

IN THE WEST VIRGINIA INTERMEDIATE COURT OF APPEALS

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AMBER B Elmore,
Plaintiff Below, Petitioner

Vs.

No. 25-ICA-234

MOUNT VERNON BAPTIST CHURCH,
FRANK BUDD,
THE BOARD OF DEACONS OF THE MOUNT VERNON BAPTIST CHURCH,
RONALD MCCLUNG,
Defendants Below, Respondents

PETITIONER'S BRIEF

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ASSIGNMENTS OF ERROR

1. The Circuit Court erred by granting a motion for summary judgment.

STATEMENT OF THE CASE

Petitioner, Amber B. Elmore, respectfully submits the following brief in support of her appeal from the Circuit Court of Putnam County, West Virginia. The Circuit Court

committed reversible error when it granted a motion for summary judgment in favor of the Respondents.

On May 9, 2021, the Petitioner (hereinafter sometimes Ms. Elmore) was preparing for Sunday School, the Children's Message and the Kid's Worship because she was the children's teacher at the Mount Vernon Baptist Church in Putnam County, West Virginia. When the children of a co-worker came into the room, Ms. Elmore asked them "What's one thing you love about your mom?" (May 9, 2021, was Mother's Day). The children answered, "Even though she hits us, she still tries to be patient." Ms. Elmore then said, "She hits you?". The children then responded "Yes, but we're not nearly as scared of her as we are our dad. He says that he can hit us on anywhere on our body to teach us lessons, but it's mainly our back and our legs."

Ms. Elmore continued with her duties that morning but as soon as church was over, she told the head of deacons what she had been told and that she had to report the disclosure. Ms. Elmore is a mandated reporter per West Virginia Code §49-2-803(a) as an "employee...of an entity that provides organized activities for children..." The head of deacons would also be a mandated reporter. Ms. Elmore also reported the situation to the pastor, Ron McClung. Although the pastor is also a mandated reporter,

both under the provisions covering Ms. Elmore and the head of deacons and the separate clause specifically identifying members of the clergy, he told her to not report and that "it can be handled with just a conversation, that Mr. [C] is on our staff, he's our brother, and we have to take care of him." The pastor then announced he was going to meet with the co-worker. Ms. Elmore cautioned him, "Do you understand that if we do something before it's reported and if we alert that, that that is -- if it's happening, it could put the girls more in danger?" The pastor responded, "It doesn't matter. I think he has a right to know."

Despite Ms. Elmore's concerns, a meeting was arranged for later that day at around 3:30 p.m. Present were the co-worker, the Pastor, and Mr. Elmore, although Mr. Elmore did not actually participate in the meeting. Ms. Elmore recounted what the children had told her and repeatedly said she was a mandated reporter and had to make the report. In response, the co-worker threatened Ms. Elmore with legal action. "He said that he -- everything that ever happened to his kids he could sue me for and that it - - escalated to the point he said that this is racially motivated." Even though the co-worker was threatening Ms. Elmore with legal action, he never stated anything that would have supported legitimate legal action against her.

The co-worker also physically threatened Ms. Elmore. At least twice he said, 'Everything you're accusing me of is going to come back to you.' Ms. Elmore testified what her understanding of this threat was. "I believe he was threatening to hit me, and I was fearful that he was going to do that in that moment because his fists were balled up and he was lunged towards me." As the meeting continued, the Respondent threatened Ms. Elmore's daughter. "[T]here were a couple of times that he said, 'You have a daughter too.'" Ms. Elmore believed this to be a threat against the daughter. "I interpreted it to mean that I have a daughter that could also get hurt." The meeting came to an end after the co-worker stated the statements were racially motivated.

After the meeting, Ms. Elmore reported what she had been told to the Putnam County Sheriff's Department and the Department of Human Services, Child Protective Services (DHHR, CPS) by telephone. During the conversation with law enforcement Ms. Elmore's feelings of being threatened came up and she was advised to contact a Putnam County Magistrate.

Notwithstanding the requirements of West Virginia Code §49-2-803(a), the head of deacons nor the pastor, Ron

McClung, made the mandated report to either law enforcement or CPS.

On May 10, 2021, the Petitioner filed a petition for an emergency domestic violence protective order in the Magistrate Court of Putnam County, West Virginia. That same day an emergency domestic violence protective order was issued.

As a result of the actions of the Petitioner, she was fired on June 29, 2021.

The Petitioner filed a civil action alleging violation of substantial public policy, gender discrimination in violation of the West Virginia Human Rights Act, unequal pay based upon gender discrimination, violation of the Petitioner's Constitutional right to freedom of speech and for retaliatory discharge for the filing of a domestic violence protective order against a coworker.

After considering the pleadings of the parties, the Circuit Court granted the Respondents' motion for summary judgment applying the ministerial exception

SUMMARY OF ARGUMENT

The Circuit Court committed reversible error when it granted summary judgment based upon the ministerial exception.

STATEMENT REGARDING ORAL ARGUMENT

Petitioner respectfully requests oral argument under Rule 20, in that this is a case of first impression, a case involving issues of fundamental public importance, and a case involving constitutional questions regarding the validity of a court ruling.

ARGUMENT

Standard of review

"We previously have held that our standard of review of summary judgment orders is plenary: A circuit court's entry of summary judgment is reviewed *de novo*. " We also consider the correctness of a court's summary judgment ruling under the following standard: "A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." **Goodwin v. Shaffer**, 873 S.E.2d 885 (W.Va. 2022).

**Ministerial exception is inapplicable to
Petitioner's Claims Under West Virginia State Law**

Petitioner's Amended Complaint, Appendix Vol. 1, page 39, states legally cognizable claims under West Virginia State law for unlawful retaliatory discharge

of her employment by Respondents in contravention of substantial public policies of this State upon which she is entitled to relief. (Amended Complaint, hereafter referenced as "Complaint"). Retaliatory Discharge Claims in West Virginia have long been recognized by the West Virginia Supreme Court of Appeals, as follows:

In the syllabus of **Harless [Harless v. First Nat. Bank in Fairmont]**, 162 W.Va. at 116, 246 S.E.2d 270 (W.Va. 1978), this Court stated:

The rule that an employer has an absolute right to discharge an at will employee must be tempered by the principle that where the employer's motivation for the discharge is to contravene some substantial public policy princip[le], then the employer may be liable to the employee for damages occasioned by this discharge. **Kanagy v. Fiesta Salons, Inc.** 208 W.Va. 526, 541 S.E.2d 616, 620 (W.Va. 2000).

The right of ministers to bring retaliatory discharge claims has also been recognized by the West Virginia Supreme Court of Appeals as follows:

When a church is congregational in polity, judicial scrutiny of final actions by the local church affecting rights under the civil law is appropriate. Syl. Pt. 2, **Gillespie v. Elkins Southern Baptist Church**, 177 W.Va. 88, 89, 350 S.E.2d 715, 717 (W.Va. 1986).

In a wrongful discharge action by a terminated pastor, the courts cannot go beyond completely neutral principles of law to inquire into church doctrine or to determine if the termination was arbitrary. *Id.* at Syl. Pt. 3., 177 W.Va. at 89-90, 350 S.E.2d 715, 717

In a congregational church the membership ultimately controls the business of the church and, without some compelling reason to do otherwise, this Court will limit its analysis in a pastor's wrongful discharge action to inquiring whether the congregation met and whether it acted to terminate the pastor. *Id.* at Syl. Pt. 4, 177 W.Va. at 90, 350 S.E.2d 717.

The **Gillespie** Court denied the appellant's claims therein, in part, on the grounds that he had not alleged any violation of substantial public policy. Petitioner herein does so allege violations and contraventions of substantial public policy, with specific citations to statutes, legislative declarations, and factual assertions in support of her claims. Therefore, her Complaint states legally cognizable claims upon which relief can be granted.

MVBC is a congregational church; however, compelling reasons exist to go beyond the membership's vote, because Respondents' own exhibits show that they concealed the nature of Petitioner's disagreements—reported sexual harassment and reported suspected child abuse with unidentified staff (Detweller and Mr. C), from its congregation. See Appendix Vol. III, page 172-175.

With regard to disputes within hierarchical churches, civil courts should respect, and where appropriate enforce, the final adjudications of the highest church tribunals, provided that such adjudications are not procured

by fraud or collusion. Syl. Pt. 2 **Board of Church Extension v. Eads**, 230 S.E.2d 911, 159 W.Va. 943 (W.Va. 1976).

With regard to disputes within congregational churches, a civil court may intervene only if it may apply a completely neutral principle of law unsusceptible to a result-oriented rule selection process and the Court is not required to inquire into church doctrine or practice; where a court cannot apply a completely neutral principle to resolve the dispute, it must stay its hand, decline to intervene, and leave the matter in whatever Status quo the machinations of the church itself have brought it. Id. at Syl. Pt. 3.

Herein, this Court does not need to go beyond completely neutral principles of law to resolve whether Respondents retaliated against Petitioner in violation of her rights under civil and criminal law constituting substantial public policies of this State for the protection of children from child abuse and protecting employees from invidious retaliation and discrimination. MVBC's own Child Protection Policy states its General Purpose as: "[MVBC] seeks to provide a safe and secure environment for the children who participate in our programs and activities. By implementing the below practices, our goal is to protect the children of [MVBC] from incidents of misconduct or inappropriate behavior while protecting our staff and volunteers (workers) from false allegations."

Petitioner's Complaint neither violates nor implicates the First Amendment of the United States Constitution nor the Religion Clause of the West Virginia Constitution. In fact, the substantial public policies and the mandatory reporting requirements of W.Va. §49-2-803 of the Child Welfare Act are entirely consistent with the MVBC's religious mission to minister to and protect its children as stated in its written Child Protection Policy that was in effect during Petitioner's employment. However, Respondents violated the Child Welfare Act, the mandatory reporting requirements of W.Va. Code §49-2-803, and their own Child Protection Policy, and then suspended and fired Petitioner from her job for complying with the law and MVBC's own policy. Complaint.

In contrast, Respondents allowed the accused perpetrators of suspected child abuse and the Youth Minister accused by Petitioner of sexual harassment of her own daughter, to retain their jobs at the time Petitioner was suspended and fired. The "ministerial exception" does not and should not be used under the guise of religious freedom to protect the Respondents from such egregious misconduct, which threatens the safety, physical, and mental well-being of the children of their Church, and which violates the substantial public policies of this

State which were Legislatively enacted to protect children from such harm by requiring mandated reporters such as Petitioner and Respondents to report such suspected child abuse to Child Protective Services and/or law enforcement. In retaliatory discharge claims, the West Virginia Supreme Court of Appeals has held that:

The employers of this state, ... have long been on notice that they cannot terminate an employee for his or her efforts to uphold this state's laws. See **Harless**, 162 W.Va. at 116, 246 S.E.2d at 271, syllabus; see also **Kanagy v. Fiesta Salons, Inc.**, 208 W.Va. 526, 533, 541 S.E.2d 616, 623 (2000) ("There is a substantial public interest in discouraging illegal behavior.") **Frohnafel v. ArcelorMittal USA LLC**, 235 W.Va. 165.

The West Virginia Supreme Court of Appeals has also held:

We echo the concise sentiment expressed by the Arizona court in **Wagner v. City of Globe**, 150 Ariz. 82, 722 P.2d 250 (1986), that "employees should not be discharged because they performed an act that public policy would encourage, or refused to do that which public policy condemns." *Id.* at 256. We also concur with the summary provided by the Colorado court in **Martin Marietta Corp. v. Lorenz**, 823 P.2d 100 (Colo. 1992).

There is no question that the manifest public policy of this state is that neither an employer nor an employee should be permitted to knowingly perpetrate a fraud or deception on the federal or state government. **A corollary of this policy is that an employee, whether at-will or otherwise, should not be put to the choice of either obeying**

an employer's order to violate the law or losing his or her job.

Therefore, under the facts and circumstances of this case, Petitioner submits that the West Virginia Supreme Court of Appeals would be disinclined to apply the "ministerial exception" to Petitioner's claims for retaliatory discharge for Respondents' violation and contravention of the substantial public policies by asking her to violate and/or ignore the mandatory reporting law of W.Va. §49-2-803 to report suspected child abuse and firing her in retaliation for it when she refused to break the law.

Moreover, the West Virginia Supreme Court of Appeals has never hesitated to afford individuals greater protection from discrimination under the West Virginia Human Rights Act (WVHRA) than federal jurisdictions, as follows:

We also have in the Human Rights Act a complex array of procedures and protections designed to give effect to the "civil right of all persons" to equal employment opportunity and to end the invidious discrimination that "is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society." W.Va. Code, 5-11-2 (1989). We think our answers to the certified questions best accommodate the different legislative goals that support the two statutes involved in this case. ¹²

In so holding, we particularly remain mindful of the primacy that the Legislature has accorded to eliminating invidious discrimination

in this State. As we stated in **Allen v. State Human Rights Commission**, 174 W.Va. 139, 149, 324 S.E.2d 99, 109 (1984), "[e]qual opportunity in this State is a fundamental principle" grounded in several provisions of our State Bill of Rights. "[E]very act of unlawful discrimination in employment ... is akin to an act of treason, undermining the very foundations of our democracy." 174 W.Va. at 148, 324 S.E.2d at 108. as cited in **Vest v. Board of Educ. of County of Nicholas**, 193 W.Va. 222, 228, 455 S.E.2d 781, 787, (W.Va. 1995).

If the State of West Virginia is not immune from the discrimination laws of the WVHRA, churches, such as Respondent MVBC, religious organizations, and individual persons who also have religious titles are also not immune from the WVHRA discrimination and retaliation laws simply because the employee is a minister.

Respondent(s) are an employer within the meaning of W.Va. Code §5-11-3(d), which states that "the term "employer" means the state, or any political subdivision thereof, and any person, employing twelve or more persons within the state for twenty or more calendar weeks in the calendar year in which the act of discrimination allegedly took place or the preceding calendar year." Id.

The individual Respondents are clearly "persons" within the meaning of W.Va. Code §5-11-3(a), and the Board of Deacons also qualifies as "persons" under the associations, organizations language of this statute.

Additionally, the United States Civil Rights Act and the various Titles thereof, all contain certain exemptions for religious employers, that the West Virginia Human Rights Act simply does not contain. See, **Goodman v. Archbishop Curley High Sch., Inc.** 149 F.Supp. 3d 577 (D.Md. 2016); **Goodman v. Archbishop Curley High Sch., Inc.**, 195 F.Supp.3d 767 (D.Md. 2016); **Foothills Christian Ministries v. Johnson**, 22-cv-0950-BAS-DLL (S.D.Cal. May 20, 2024; **Seattle Pac. Univ. v. Ferguson**, 22-35986 (9th Cir. Jun 07, 2024); **McMahon v. World Vision, Inc.**, C21-0920JLR (W.D. Wash. Nov. 28, 2023).

The WVHRA is neutral, generally, and equally applicable to religious employers as it is to secular employers. Respondents have not denied that MVBC is an employer within the meaning of the WVHRA, instead it has claimed that the "ministerial exception" of **Hosanna-Tabor Evangelical Lutheran Church Sch. v. Equal Emp't Opportunity Comm'n**, 132 S.Ct. 694, 181 L.Ed.2d 650, 565 U.S. 171 (2012) exempts them from the discrimination laws of same. It does not.

The Respondents are not above the general and neutrally applicable criminal and civil laws of this State, which are equally applicable to secular and religious individuals and organizations. Petitioner's Complaint

alleges that Respondents have violated both the civil and criminal substantial public policies of this State in terminating her employment. Child abuse is a crime in this State, and all 50 states. Domestic Violence is a crime in this State and all 50 states; sexual harassment of a child is considered child abuse in this State and is a crime in this State. Retaliatory discharge for reporting sexual harassment is unlawful in this State under the West Virginia Human Rights Act. Retaliation, Intimidation, and Harassment against a mandated reporter of suspected child abuse is a crime in this State, and Respondents have engaged in such criminal and civil misconduct against the Petitioner in this case by retaliating against her for doing what these substantial public policies and laws required her to do - report suspected child abuse and report sexual harassment of a minor, her daughter. The ministerial exception of **Hosanna-Tabor**, supra, was not meant to shield religious employers from criminal misconduct that harms or places the children in their care at risk of harm, nor child abuse and sexual harassment by its own ministers. Respondents retaliatory discharge of Petitioner's employment was unlawful under the laws of West Virginia, and her Amended Complaint is sufficiently pled and contains more than sufficient factual allegations to

state legally cognizable claims in West Virginia upon which she is entitled to relief.

The Respondents herein are and were mandatory reporters required to report suspected child abuse or neglect to CPS and law enforcement; and the Complaint alleges that they did not do so; Respondents have admitted they did not do so in their Answers, and there is evidence in this case that they fired Petitioner for reporting sexual harassment of her own 13 year old daughter by the then male Youth Minister, Mr. Detweller; and for reporting Mr. C., another male minister of the Church, to CPS and law enforcement, and filing a domestic violence petition against him, and concealed her reporting of child abuse and sexual harassment from the congregation, under the guise of confidentiality when the vote was taken to terminate her employment. Appendix Vol III, page 172-175.

In the domestic violence hearing Petitioner brought against Mr. C., Mr. McClung admitted that in his view striking children in the back is not child abuse this action. The laws of this State governing Child Abuse prove otherwise.

Petitioner was not fired for religious reasons, but instead was fired for her refusal to violate the laws of this State codified in W.Va. Code 49-2-803 which required

her as a mandated reporter to report suspected child abuse to CPS and law enforcement; for filing a domestic violence petition against the minister and parent whom she reported to CPS and law enforcement; and for reporting the sexual harassment of her daughter by the Youth Minister to the Respondents. The federal affirmative defense of the ministerial exception does not shield the individual Respondents nor the MVBC from such civil and criminal misconduct. Mandated Reporters who fail to report suspected child abuse are subject to criminal penalties.

Petitioner's Complaint cites to statutes and substantial public policies of West Virginia that are neutral general substantial public policies for the protection of children, reporting and prevention of child abuse and neglect, prevention of domestic violence, protection from sexual harassment, and protection of Petitioner, as a mandated reporter, from retaliation by the Respondents for Petitioner's reporting of suspected child abuse as well for the protection the reporting of sexual harassment (of her own daughter) a legally protected right afforded to Petitioner under the West Virginia Human Rights Act.

The wrongful retaliatory discharge and violations of substantial public policies of which Petitioner complains

are clearly equally applicable to secular and religious employers, secular and religious persons, and the mandated reporting requirements of W.Va. Code 49-2-803, are clearly neutrally applicable to secular and religious persons identified as mandated reporters, and equally applicable to secular and religious organizations that provide organized activities for children.

Additionally, substantial public policy reasons of Respondents' violations of substantial public policy for the protection of children from child abuse, neglect and sexual harassment exist in this action, which were concealed from the congregation; and therefore, these compelling reasons authorize this Court not to limit its analysis to whether the congregation met and voted to terminate Petitioner, because Respondents simply concealed these facts from the congregation as evidenced by Respondents' own exhibits to their premature motion. See Defs. Exs. Therefore, Petitioner's Complaint states a claim upon which relief can be granted and the evidence of record is sufficient to defeat Respondents motion for summary judgment.

Herein, as shown by Respondents' own exhibits, Appendix Vol. III, Page 172-175, the allegations in Petitioner's complaint, there are multiple compelling

reasons to look behind the membership's vote, as Respondents did not tell the congregation the nature of Petitioner's alleged disagreements with the two male members/ministers of the Church--sexual harassment of her daughter and Mr. C's suspected child abuse of his own children. Appendix Vol. III, page 172-175. Respondents did not tell the congregation even the broad strokes of the nature of these disagreements--instead Respondents engaged in a cover up that protected Respondents and two male ministers that Petitioner respectively reported for suspected child abuse and sexual harassment of her own daughter. Respondents did not tell the congregation that Petitioner had reported Mr. C. for suspected child abuse of his own children to CPS and law enforcement, and filed a domestic violence petition against him, or that Respondents had discouraged her from doing so. Therefore, there is a substantial public policy compelling reason to look behind the congregation's vote because Respondents did not tell the congregation that Petitioner had reported sexual harassment of her own daughter by the then Youth Minister of the MVBC; and that these two male ministers of the Church, who were still employed there at that time, and around the congregation and their children. Respondents failed to inform, hid, and concealed the substance of

Petitioner's alleged "disagreements" with other staff from the congregation.

Respondents' sole basis for their motion that Petitioner's State "discrimination" claims are barred by the "ministerial exception" because she is a minister, is both misplaced and misguided. Petitioner's Respondents' motion solely relied upon a federal affirmative defense to federal Title VII ADA discrimination claims, known as the "ministerial exception" which has not been adopted nor applied by the West Virginia Supreme Court of Appeals in any case that Petitioner can locate. Respondents did not cite any West Virginia authority that has done so in their motion. The so-called "ministerial exception" was first recognized on by the United States Supreme Court upon the appeal of a summary judgment ruling in **Hosanna-Tabor**, supra. This federal "ministerial exception" is inapplicable to Petitioner's West Virginia State claims herein.

Contrary to Respondents' assertions, Petitioner's title is not dispositive and all factors and circumstances surrounding her employment are important to this factual question. Additionally, it could be argued, that Petitioner's case presents the exact type of horrors that the EEOC and Pietrich envisioned in **Hosanna-Tabor**, supra,

and which the Supreme Court specifically stated might not be barred.

The EEOC and Perich foresee a parade of horrors that will follow our recognition of a ministerial exception to employment discrimination suits. According to the EEOC and Perich, such an exception could protect religious organizations from liability for retaliating against employees for reporting criminal misconduct or for testifying before a grand jury or in a criminal trial. What is more, the EEOC contends, the logic of the exception would confer on religious employers "unfettered discretion" to violate employment laws by, for example, hiring children or aliens not authorized to work in the United States. Brief for Federal Respondent 29. **Hosanna-Tabor**, supra., 565 U.S. at 195, 132 S.Ct. 710.

The Supreme Court then went on to say that "We express no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers. There will be time enough to address the exception to other circumstances if and when they arise. Id.

That time is now. Applying the affirmative defense ministerial exception in Petitioner's case herein would contravene and defeat the primary purposes of the mandatory reporting statutory and the West Virginia Child Welfare Act, which is to protect children from child abuse and allow the Respondents to continue to break these laws without consequence. This Court should decline to do so.

In **State ex rel. Morrissey v. Diocese of Wheeling Charleston**, 851 S.E.2d 755, the West Virginia Supreme Court of Appeals declined to extend the provisions of the Consumer Credit and Protection Act to Churches, however that Court noted that:

Nothing in our decision today relieves a religious institution, or a school or camp operated by a religious institution, from its obligation to maintain a safe environment or its obligation to comply with other provisions of law as the case may be. For example, our mandated reporter statute, West Virginia Code § 49-2-803 (2018), requires school teachers, youth camp administrators and counselors, and members of the clergy, *inter alia*, to timely report reasonable suspicions of child abuse neglect or abuse—including sexual abuse or sexual assault—to the West Virginia Department of Health and Human Resources or law enforcement, depending on the severity of the suspected abuse. *Id.* § 49-2-803(a). A mandated reporter who fails in his duty, or prevents another from doing so, is guilty of a misdemeanor and subject to a \$5,000 fine or up to a 90-day term of confinement. *Id.* § 49-2-812(a). If he fails to report a case involving the sexual abuse of a child on *school premises*, he is likewise guilty of a misdemeanor, and subject to \$10,000 fine or up to six months of confinement. *Id.* § 49-2-812(b).

Petitioner did not set forth a separate cause of action for intentional infliction of emotional distress, which is considered a personal injury in this State, as it is encompassed in her other claims. Petitioner's Complaint

asserts that Respondents concealed the reasons behind Respondents' termination of her employment from the congregation; therefore, fraud or constructive fraud, and civil conspiracy are also implicated by her allegations and the evidence of record. In **Doe v. Corp. of the President of the Church of Jesus of Latter Day Saints, 801 S.E.2d 443 (W.Va. 2017)**, the West Virginia Supreme Court of Appeals reversed an award of summary judgment that had been granted against the appellants below, who had sued the Church for injuries to their children resulting from the Church's cover-up of sexual assault and abuse, where the Church had recommended a known sex offender as a babysitter for their children in violation of the Church's stated abuse prevention and response systems for the protection of children. While not an employment claim, the Doe Court's ruling provides guidance to this Court that summary judgment is inappropriate in this case because of the evidence of record which indicates a cover up by Respondents of child abuse, and sexual harassment of a minor.

Respondents asked the court below to grant summary judgment as a matter of law on Petitioner's Complaint on the sole grounds that she was a minister when her title is

not dispositive of her status as a minister under the **Hosanna-Tabor** exception, and her claims for retaliatory discharge in violation of substantial public policy of this State.

Respondents' arguments further ignore that the West Virginia Supreme Court of Appeals, **Gillespie** Court, supra., specifically left the door open for ministers to bring a **Harless** or other type of wrongful retaliatory discharge claim against a Church employer if there was a substantial violation of public policy, or a compelling reason to look behind the congregations vote to terminate the minister such as fraud or collusion. The **Gillespie** appellant made no such claims; however, Petitioner's Complaint alleges both-- it alleges she was fired in retaliation for protected activity under the mandated reporter of child abuse statutes; that she was fired for making complaints to Respondents of the sexual harassment of her own daughter by a male Deacons. Respondents' own exhibits show that the Respondents did not inform the congregation of these legally protected complaints, but instead just told the congregation she could not get along with other staff--from this evidence, a reasonable jury could infer that Respondents colluded to fraudulently conceal material facts

from the congregation when Respondents asked them to vote on Petitioner's termination.

Respondents have cited to no West Virginia case in which the ministerial exception of **Hosanna-Tabor**, supra, has been adopted nor applied. Petitioner's complaint was brought under West Virginia State laws for retaliatory discharge, violations of substantial public policy of West Virginia.

Petitioner's Complaint states more than one cause of action for violations of substantial public policy of this State for the protection of children from child abuse and neglect, as well as claims of retaliation for reporting sexual harassment of Petitioner's own child, which constituted violations of the West Virginia Human Rights Act upon which relief can be granted, and further sets forth sufficient factual allegations in support of her claims, which in turn raise other legal cognizable claims under which relief can be granted against the individual Respondents as well as the Respondent Mount Vernon Baptist Church.

The Court below ignored that Petitioner's Complaint alleges claims against individuals as well as the MVBC.

CONCLUSION

WHEREFORE, for all the foregoing reasons, Petitioner prays that this Honorable Court will reverse the decision of the Court below and remand this matter for trial, and all such further relief as the Court deems fair, just and equitable.

Respectfully submitted,
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IN THE WEST VIRGINIA INTERMEDIATE COURT OF APPEALS

AMBER B. ELMORE,
Petitioner Below, Petitioner

Vs.

No. 25-ICA-234

MOUNT VERNON BAPTIST CHURCH,
FRANK BUDD,
THE BOARD OF DEACONS OF MOUNT VERNON BAPTIST CHURCH,
RONALD MCCLUNG,
Respondents Below, Respondents

CERTIFICATE OF SERVICE

I, Clinton W. Smith, counsel for the Petitioner,
certify that a copy of the foregoing Petitioner's Brief was
served upon:

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by electronic filing this 2nd day of September 2025.

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