

**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 Writ Of Certiorari To
The Court Of Special Appeals Of Maryland**

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**BRIEF IN OPPOSITION FOR RESPONDENT
CEDAR GROVE UNITED METHODIST CHURCH**

—◆—
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**OBJECTION TO PETITIONER'S
QUESTION PRESENTED**

The facts of this case do not present the question suggested by Petitioner. The proper issue before this Court is whether the Court should grant certiorari to consider whether the Maryland state courts correctly concluded that Petitioner's wrongful discharge claim is barred by the ministerial exception and discovery is unnecessary because, even though Petitioner's wrongful discharge claim included allegations of illegal conduct, the face of the complaint alleges that Petitioner was a minister and that the church terminated Petitioner because it was transitioning and had lost faith in his spiritual leadership.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Cedar Grove United Methodist Church is a Maryland 501(c)(3) not-for-profit non-stock corporation and has no parent corporation.

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COUNTER STATEMENT OF THE CASE

Cedar Grove objects to Petitioner's statement of the case. It makes statements of purported facts not part of the record below and submits facts not material to the consideration of the question presented. The only facts in the record are the allegations in the complaint. The case was disposed of on a motion to dismiss. A copy of the complaint was not included in Petitioner's Appendix. Accordingly, a copy is included in the attached Appendix and referred to as Resp. Apx.

Petitioner did not raise breach of contract claims below. That issue is not preserved for review. Further, the petition is the first mention of an alleged right to continue as minister as long as he wanted. Petitioner also did not raise the issue of alleged harm to third parties below. Accordingly, that issue is also not preserved for review.

This case arises out of an employment dispute between Petitioner and the Respondents. On December 12, 2013, Petitioner Edwin R. Melhorn ("Petitioner") filed a Complaint in the Circuit Court for Baltimore County against the three (3) Respondents: (1) Cedar Grove United Methodist Church ("Respondent" or "Cedar Grove"); (2) The Baltimore-Washington Conference of the United Methodist Church ("The Baltimore-Washington Conference"); and (3) Rev. Dr. Karin Walker ("Rev. Dr. Walker"), alleging wrongful discharge. On March 31, 2014, The Baltimore-Washington Conference and Dr. Walker filed a Motion to Dismiss for failure to state a claim upon which relief can be granted.

On April 2, 2014, Cedar Grove filed a Motion to Dismiss on the same grounds. On May 8, 2014, Petitioner filed an Opposition to the Motions to Dismiss. On May 27, 2014, The Baltimore-Washington Conference and Dr. Walker filed a Reply Memorandum.

On November 5, 2014, a motions hearing was held before the Honorable H. Patrick Singer presiding in the Circuit Court for Baltimore County, Maryland. After hearing oral argument from counsel for each party, and after a thorough fact-specific and claim-specific analysis on the record, Judge Singer dismissed Petitioner's Complaint with prejudice for failure to state a claim upon which relief could be granted. Pet. App. 18-29.

On December 3, 2014, Petitioner noted an appeal to the Court of Special Appeals of Maryland. On March 16, 2016, the Court of Special Appeals filed an unreported opinion holding that the circuit court ruled correctly when it dismissed Petitioner's Complaint for failure to state a claim upon which relief could be granted on the basis of the ministerial exception and without providing an opportunity for discovery. Pet. App. 1. On March 29, 2016, Petitioner filed his Petition for Writ of Certiorari with the Court of Appeals of Maryland. On May 23, 2016, the Petition was denied. Now Petitioner asks this Court to hear his case.



REASONS FOR DENYING THE PETITION

There is no split of authority on the issue presented by this case. The question asked by Petitioner has already been answered by this Court. New and meritless arguments that were not preserved for review have been raised in the Petition. There is no risk of dangerous First Amendment precedent because no ministerial immunity in cases involving illegal conduct or harm to third parties exists.

I. There is no authority that the ministerial exception absolutely bars breach of contract and tortious conduct lawsuits, let alone a split in authority.

Petitioner argues that there is a split of authority on the issue of whether the ministerial exception absolutely bars breach of contract and tortious conduct lawsuits. Respondent knows of no case, and none have been cited by Petitioner, that stands for the proposition that the ministerial exception is an absolute bar to breach of contract and tort actions by a minister against the church. What the lower courts have consistently done, both pre- and post-*Hosanna-Tabor*,¹ is apply a fact specific inquiry into each cause of action presented in a case and determine whether resolution of that claim would necessarily involve inquiring into

¹ *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, et al.*, 132 S.Ct. 694 (2012).

internal church governance or whether neutral principles of law could be applied in resolving the dispute, without wading into ecclesiastical waters.

Some claims, including contract and tort claims, have been permitted to proceed, while other claims, including contract and tort claims, have not been permitted to proceed. Sometimes, the cases are resolved on a motion to dismiss. Sometimes the pleadings do not contain sufficient information and discovery is permitted to develop a factual record to determine whether the claim can proceed in the civil courts. And sometimes the claims, including contract and tort claims, proceed to full blown litigation when the court has determined that First Amendment concerns do not exist.

Here, in an attempt to cloak his run of the mill employment dispute case in a cert-worthy robe, Petitioner tries to assemble a split in authority by comparing decisions made in *Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597 (Ky. 2014); *Cropper v. Saint Augustine Sch.*, No. 2014-CA-001518-MR, 2016 WL 98701 (Ky. Ct. App. Jan. 8, 2016); and *Jackson v. Mount Pisgah Missionary Baptist Church Deacon Bd.*, 2016 IL App. (1st) 143045, 2016 WL 3569801 (IL App. June 30, 2016) on the one hand, for cases where contract claims have been permitted to proceed, with *DeBruin v. St. Patrick Congregation*, 816 N.W.2d 818 (Wis. 2012) and *Warnick v. All Saints Episcopal Church*, No. 01539, Dec. Term 2011, 2014 WL 11210513 (Pa. Com. Pl. April 15, 2014) on the other hand, for cases where contract claims have not been permitted to proceed.

In *Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597, 614 (Ky. 2014), the Supreme Court of Kentucky affirmed the trial court's dismissal of Mr. Kirby's discrimination claims on the basis of the ministerial exception. The court also held that Mr. Kirby's contract claims could proceed because (1) enforcement of the specific contractual arrangement between the Seminary and Mr. Kirby did not raise concerns of government interference in the selection of ministers (the Seminary had voluntarily circumscribed its right to excuse faculty, ministers or not) and (2) the specific unambiguous contract termination provisions at issue did not involve any matters of ecclesiastical concerns that would bar the suit under the ecclesiastical abstention doctrine. *Id.* at 615. Unwilling to adopt an absolute rule (either barring or permitting) with regards to contract claims brought by ministers against a religious organization, the *Kirby* court noted that "[i]f the contracts involve church doctrine, a court is more accurate in ending the litigation on the basis of ecclesiastical abstention rather than the ministerial exception." *Id.* at 620.

In *Cropper v. St. Augustine Sch.*, No. 2014-CA-001518-MR, 2016 WL 98701, *3 (Ky. Ct. App. Jan. 8, 2016), an unreported opinion from the intermediate appellate court in Kentucky cited by Petitioner, both the trial court and the court of appeals found that the ministerial exception did not apply to a Principal's breach of contract claim. The court of appeals reversed the trial court's grant of summary judgment in favor of

the church, however, not on grounds involving the ministerial exception or the ecclesiastical abstention doctrine, but on the ground that the trial court erred by looking beyond the four corners of the contract when the claim brought by Ms. Cropper involved interpretation of an unambiguous contract term. *Id.*

In *Jackson v. Mount Pisgah Missionary Baptist Church Deacon Bd.*, 2016 IL App. (1st) 143045, 2016 WL 3569801, *1 (IL App. June 30, 2016), a pastor sued his church alleging that the church breached its oral agreement with him when it terminated him, because the church did not follow the procedural steps required by the bylaws for terminating a pastor and the parties had agreed that the pastor's employment would be governed by the church's bylaws. The church filed a motion to dismiss claiming civil courts are prohibited from interfering in ecclesiastical matters involving termination of clergy. *Id.* at *3. The trial court denied the motion to dismiss, finding the issue was a contractual matter of whether or not the termination procedures enacted by the church in its bylaws had in fact been followed when it terminated the plaintiff pastor. *Id.* The trial court found in favor of the defendant church, concluding that the church had complied with the termination procedures in its bylaws. *Id.* at *9.

The Illinois intermediate appellate court affirmed the trial court's decision that the matter was a contractual issue and affirmed the judgment in favor of the defendant church on the same ground – the church had complied with the bylaws. *Id.* at *17. Although the defendant church did not raise the issue of the trial

court's denial of its motion to dismiss the pastor's case on the ground that the ecclesiastical abstention doctrine prohibited civil inquiry into a church's termination of its clergy, the Illinois intermediate appellate court raised the issue *sua sponte*. *Id.* at *9-11. After engaging in a thorough analysis of the ecclesiastical abstention doctrine, the court agreed with the trial court and found that it did not apply because deciding whether or not the defendant church violated the procedures set forth for termination of a pastor as set forth in the church's bylaws in this particular case would not require inquiry into religious doctrine, and could be resolved using neutral principles of law. *Id.*

In *DeBruin v. St. Patrick Congregation*, 816 N.W.2d 878, 882 (Wis. 2012), Plaintiff Kathleen DeBruin, claimed that her employment was wrongfully terminated in violation of the contract she had with the church. On July 1, 2009, the church entered into a one (1) year employment contract with DeBruin as the Director of Faith Formation. *Id.* at 883. On October 5, 2009, the church terminated DeBruin's employment. *Id.* The contract provision governing termination of the employment relationship provided, in pertinent part:

The PARISH agrees that the DIRECTOR OF FAITH FORMATION shall not be discharged during the term of this contract, without good and sufficient cause, which shall be determined by the PARISH. The PARISH agrees that the Pastor of the PARISH will be responsible for giving the employee notice of any dissatisfaction with service or conduct.

Dismissal may be immediate or within a time frame determined by the PARISH.

Id.

All parties agreed DeBruin was a ministerial employee. *Id.* Defendant church filed a motion to dismiss, which the trial court granted. One of the grounds on which the church argued for dismissal was the ministerial exception. The decision was appealed and the Wisconsin court of appeals certified the matter to the Wisconsin Supreme Court which was asked to decide “whether, under the First Amendment of the United States Constitution and Article I, Section 18 of the Wisconsin Constitution, Kathleen DeBruin’s complaint against St. Patrick Congregation (St. Patrick), alleging that her employment was terminated for an improper reason, states a claim upon which relief may be granted.” *Id.* at 882. The Supreme Court of Wisconsin concluded it did not and affirmed the trial court’s decision. *Id.* The plurality opinion explained:

Permitting the continuation of this type of breach of contract or promissory estoppel claim by a ministerial employee, who seeks payment based on an allegedly improper reason for being terminated from her employment, would impermissibly interfere in a religious institution’s choice of ministerial employees, in violation of the First Amendment of the United States Constitution and Article I, Section 18 of the Wisconsin Constitution.

Id.

One of the judges who joined in the plurality decision and who authored a concurring opinion opined that the case could have been resolved on non-constitutional grounds and would have preferred to do so rather than reaching the constitutional issues raised by the church. *Id.* at 891. The second judge who joined the plurality opinion and wrote a concurring opinion agreed that there were non-constitutional grounds that invalidated the termination clause of the contract as a matter of law. *Id.* at 899. This judge also stated, however, that the case could not proceed in any event because “[t]o prevail, DeBruin would have to persuade a court to enter into an internal parish conflict and second guess the parish’s decision. It would deny St. Patrick the power to make a decision that it explicitly reserved for itself. This cannot be squared with any reasonable view of religious liberty.” *Id.*

In *DeBruin*, the fact that there was nothing in the record about why DeBruin was terminated or whether that decision involved matters of faith and ministry was key to the dissent not joining in the decision and desiring the case to be remanded for further proceedings to develop the factual record. *Id.* at 908. The dissent conceded that the case may nevertheless need to be dismissed if it becomes evident during discovery that adjudication of the claim would violate one or both of the religious clauses of the First Amendment. *Id.*

In *Warnick v. All Saints Episcopal Church, et al.*, No. 01539, Dec. Term 2011, 2014 WL 11210513, *1 (Pa. Com. Pl. April 15, 2014), another unreported intermediate state appellate court decision cited by Petitioner,

after the church revoked his license to minister in Pennsylvania a priest sued for defamation, tortious interference with existing and prospective contractual relations, libel/slander, breach of contract, and civil conspiracy. The church's decision to revoke his license stemmed from the congregants' concerns about Father Warnick's conduct, including living in the rectory with a woman not his wife and posting sexual material on social media. *Id.* at *1. Father Warnick was paid through the end of his contract even though his license was revoked before the contract was set to expire. *Id.* at *5. Further, the church permitted him to live rent free in the rectory for six (6) additional months and the church paid the water and electric bills. *Id.*

Father Warnick filed a canonical complaint, pursuant to the procedures set forth by the Constitution and Canons of the Episcopal Church. *Id.* The Diocese rejected his claims on all grounds. *Id.* Father Warnick then filed his civil suit. *Id.* The defendants moved for summary judgment on all claims. *Id.* at *1. The trial court granted the motion for three (3) independently sufficient reasons, finding that: (1) the First Amendment's deference and ministerial exception doctrines barred all claims; (2) Father Warnick's claims failed as a matter of law in areas where there was no factual dispute; and (3) Father Warnick failed to show evidence essential to prove his claims, resting instead on mere allegations. *Id.*

Father Warnick appealed the decision. *Id.* On appeal, the court engaged in a thoughtful analysis of the ecclesiastical abstention doctrine and the ministerial

exception and affirmed the prior decision that Father Warnick's claims were barred by the First Amendment. *Id.* at *6-11. Notably the court found that "Father Warnick's tort and contract claims seek damages for Movants' frank debate about his suitability as minister and their resultant choice to discontinue his ministry at All Saints. [. . .]. It is hard to conceive of questions more appropriately left to the Church itself [. . .]." *Id.* at *8. The court also determined that "[i]f Father Warnick's claims were to move forward, this Court would not only have to invade the Church's process for choosing clergy, but also challenge the Church's understanding of its own Constitutions and Canons." *Id.* at *9. On appeal, the court also affirmed that even if the First Amendment did not bar all claims, Father Warnick's claims failed as a matter of law and he failed to produce evidence essential to prove his claims. *Id.* at *12 and *18.

Here, Petitioner takes the position that because individual cases based on individual facts have resulted in different outcomes, there is a "split in authority that creates the dangerous possibility that 'a church's ability to arbitrarily fire its ministers is so sacrosanct that the church cannot contract around it' even when it wants to." Pet. 9, quoting dissent in *DeBruin*. Petitioner's reasoning is fatally flawed by his leap in logic which fails to take into account the factual differences driving the different decisions. That factually different cases have different outcomes does not a split in authority make.

The lower courts' decisions reflect a fact-specific nuanced approach to cases that involve individuals that qualify as ministers under the ministerial exception. When it is clear from the face of the pleadings and/or the factual record that further inquiry would result in the prohibited involvement in a church's selection of its ministers or internal church decisions and doctrine, the lower state and federal courts are willing to grant a motion to dismiss or a motion for summary judgment. When it is not clear from the face of the pleadings or the factual record developed to that point, the courts have let those claims proceed, while simultaneously cautioning that the case may yet need to be resolved on a motion for summary judgment should it become clear during the development of the factual record that adjudication of the claim would require the court to step into ecclesiastical waters.

II. There is no risk of dangerous First Amendment precedent because no ministerial immunity in cases involving illegal conduct or harm to third parties exists.

Religious employers under current First Amendment jurisprudence do not enjoy absolute immunity from civil liability. Petitioner's scare tactics are misplaced. Nothing in the ministerial exception prevents an external victim, be it an individual or tax authority, for example, from bringing suit against a religious organization. What the ministerial exception does prohibit, assuming it is asserted, is a civil court from

determining whether a church fired its minister because it had lost faith in his or her spiritual leadership, or for some other reason. If a church violates a neutral law of general applicability, the minister can act as the whistleblower for the third party external victim, and the third party can file suit. To allow, even in instances of alleged fraud or collusion, a minister to pursue a wrongful discharge claim when he pled that he was told he was fired for spiritual reasons, would necessarily require the civil courts to delve into issues involving internal church governance and the selection of the church's minister. This Court and the lower courts have all held that such an inquiry violates the Free Exercise Clause and the Establishment Clause of the First Amendment to the Constitution of the United States of America.

In the case *sub judice*, Petitioner's sole cause of action against Cedar Grove was for wrongful discharge. Petitioner does not dispute that he was a minister. Petitioner's Complaint states that he was employed as the Pastor at Cedar Grove and that as Pastor his "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 [. . .]." Resp. Apx. 5-6, ¶17. Respondents raised the ministerial exception as an affirmative defense to Petitioner's claim.

In his Complaint, Petitioner stated that on October 16, 2012 he was told "Cedar Grove was 'transitioning' and his services were not [sic] longer required" and

that “Rev. Dr. Walker later told Mr. Melhorn that his employment was terminated because [. . .] the church had lost faith in Mr. Melhorn’s spiritual leadership.” Resp. Apx. 9-10, ¶¶30-31. Petitioner alleged that the church’s spiritual reasoning for deciding not to renew his pastorship was pretextual and averred the real reason he was fired was because he failed to participate in what he perceived as potentially illegal conduct involving the manner in which the church was planning to accept a bequest. Resp. Apx. 6-10, ¶¶18-31; 11-12, ¶¶34-42. His Complaint also alleged that he brought his concerns to the appropriate persons in the church hierarchy and those individuals did not agree with his perception that any wrongful conduct was occurring. Resp. Apx. 8, ¶25; 9, ¶28-29.

Petitioner does not allege that he raised his concerns of potentially illegal conduct to any government authority. Petitioner’s Complaint shows that his case is entirely an internal dispute about money and the church’s decision to discontinue his pastorship. Accordingly, his case fits squarely within the ministerial exception and the trial court correctly granted defendants’ motions to dismiss on the ground that the ministerial exception barred his wrongful discharge claim from proceeding.

In his Petition to this Court, Petitioner states that this “case has nothing to do with Pastor Melhorn’s qualifications for ministry and everything to do with protecting the government’s interests in combating illegal conduct, tax evasion, fraud, and possible harm to third parties associated with the Trust, including the

original donors of the money to Cedar Grove.” Pet. 15. But the Complaint does not allege that there are external victims that Mr. Melhorn is seeking to protect. The Complaint solely seeks payment to Mr. Melhorn in an amount greater than One Million Dollars (\$1,000,000.00). Resp. Apx. 12, ¶43. If this case has nothing to do with Mr. Melhorn’s ministerial position, and everything to do with government and third party interests, why is Mr. Melhorn the only plaintiff and the only one who would potentially benefit if the case were to proceed and if he were successful? This case had nothing to do with protecting the government’s interests in combating illegal conduct, tax evasion, fraud, and possible harm to third parties associated with the Trust and everything to do with a pastor seeking a payday from a small church who inherited a sizeable sum of money.

Petitioner cites *Listecki v. Official Comm. of Unsecured Creditors*, 780 F.3d 731 (7th Cir.), *cert. denied*, 136 S.Ct. 581 (2015), in support of his argument that his case is analogous to third party actions against a religious organization and argues that “[t]he same principles that correctly compel those cases to be litigated are involved in Petitioner’s case [. . .].” Pet. 12. In *Listecki*, the Milwaukee Archdiocese filed bankruptcy, partly in response to a small number of claims made by sexual abuse survivors. *Id.* at 734. During the bankruptcy case, it was discovered that Fifty-Five Million Dollars (\$55,000,000.00) had been transferred to a cemetery trust prior to the church filing bankruptcy

and for the purpose of shielding the money from liability claims. *Id.* at 734. The bankruptcy committee sought to include those funds in the bankruptcy estate and alleged that the funds had been fraudulently transferred. *Id.* at 734. The Seventh Circuit rejected the church's attempt to invoke First Amendment shields to the fraudulent transfer claim because at issue was an alleged fraudulent transfer and the court concluded it would not need to interpret any religious laws or principles to make that determination, nor would the court have to examine a decision of a religious organization on whether or not the transfer was fraudulent. *Id.* at 742. *Listecki* does not involve claims by a minister against his church.

Here, Petitioner is suggesting that because his complaint contained allegations of fraud, his case must be treated different than other wrongful discharge claims involving ministers. If this were the standard, then all that an employee subject to the ministerial exception would need to do to overcome the church's First Amendment protections would be to allege fraud in the complaint. Third party cases against religious organizations alleging fraud are not analogous to Petitioner's case; the fact remains – Petitioner was a minister the church terminated on the grounds that it was transitioning and had lost faith in his spiritual leadership. If his claims were to proceed, the civil court would have to weigh the evidence to determine if it believed Petitioner was fired for religious reasons or for other reasons. And as this Court recently explained:

The purpose of the exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason. The exception instead ensures that the authority to select and control who will minister to the faithful – a matter strictly ecclesiastical, is the church's alone.

Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, et al., 132 S.Ct. 694, 709 (2012) (internal citation and quotation omitted).

In *Serbian Eastern Orthodox Diocese for the United States of America and Canada, et al. v. Milivojevic, et al.*, 426 U.S. 696 (1976), this Court rejected the arbitrariness exception to the ecclesiastical abstention doctrine that had been articulated in *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929) and in dictum concluded that:

whether or not there is room for 'marginal civil review' under the narrow rubrics of 'fraud' or 'collusion' when Church tribunals act in bad faith for secular purposes, no 'arbitrariness' exception – in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchal church complied with church laws and regulations – is consistent 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.

Milivojevich, 426 U.S. at 713.

Notably Petitioner does not address the *Gonzalez* and *Milivojevich* line of cases. One would think this line of cases would provide the most support for Petitioner's otherwise weak position. Perhaps Petitioner recognized, as Respondent encourages this Court to do, that here, as in *Milivojevich*, the United Methodist Church, a hierarchal church, decided that it wanted to transition away from Pastor Melhorn's spiritual leadership because it had lost faith in him and trying to determine "under the narrow rubrics of fraud and collusion" whether the church had acted in bad faith for secular purposes or whether the church had in fact discontinued his pastorship for religious reasons would necessarily require an inquiry into the reasoning behind the church's decision, and potentially result in the substitution of the church's decision by a civil court. And "this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of church tribunals as it finds them." *Milivojevich*, 426 U.S. at 713.

Petitioner cites *Galetti v. Derral W. Reeve, Kim Gilen, Brenda Conyne, and Texico Conference Association of Seventh-Day Adventists*, 2014-NMCA-079, 331 P.3d

997 (2014), for the truism that claims not rooted in religious beliefs do not implicate the First Amendment protections. Pet. 10. In *Galetti*, the New Mexico Court of Appeals concluded that the district court had erred in dismissing the plaintiff's breach of contract claim because the breach of contract claim could *potentially* be resolved without any religious entanglement since the district court only needed to determine whether the Conference complied with its contractual obligation with regards to timeliness of the notice it provided to plaintiff, and not whether the Conference had cause to terminate Plaintiff. *Id.* at 1002.

Galetti, like all of the other cases cited by Petitioner in his attempt to manufacture a split in authority, is easily distinguished from Petitioner's case because *as pled* Petitioner's claim of wrongful discharge inherently involves inquiry into who the church picks as its voice and why. Although the *Galetti* court found plaintiff's breach of contract claim should have survived the motion to dismiss, it recognized the real possibility that it might become apparent at a later stage in the proceedings that the plaintiff's breach of contract claim in fact turns on matters of doctrinal interpretation or church governance, in which case summary judgment in favor of the Conference might be proper. *Id.*

Here, further proceedings are unnecessary because Petitioner's Complaint *on its face* shows that determining the merits of his wrongful discharge claim would necessarily involve trial court inquiry into the church's selection of its ministers. The *Galetti* court

also found that the district court had erred in dismissing the Plaintiff's claims (*e.g.*, defamation, retaliation, violation of New Mexico Human Rights Act) against the individual defendants because, as pled, they did not necessarily involve religious matters. *Id.* The court reiterated that the claims could be dismissed later if it became clear that resolution thereof would involve the prohibited religious entanglement. *Id.* Again, that is not the case here. Petitioner's claim of wrongful discharge *does* necessarily involve religious matters as pled because the court would have to weigh in on the church's internal governance, selection of its ministers, and its decision not to rehire Petitioner.

Here, contrary to Petitioner's argument in his statement of the case, the Maryland courts' reasoning did not suggest that "the ministerial exception provides an absolute defense to contract and tort lawsuits, with the result being that every lawsuit must be dismissed at the defendants' mention of the word minister." Pet. 3-4. In the unreported opinion of the Court of Special Appeals of Maryland, the court stated, in pertinent part:

Although the Supreme Court has not addressed whether the ministerial exception applies to wrongful discharge claims, the Court of Appeals, our Court, the United States Court of Appeals for the Fourth Circuit, and the United States District Court for the District of Maryland have all held that it does.

Pet. App. 11.

The court continued:

The court could not have heard the appellant's wrongful discharge claim without having to make a determination as to whether 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 taking.

Pet. App. 13.

The court also explained that discovery was unnecessary because it was clear from the face of the complaint that an inquiry into religious matters and the reasoning behind Petitioner's termination would have been necessary. Pet. App. 15.

No cases cited by Petitioner show an unbalanced or absolutist approach to the application of the ministerial exception or the ecclesiastical abstention doctrine currently being applied in the lower state and federal courts. Quite the opposite is occurring; the courts' analyses show they are engaging in the fact-specific inquiry as set forth in *Hosanna-Tabor* and prior Supreme Court precedent, and allowing the claims that do not involve internal church governance or resolution of church doctrine to proceed, while disallowing claims that will involve delving into ecclesiastical matters, be they minister matters or church governance matters.

A bright-line rule would be unworkable. Whether a contract or tort claim is barred by the ministerial exception or the ecclesiastical abstention doctrine is not a yes or no question. This is a major constitutional question that the lower courts have shown they are capable of answering in a nuanced manner based on the facts and circumstances of each case. If cases start popping up down the road showing a split in authority or showing the lower courts are not deciding cases in line with this Court's decisions, the issue can be addressed by this Court at that time. It has been less than five (5) years since *Hosanna-Tabor* and while the chimerical picture painted by Petitioner is vivid, the case law on the ground simply does not support it.

Here, Petitioner's wrongful discharge case could not be resolved by neutral principles of law. This is an intrachurch governance decision and an entirely internal dispute about the church's decision to fire a minister. Any alleged external victims still have the remedy available of filing suit against the church. *Hosanna-Tabor* does not bar third party lawsuits against religious organizations for alleged tortious conduct, nor any alleged tortious conduct by their employees.



CONCLUSION

Edwin R. Melhorn's Petition for Writ of Certiorari should be denied and the judgment below should not be reversed. No split in authority exists. The Maryland courts recognized Supreme Court precedent in

Hosanna-Tabor and correctly applied the ministerial exception. Respondent Cedar Grove United Methodist Church respectfully requests that this Court deny the Petition.

Respectfully submitted,

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Cedar Grove United

Methodist Church

September 22, 2016

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

EDWIN MELHORN :
12251 Roundwood Road, :
Unit 605 :
Timonium, Maryland 21093 : Civil Action No.
Plaintiff, : 03-C-13-014153

v. :

CEDAR GROVE UNITED :
METHODIST CHURCH, :
2015 Mount Carmel Road :
Parkton, Maryland 21120 :

SERVE ON: :
Margaret Rosier, :
Resident Agent :
17208 Prettyboy Dam Road :
Parkton, Maryland 21120 :

THE BALTIMORE- :
WASHINGTON CONFER- :
ENCE OF THE UNITED :
METHODIST CHURCH :
17111 East Market Place :
Fulton, Maryland 20759 :

SERVE ON: :
Paul J. Eichelberger :
13401 Jesse Smith Road :
Mt. Airy, Maryland 21771 :

REV. DR. KAREN [sic] :

WALKER

17111 East Market Place :

Fulton, Maryland 20759

SERVE ON: :

Rev. Dr. Karen [sic] Walker :

17111 East Market Place :

Fulton, Maryland 20759 :

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COMPLAINT

(Filed Dec. 12, 2013)

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 [sic] 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 [sic] 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 [sic] 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

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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/ [Illegible]

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