After discussing the matter with Wells Fargo, Mr. Melhorn learned that the bequest amounted to \$612,424.67 for Cedar Grove's operating fund and \$612,424.67 for the Cemetery Fund – a total bequest of \$1,224,849.34.

17. As Pastor at Cedar Grove, Mr. Melhorn's job duties and responsibilities included, among other things, leading the congregation in study and worship, delivering sermons, performing personal, spiritual or grief counseling, administering the affairs of the church and promoting financial stewardship and caring for Cedar Grove's financial obligations and records.

**Mr. Melhorn's Refusal To Accept  
The Bequest To Cedar Grove**

18. When Mr. Melhorn examined the papers relating to the bequest which had been forwarded by Wells Fargo, he realized that there was a serious problem –

Cedar Grove no longer owned the cemetery and did not provide “upkeep of the cemetery” or maintain a cemetery fund.

19. At that point, Mr. Melhorn, who had worked as a financial manager for IBM for nearly twenty-five years before becoming a pastor, determined that it would be a breach of trust – as well as fraud and tax evasion – for Cedar Grove to accept the portion of the bequest relating to the upkeep of the cemetery because Cedar Grove did not own or maintain the cemetery, so he contacted Cedar Grove’s Board of Trustees and presented them with three options: a) not accept the bequest relating to the cemetery since Cedar Grove no longer owns the cemetery; b) advise Wells Fargo that Cedar Grove no longer owns the cemetery and ask for guidance; or c) keep quiet and take the money. Mr. Melhorn strongly advised the Board of Trustees to notify Wells Fargo that it no longer owns the cemetery and ask for guidance.

20. Shortly thereafter, in mid-late June 2012, Mr. Melhorn met with A. Carville Foster, Vice Chairman of the Board of Trustees, and was instructed to contact Wells Fargo to request that the bank forward the full amount of the bequest and then deposit the money in Cedar Grove’s operating account. Mr. Foster was concerned that the Conference would find out about the monies and close the Church so that the Conference could obtain the bequest.

21. Mr. Melhorn refused to follow Mr. Foster’s unlawful orders and told him that he would not request the

money for Cedar Grove nor would he deposit the money in Cedar Grove's operating account because Cedar Grove did not have a cemetery fund and did not own a cemetery, and therefore it would be unlawful for him to make such a request. Subsequently, Mr. Melhorn was threatened with his job and told to keep quiet and warned that he should not notify the Church Council, which is responsible for legal matters involving the church, including whether the actions of local churches are in accordance with church law.

**Cedar Grove's Retaliation And  
Punishment Of Mr. Melhorn**

22. Immediately after Mr. Melhorn's refusal to request or accept the bequest, he was no longer invited to the regular meetings of the Board of Trustees, he was removed as the liaison between the Church Council and the Board of Trustees, and his name was removed from the list of persons who were to receive monthly bank statements for Cedar Grove (Barbara Bernis, Secretary of the Board of Trustees, substituted her name as the head of the church for purposes of receiving financial statements, even though she was not the head of the church).

23. Shortly thereafter, Cedar Grove received four checks for the total amount of the bequest relating to the cemetery fund, and the monies were deposited into Cedar Grove's operating account.

24. When Mr. Melhorn spoke with United Methodist Foundation Executive Director Jack Brooks about his

concerns regarding the bequest, he was told that it would be too much trouble for Cedar Grove to set up a separate account, and that if the bequest went to the CG Cemetery, rather than Cedar Grove, then the CG Cemetery would have to pay taxes on the monies received pursuant to the bequest because the CG Cemetery was not a tax-exempt entity.

25. In August 2013, Mr. Melhorn notified his District Superintendent, the Rev. Dr. Karen Walker, who is employed by the Conference, of his concerns that Cedar Grove was engaging in fraudulent misconduct, but she sent Mr. Melhorn an email, dated August 28, 2012, stating that the funds were being managed “accurately” and that she “trusts them fully as manager of the money.”

26. On August 8, 2012, Cedar Grove’s committee on pastor-parish relations met to discuss Mr. Melhorn, in direct violation of *The Discipline of the United Methodist Church*, which requires that either the pastor or District Superintendent be present at any committee meeting.

27. On August 22, 2013, the committee met with Mr. Melhorn and proceeded to personally attack Mr. Melhorn for alleged perceived slights or issues – “your personality has changed since the money arrived” and “we want the old Ed back” and “you’re trying to force yourself to be someone you’re not.” At no point were any complaints forwarded about his job performance.

28. On October 15, 2012, Mr. Melhorn met with Frank Roberts, Associate Director of the United Methodist Foundation, and explained his refusal to request or accept the bequest and that Cedar Grove was engaging in fraud by accepting monies that it was not entitled to receive from the Trusts and might be engaging in tax evasion.

29. Mr. Melhorn also expressed his concern that Cedar Grove was improperly using the monies that were bequested for “general operations and maintenance of the Church” for other purposes, such as a setting up an endowment fund to fund scholarships, and Mr. Melhorn asked to speak to the Conference’s attorney to determine how to handle the matter, but he was told by Mr. Roberts that he would discuss the matter with Ms. Walker.

30. The next day, on October 16, 2012, Mr. Melhorn was asked to meet with Rev. Dr. Walker at the Fallston United Methodist Church, where he was told that his last day at Cedar Grove would be December 31, 2012 because Cedar Grove was “transitioning” and his services were not longer required.

31. Rev. Dr. Walker later told Mr. Melhorn that his employment was terminated because Joe Ensor, Chairman of Cedar Grove’s Finance Committee, had informed her the church had lost faith in Mr. Melhorn’s spiritual leadership. This made absolutely no sense in light of the fact that Mr. Melhorn had consistently received positive feedback about his job performance and

had been told, as recently as July 2012, that “You have been a great spiritual leader.”

32. A few months later, in May 2013, the CG Cemetery sent out a solicitation letter appealing for monetary donations to assist with the maintenance of the cemetery since the “cemetery receives no funds from the church, or the United Methodist Conference. All funding is therefore through generous donations of those friends, who like yourself have found a final resting place of peace at our cemetery.”

33. As a result of his unlawful and wrongful termination, Mr. Melhorn has suffered emotional distress, including depression, loss of sleep and anxiety, and has been unable to find comparable employment despite his best efforts to mitigate his damages by searching for alternative employment.

### **COUNT I**

#### **WRONGFUL DISCHARGE**

34. Plaintiff repeats and realleges all of the allegations contained in the preceding paragraphs of this Complaint as if the same were fully set forth herein.

35. During all relevant times, Defendants were Mr. Melhorn’s employers and exercised control and authority over his employment with Cedar Grove and the Conference.

36. There is a clear mandate of public policy in Maryland, as set forth in common law by the Court of Appeals and in statutory law, that fraudulent misrepresentation and concealment, tax evasion and theft are not acceptable or legal forms of conduct by individuals or by a business or corporate entity, including Defendants.

37. It is the public policy of the State of Maryland, pursuant to Maryland Criminal Code Article Section 7-100, et al., that theft, including by deception and by obtaining control over property knowing that the property was mistakenly delivered to the party, is unlawful.

38. As set forth herein, by ordering Mr. Melhorn to violate Maryland state law by engaging in unlawful conduct, including fraud, misrepresentation and theft, and by terminating his employment for refusing to engage in such unlawful conduct, Defendants wrongfully terminated Mr. Melhorn in violation of a clear mandate of public policy of the State of Maryland.

39. At all times before his wrongful discharge, Mr. Melhorn was either refusing to commit or participate in an unlawful act, refusing to follow an unlawful order, performing an important public function, intending to fulfill a statutorily prescribed duty, or exercising a legal or statutory right or privilege involving a clear mandate of public policy, as set forth herein.

40. Mr. Melhorn's refusal to comply with Defendants' unlawful orders was the sole reason why Defendants wrongfully discharged Mr. Melhorn from the position of Pastor at Cedar Grove.

41. Defendants acted in an unlawful and retaliatory manner toward Mr. Melhorn when they decided to wrongfully discharge Mr. Melhorn based solely on his refusal to execute Defendant's unlawful instructions.

42. Defendants knew, or should have known, that they were acting in an unlawful and retaliatory manner toward Mr. Melhorn when they decided to wrongfully discharge Mr. Melhorn based on his refusal to engage in unlawful conduct, but Defendants took no steps to properly assure that Mr. Melhorn was neither retaliated against nor wrongfully discharged.

43. As a direct result of Defendants' improper, illegal, injurious, intentional and malicious conduct, Mr. Melhorn has suffered extensive emotional and financial injury.

WHEREFORE, Plaintiff Edwin Melhorn demands judgment in an amount greater than one million dollars (\$1,000,000) against Defendants in compensatory damages, including back pay and front pay, punitive

damages, attorney's fees, interest and costs and any and all other relief deemed appropriate by this Court.

Respectfully Submitted,

/s/ Andrew M. Dansicker

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