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COMMONWEALTH OF KENTUCKY
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CASE NO. 2012-SC-000502-DG

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Appeal from Kentucky Court of Appeals
No. 2011-CA-000004-MR

LAURENCE H. KANT

APPELLANT

v.

LEXINGTON THEOLOGICAL SEMINARY

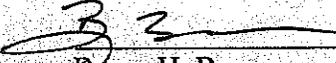
APPELLEE

**AMICUS CURIAE BRIEF OF ALLIANCE DEFENDING FREEDOM
AND ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL
ON BEHALF OF APPELLEE
LEXINGTON THEOLOGICAL SEMINARY**

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ARGUMENT

I. KENTUCKY'S HIGHEST COURT SHOULD OFFICIALLY RECOGNIZE THE MINISTERIAL EXCEPTION.

This case presents an issue of first impression – whether the Commonwealth of Kentucky will join numerous states, every federal circuit court, and the United States Supreme Court in officially recognizing the ministerial exception. This important legal doctrine protects the rights of churches and similar religious institutions to select their ministerial employees without state interference. The ministerial exception is firmly rooted in both the Free Exercise Clause and Establishment Clause of the First Amendment, and is consistent with Kentucky's well-established ecclesiastical abstention jurisprudence.

A. The Ministerial Exception Is Grounded In The First Amendment Religion Clauses And Is An Extension Of Ecclesiastical Abstention.

The ministerial exception is firmly grounded in the First Amendment Religion Clauses.¹ *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S.Ct. 694, 702 (2012) (“Both Religion Clauses bar the government from interfering with the decision of a religious group to fire one of its ministers”).

Against the backdrop of perceived abuses in English church-state relations, the Free Exercise Clause and Establishment Clause were instituted to “foreclose state interference with the practice of religious faiths, and to foreclose the establishment of a state religion familiar in other Eighteenth Century systems.” *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 126 (1982) (quoting *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 222 (1963)); *see also Hosanna-Tabor*, 132 S.Ct. at 703 (noting that in adopting the

¹ The Religion Clauses state: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...” U.S. CONST amend. I.

First Amendment, “the founding generation sought to foreclose the possibility of a national church.”). Not only were church and state mutually foreclosed from interfering with the internal affairs of the other, but the First Amendment gave “special solicitude to the rights of religious organizations” – particularly as those rights pertain to a religious organization’s selection of its own ministers. *Hosanna-Tabor*, 132 S.Ct. at 706.

The Religion Clauses ensure that the new Federal Government – unlike the English Crown – would have no role in filling ecclesiastical offices. The Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own.

Id. at 703.

This constitutionally-mandated deference to religious institutions developed into over a century of jurisprudence that “radiates...a spirit of freedom for religious organizations, an independence from secular control or manipulations—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952) (referencing *Watson v. Jones*, 80 U.S. 679 (13 Wall.) 679 (1872)). A religious institution’s freedom to decide internal matters relating to “discipline...faith, or ecclesiastical rule, custom, or law,” *Watson*, 80 U.S. at 727, has become known as the ecclesiastical abstention doctrine.

Although ecclesiastical abstention touches all aspect of internal church governance – including theology, church discipline, government, practice – it has particular application to a religious institutions’ selection of its minister. No First Amendment right is more vital to church autonomy than the right of religious institutions to choose the individuals who will represent their religious beliefs and shape their

mission and ministry. See *McClure v. Salvation Army*, 460 F.2d 553, 555 (5th Cir. 1972) (“The relationship between an organized church and its ministers is its lifeblood”). In recognition of this, the Supreme Court declined to interfere in any aspect of the ministerial process, including selecting, credentialing, ordaining, and disciplining a minister. See *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952) (selecting a minister), *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929) (credentialing a minister), *Serbian Eastern Orthodox Diocese for U.S. v. Milivojevich*, 426 U.S. 696 (1976) (disciplining a minister), *Hosanna-Tabor v. EEOC*, 132 S.Ct. 694 (2012) (revoking ordination of a minister).

But out of this general ecclesiastical abstention doctrine and deference to internal matters of church government has developed a special exception arising in employment controversies. The ministerial exception developed at the intersection of employment law and ecclesiastical abstention to protect employment decisions of religious institutions concerning their ministerial employees. Its rationale is simple:

Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of who will personify its beliefs.

Hosanna-Tabor, 132 S.Ct. at 705. The ecclesiastical abstention doctrine and ministerial exception, while similar, are not identical.

The ecclesiastical abstention doctrine prevents secular courts from reviewing many types of disputes that would require an analysis of theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standards of morals required....More narrowly, if the claim challenges a religious institution’s employment decision, the...inquiry is whether the employee is a member of the clergy or otherwise serves a ministerial function. If the employee is a minister, then the ministerial exception applies, preventing secular

review of the employment decision without further question as to whether the claims are ecclesiastical in nature.

Patton v. Jones, 212 S.W.3d 541, 548-49 (Tex.App.-Austin, 2006) (internal quotations & citations omitted).² Thus, the ministerial exception is implicated when ministerial employees of a religious organization are involved in an employment dispute.

B. The Ministerial Exception Has Been Widely Accepted By Federal And State Courts.

The Fourth Circuit is credited with first coining the term “ministerial exception” in the 1980’s, although the legal concept originated much earlier. *See Hosanna-Tabor*, 132 S.Ct. at 714 (Alito, J. concurring). In subsequent decades, the “Courts of Appeals have uniformly recognized the existence of a ministerial exception....” *Hosanna-Tabor*, 132 S.Ct. at 706 (2012).³ The Sixth Circuit’s persuasive jurisprudence is no exception. *See, e.g. Hollins v. Methodist Healthcare, Inc.*, 474 F.3d 223 (6th Cir. 2007) (ministerial exception applied to the wrongful termination suit of a former employee against a church-affiliated hospital).⁴

Numerous state courts have likewise acknowledged the constitutionally-mandated ministerial exception. *See, e.g., Daynere v. Archdiocese of Hartford*, 23 A.3d 1192, 1199 (Conn., 2011) (“We note that the ministerial exception...is ‘constitutionally required by

² The procedural effects of the doctrines are likewise distinct. The ecclesiastical abstention doctrine is a jurisdictional bar, while the ministerial exception is an affirmative defense on the merits. *Hosanna-Tabor*, 132 S.Ct. at 709 FN4.

³ Citing *Natal v. Christian and Missionary Alliance*, 878 F.2d 1575, 1578 (1st Cir. 1989); *Rweyemamu v. Cote*, 520 F.3d 198, 204-209 (2d. Cir. 2008); *Petruska v. Gannon Univ.*, 462 F.3d 294, 303-307 (3d. Cir. 2006); *EEOC v. Roman Catholic Diocese*, 213 F.3d 795, 800-801 (4th Cir. 2000); *Combs v. Central Tex. Annual Conference*, 173 F.3d 343, 345-350 (5th Cir. 1999); *Hollins v. Methodist Healthcare, Inc.*, 474 F.3d 223, 225-227 (6th Cir. 2007); *Schleicher v. Salvation Army*, 518 F.3d 472, 475 (7th Cir. 2008); *Scharon v. St. Luke’s Episcopal Presbyterian Hospitals*, 929 F.2d 360, 362-63 (8th Cir. 1991); *Werft v. Desert Southwest Annual Conference*, 377 F.3d 1099, 1100-1104 (9th Cir. 2004); *Bryce v. Episcopal Church*, 289 F.3d 648, 655-657 (10th Cir. 2002); *Gellington v. Christian Methodist Episcopal Church, Inc.*, 203 F.3d 1299, 1301-04 (11th Cir 2000); *EEOC v. Catholic Univ.*, 83 F.3d 455, 460-63 (D.C. Cir. 1996).

⁴ As the Appellate Court noted, *Hollins* was abrogated by *Hosanna-Tabor* on the grounds that the ministerial exception operates as an affirmative defense, not a jurisdictional bar.

various doctrinal underpinnings of the first amendment.”); *Catholic Charities of Sacramento, Inc. v. Superior Court*, 85 P.3d 67, 78 (Cal., 2004) (“The rule that emerges from these decisions is sometimes called the ‘ministerial exception.’”); *Cooper v. Church of St. Benedict*, 954 A.2d 1216, 1219 (Pa. Super., 2008) (“Rooted in the First Amendment’s guarantee of religious freedom, the ministerial exception precludes courts from considering claims involving the employment relationship between a religious institution and its ministerial employees.”); *Erdman v. Chapel Hill Presbyterian Church*, 286 P.3d 357 (Wash., 2012) (ministerial exception applied to bar suit by former employee for negligent retention and negligent supervision claims).

Not only have every federal court of appeal and numerous state courts acknowledged the ministerial exception, but in 2012 a unanimous Supreme Court enshrined the ministerial exception in constitutional jurisprudence when it decided the seminal case *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*. 132 S.Ct. 694, 706 (2012) (“We agree that there is such a ministerial exception.”). *Hosanna-Tabor* involved a Lutheran schoolteacher whose employment was terminated in light of actions deemed to be unbecoming her position and contrary to the school’s beliefs. *See id.* at 699-700. In addressing her employment discrimination claims, the Court firmly underscored church sovereignty over its choice of a minister:

Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over selection of who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group’s right to shape its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.

Id. at 706. If there were any lingering doubts concerning the validity of the ministerial exception, *Hosanna-Tabor* banished them.

C. The Ministerial Exception Is Consistent With Existing Kentucky Jurisprudence.

The ministerial exception is consistent with and a natural outflow of Kentucky's current jurisprudence. As early as the 1930's, Kentucky had already developed a robust ecclesiastical abstention doctrine:

In recognition of the vital principle of separation of church and state, this court, as have all others, has consistently declared that the secular courts have no jurisdiction over ecclesiastic controversies and will not interfere with religious judicature or with any decision of a church tribunal relating to its internal affairs, as in matters of discipline or excision, or of purely ecclesiastical cognizance. In such matters relating to the faith and practice of the church and its members, the decision of the church court is not only supreme, but is wholly without the sphere of legal or secular judicial inquiry. Every person who assumes the relation of minister or member of a church impliedly, if not expressly, voluntarily covenants to conform to its canons and rules and to submit to its authority and discipline.

Marsh v. Johnson, 82 S.W.2d 345 (Ky. 1935). In *Marsh v. Johnson*, a pastor sued after his license to preach was revoked for "unorthodox policies and practices." *Id.* at 345. In dismissing the pastor's claim against the church, the court concluded that the "courts all recognize that where a minister has been deposed by the proper church authorities for an ecclesiastical offense, he no longer has the right to exercise the prerogatives of his office." *Id.* at 346.

More recently, this Court affirmed dismissal of a suit by a minister who alleged that the church violated his "employment contract" based on the Methodist *Book of Discipline* when he was placed on forced sabbatical. *Music v. United Methodist Church*, 864 S.W.2d 286 (Ky. 1993). The Court declined to decide the case on "neutral principles" of contract law: "[t]he 'neutral principles' doctrine should not be extended to

religious controversies in the areas of church government, or order and discipline.” *Id.* at 288. In dismissing the suit, the Court concluded that determining the minister’s claim “would inevitably require interpretation of provisions in the *Book of Discipline* that are highly subjective, spiritual, and ecclesiastical in nature. Such a suit necessarily involves interpretation of the minister’s occupational qualifications, and therefore forecloses any inquiry by civil courts.” *Id.* at 290.

Both *Marsh* and *Music* illustrate that the ecclesiastical abstention doctrine is well-established and revered in this Commonwealth.⁵ It is time for Kentucky to embrace that doctrine’s progeny – the ministerial exception. Given its long history and constitutional grounding, there can be no serious question as to the vitality of the ministerial exception. “Presented with this occasion to formally adopt the ministerial exception,” the *amicus curiae* urge this Court to “affirm the vitality of that doctrine” within the Commonwealth of Kentucky. *Rweyemamu v. Cote*, 520 F.3d 198 (2d. Cir. 2008) (officially embracing the ministerial exception in the Second Circuit).

II. THE MINISTERIAL EXCEPTION IS AN AFFIRMATIVE DEFENSE TO, AND DISPOSITIVE OF, KANT’S CLAIMS AGAINST LEXINGTON THEOLOGICAL SEMINARY.

The ministerial exception is an affirmative defense to Dr. Kant’s claims against Lexington Theological Seminary (“LTS” or “Seminary”). As discussed below, the Seminary is an indisputably religious organization devoted to training individuals for Christian ministry. Based on the totality of the circumstances of Dr. Kant’s former employment, he was a ministerial employee and the ministerial exception bars his claims.

A. Lexington Theological Seminary Is A Religious Institution Exclusively

⁵ The Kentucky Legislature also recognizes the constitutional concerns at stake in employment decisions of religious organizations by exempting such organizations from employment discrimination laws. *See* K.R.S. 344.090.

Devoted to Training Individuals for Christian Ministry.

Religious institutions may invoke the ministerial exception. Qualifying religious employers “need not be a traditional religious organization such as a church, diocese, or synagogue, or an entity operated by a traditional religious organization” to claim the ministerial exception. *Hollins v. Methodist Healthcare, Inc.*, 474 F.3d 223, 225 (6th Cir. 2007). For example, the ministerial exception has been successfully raised by private Christian schools, *see Hosanna-Tabor*; universities, *see EEOC v. Catholic Univ.*, 83 F.3d 455 (D.C. Cir. 1996) (Catholic university); hospitals, *see Scharon v. St. Luke’s Episcopal Presbyterian Hospitals*, 929 F.2d 360 (8th Cir. 1991) (Presbyterian hospital); nursing homes, *see Shaliehsabou v. Hebrew Home of Greater Wash., Inc.*, 363 F.3d 299 (4th Cir. 2004) (Jewish nursing home), and, most pertinently to this case, seminaries, *see EEOC v. Southwestern Baptist Theological Seminary*, 651 F.2d 277 (5th Cir. 1981) (Baptist seminary).

A seminary is an institution “*exclusively* preoccupied with religion and the training of a religion’s own clergy as distinct from more general learning.” *Hope Intern. Univ. v. Superior Court*, 119 Cal.App.4th 719 (2004) (citing *EEOC v. Southwestern Baptist Theological Seminary*, 651 F.2d 277 (5th Cir. 1981)). This singularity of purpose sets seminaries apart from even religious post-secondary education; they are “wholly sectarian.” *Southwestern Baptist*, 651 F.2d at 281. Theological seminaries are also vital to the life of a church and the propagation of its faith:

Clearly, the Seminary is an integral part of a church, essential to the paramount function of training ministers who will continue the faith. It is not intended to foster social or secular programs that may entertain the faithful or evangelize the unbelieving. Its purpose is to indoctrinate those who already believe, who have received a divine call, and who have expressed an intent to enter full-time ministry.

Id. at 283. As an essential part of the church, seminaries are entitled to the First Amendment protections afforded to the church. *Id.* at 283 (holding seminaries are entitled to the “status” of a church). As the Fifth Circuit reasoned:

No one would argue that excessive intrusion into the process of calling ministers to serve a local church is constitutionally permissible. The [Southern Baptist] Conventions hiring of faculty and other personnel to train ministers for local churches is equally central to the religious mission and entitled to no less protection under the first amendment.

Id. at 281.

Lexington Theological Seminary is unquestionably a religious institution. The Seminary is associated with the Christian denomination known as the Disciples of Christ, and its sole purpose is to “prepare faithful leaders for the church of Jesus Christ, and, thus, to strengthen the church’s participation in God’s mission for the world.” Court of Appeals Opinion (“Opinion”), pg. 2. Every student enrolled in the Seminary is there to prepare for Christian ministry – secular courses are not offered. *See* Opinion, pg. 3. The Seminary is “exclusively preoccupied” with preparing the next generation of Christian leaders through theological training, pastoral development, and spiritual formation. In this regard, LTS is “wholly sectarian.” The Seminary is, therefore, a religious organization entitled to invoke the ministerial exception.

B. Dr. Kant Taught At The Seminary In A Ministerial Capacity.

Not only is LTS a religious employer, but Dr. Kant was a ministerial employee. The term “ministerial employee” is broadly used to denote a person of importance in a religious faith. It applies to “any ‘employee’ who leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith.” *Hosanna-Tabor*, 132 S.Ct. at 712 (Alito, J. concurring).

Although Dr. Kant mistakenly argues that clergymen alone are “ministerial,” the term “minister” is simply judicial shorthand which, “like any trope, while evocative, is imprecise.” *Rweyemamu v. Cote*, 520 F.3d 198, 206 (2d. Cir. 2008). “The ministerial exception has not been limited to members of the clergy.” *EEOC v. Catholic Univ.*, 83 F.3d 455, 461 (D.C. Cir. 1996); *see also EEOC v. Roman Catholic Diocese of Raleigh, N.C.*, 213 F.3d 795, 801-02 (4th Cir. 2000) (church music director was a ministerial employee); *Alicea-Hernandez v. Catholic Bishop*, 320 F.3d 698, 704 (7th Cir. 2003) (press secretary was a ministerial employee).

Most pertinently to the case at hand, courts regularly conclude that seminary professors and theology teachers are ministerial employees, even if they are not ordained. *See Southwestern Baptist*, 651 F.2d at 283 (holding that all seminary professors were ministerial employees, including those who were not ordained⁶); *Alicea v. New Brunswick Theological Seminary*, 608 A.2d 218 (N.J., 1992) (holding that a seminary professor was a ministerial employee); *EEOC v. Catholic Univ.*, 83 F.3d 455 (D.C. Cir. 1996) (holding that theology professor was ministerial employee). In *Klouda v. Southwestern Baptist Theological Seminary*, a tenure-track assistant professor at a Baptist seminary sued after the seminary terminated her employment because of her gender. 543 F.Supp. 594 (N.D. Tex. 2008). Although otherwise eminently qualified to teach in her field, the female professor was not ordained – nor could she be according to Baptist beliefs. *Id.* at 596, 601. However, as a seminary professor, she was tasked with preparing her students for vocational Christian service in accordance with the seminary’s mission and bylaws. *Id.* at 600. The court concluded that the record “clearly established” that

⁶ By way of contrast, the court acknowledged greater difficulty in determining the ministerial status of seminary employees whose duties extend beyond functions essential to the propagation of their doctrine, such as finance, maintenance, and non-academic departments. *Southwestern Baptist*, 651 F.2d at 285.

“plaintiff is a ‘minister’ as contemplated by the ministerial exception doctrine,” even though she was not ordained. *Id.* at 611.

The record before this Court likewise clearly establishes that Dr. Kant was employed in a ministerial capacity. The sole purpose of the Seminary is to train the next generation of Christian leaders for ministry. Dr. Kant’s employment was consistent with and in furtherance of LTS’s purpose and mission prior to its restructuring in 2009. The Seminary extended the “call” to Dr. Kant to teach and participate in ministry – which he accepted. Dr. Kant began as a Professor of New Testament, and later assumed the role as Associate Professor of Religion. *See* Opinion, pg. 3-4. Dr. Kant was required to prepare students for Christian ministry consistent with the Seminary’s beliefs and mission. He participated in religious services at the seminary, including two ordinations. *See* Opinion, pg. 8.

Dr. Kant’s Jewish faith does not preclude ministerial employment at a Christian seminary. There are many areas of overlap and commonality between the Jewish and Christian faiths, not the least of which includes the Old Testament Scriptures and the fact that Jesus, himself, was a Jew. Dr. Kant was ministerial in the courses that he taught, which ranged from “Introduction to Greek” to “Thinking Theologically in the Church.” *See* Opinion, pg 4. He did not need to espouse every tenet of the Disciplines of Christ theology because he did not teach every tenet of that theology. Dr. Kant’s situation is not the first in which personal religious commitment is considered of more importance than devotion to a particular denomination. *See Southwestern Baptist*, 651 F.2d at 283 (“the level of personal religious commitment of faculty members is considered more important than their devotion to the Baptist church”).

Furthermore, determining which employees are “ministerial” or able to teach the tenets of the faith is fundamentally a religious question. Ecclesiastical abstention bars courts from inquiring into whether a person of Jewish faith can teach members of the Christian faith. “[T]he Religion Clauses require civil courts...to defer to a religious organization’s good-faith understanding of who qualifies as its minister.” *Hosanna-Tabor*, 132 S.Ct. at 710 (Thomas, J. concurring). The Seminary determined that Dr. Kant was “called” to ministry in the courses he taught. Thus, under the totality of the circumstances, Dr. Kant was a ministerial employee.

C. The Ministerial Exception Applies To Dr. Kant’s Breach Of Contract Claim.

LTS, facing a serious economic crisis, reorganized and restructured its curriculum to “better meet the needs of the Christian Church” by “focus[ing] on better integrating students into congregations through a pastoral life program.” Opinion, pg. 6. This reorganization and restructuring resulted in the elimination of Dr. Kant’s position at the Seminary. He then sued for breach of contract.

“Although the ministerial exception is often raised in response to employment discrimination claims under Title VII...it has also been applied to claims under the ADA [Americans with Disabilities Act] and the Age Discrimination Employment Act, as well as *common law claims* brought against a religious employer. *Hollins*, 474 F.3d at 225 (emphasis added). The Supreme Court decided *Hosanna-Tabor* in the context of a Title VII employment discrimination claim, but declined to comment on the ministerial exception’s application to other types of suits. *See* 132 S.Ct. at 710 (“The case before us is an employment discrimination suit....We express no view on whether the [ministerial] exception bars other types of suits....”).

Other courts, however, have answered this open question, concluding that the ministerial exception applies to breach of contract claims by *ministerial employees*.⁷ A New York Supreme Court considered a claim for wrongful termination by an “Associate General Secretary” of a Methodist agency based on breach of employment contract. *Mills v. Standing General Com’n on Christian Unity*, 958 N.Y.S.2d 880 (N.Y.Sup., 2013). The court summarily dismissed the idea that *Hosanna-Tabor*’s reasoning was limited to employment discrimination claims alone, and held that the ministerial exception applied to breach of contract claims by ministerial employees. *Id.* The New York court is no outlier in applying the ministerial exception to breach of contract claims. *See, e.g. Klouda*, 543 F.Supp. at 612-13 (breach of contract claim between seminary and professor barred by ministerial exception); *Music v. United Methodist Church*, 864 S.W. 2d 286, 287 (Ky. 1996) (breach of contract claim based on the Book of Discipline barred); *DeBruin v. St Patrick Congregation*, 816 N.W.2d 878, 889 (Wis., 2012) (breach of contract claim between church and religious director barred by ministerial exception).

The rationale underlying these decisions is simple. The ministerial exception protects the rights of religious institutions to select those who embody their faith and message. Church autonomy would be seriously undermined if judicial interference were permitted simply because an employee claimed wrongful termination based on breach of contract rather than employment discrimination. Claims which are “derivative of or intimately related to the employment action” must be afforded First Amendment protection. *Klouda*, 543 F.Supp. at 612-613.

⁷ This distinction is key. The ministerial exception does not prevent enforcement of *any* contract with a church – churches “may be held liable for...their valid contracts.” *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985). It does, however, protect the ministerial employment decisions of religious institutions, even when they are contested on a contractual basis.

Dr. Kant disagrees, relying instead on a Third Circuit case predating *Hosanna-Tabor*. In *Petruska v. Gannon University*, a former chaplain for a private Catholic diocesan university sued the university for breach of contract. 462 F.3d 294 (3rd Cir. 2006). Although the court initially observed that the “ministerial exception...operates to bar any claim, the resolution of which would limit a religious institution’s right to select who will perform particular spiritual functions,” it later permitted the breach of contract claim to proceed because “contractual obligations are entirely voluntary.” *Id.* at 307, 310. The court did not clarify how the voluntary nature of the employment relationship justified secular intrusion into a ministerial relationship and that case has been criticized for its strained analysis:

Petruska claimed that reducing her pastoral responsibilities was a breach of her contract with Gannon University. At one point, the court acknowledged that if judicial review of the contract claim entailed “ecclesiastical inquiry,” the claim could not proceed. However, *any inquiry into the validity of a religious institution’s reasons for the firing of a ministerial employee will involve consideration of ecclesiastical decision-making.*

DeBruin v. St Patrick Congregation, 816 N.W.2d 878, 889 (Wis. 2012) (internal citations omitted) (emphasis added). The Wisconsin Supreme Court noted:

Where a plaintiff alleges that her termination was based on an improper reason, it does not matter whether she seeks damages based on a contract theory or a statutory theory. In either case, the State is effectively enjoined by the First Amendment from interfering with the religious institution’s right to choose its own ministers.

Id. at 105. The legal theory on which the minister sues should not dictate the applicability of the ministerial exception.

Moreover, probing the validity of Dr. Kant’s termination unquestionably implicates religious doctrine. Dr. Kant was terminated as part of LTS’s *theological* decision to restructure its pastoral life program. The contract Dr. Kant has placed at issue

cannot be analyzed in isolation; it must be considered in context. Moreover, the purported tenure “contract” cannot be analyzed apart from the Seminary’s Faculty Handbook – an unquestionably religious document. Dr. Kant’s contention that his firing was pretextual is irrelevant – “[t]he 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...is the church’s alone.” *Hosanna-Tabor*, 132 S.C. at 709.

Dr. Kant’s claims cannot be extricated from the fact that they arise out of an employment decision by a religious organization concerning one of its ministerial employees. “When a ministerial employee is terminated, the religious institution’s decision about who shall teach its faith and how that shall be done are intertwined with the decision to terminate the employee. Courts can have no role in affirming or overturning such a decision based on the reason why the religious institution terminated the employment.” *DeBruin*, 816 N.W.2d at 101.

CONCLUSION

This case involves an employment relationship between a religious organization and its ministerial employee. The ministerial exception bars further consideration of claims arising from termination of this relationship. Therefore, *amicus curiae* respectfully urge this Court to officially acknowledge the ministerial exception and affirm the Court of Appeals’ decision below.

Respectfully submitted this 29th day of April, 2013.



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