

NO. 25-ICA-234

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

ICA EFiled: Oct 02 2025  
02:41PM EDT  
Transaction ID 77223337

---

**AMBER B. ELMORE,**

**Petitioner/Plaintiff,**

**v.**

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

**Respondents/Defendants.**

---

**RESPONDENTS MOUNT VERNON BAPTIST CHURCH,  
FRANK BUDD, AND RONALD MCCLUNG'S RESPONSE BRIEF**

---

Counsel for Petitioner:

Clinton W. Smith (WVSB #3458)  
405 Capitol Street  
Mezzanine Suite 4  
Charleston, WV 25301  
304-343-4498 (telephone)  
[cwsmithlawyer@aol.com](mailto:cwsmithlawyer@aol.com)

Counsel for Respondents:

Ashley W. French (WVSB #9060)  
Allison M. Subacz (WVSB #11378)  
Cipriani & Werner, PC  
500 Lee Street East, Suite 900  
Charleston, WV 25301  
304-341-0500 (telephone)  
304-341-0507 (fax)  
[afrench@c-wlaw.com](mailto:afrench@c-wlaw.com)  
[asubacz@c-wlaw.com](mailto:asubacz@c-wlaw.com)

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....3

STATEMENT OF THE CASE.....4

ASSIGNMENTS OF ERROR .....4

SUMMARY OF THE ARGUMENT ..... 4-5

STATEMENT REGARDING ORAL ARGUMENT..... 5-6

STANDARD OF REVIEW .....6

ARGUMENT ..... 7-18

    A. Ministerial Exception..... 7-12

        1. The Constitution

        2. United States Supreme Court (“SCUS”)

        3. Fourth Circuit

        4. Southern District of West Virginia

        5. West Virginia State Law Recognizes the Ministerial Exception

    B. Plaintiff was a Minister..... 13-14

    C. The MVBC Congregation met and voted pursuant to its Constitution to terminate  
        Petitioner/Plaintiff..... 14-16

    D. There Was No Fraud in the Termination Procedure under the Constitution and Bylaws  
        ..... 16-18

    E. There is No Evidence of Sexual Harassment or Wage Discrimination .....18

CONCLUSION..... 18-19

CERTIFICATE OF SERVICE .....21

**TABLE OF AUTHORITIES**

**Cases**

*Board of Church Extension v. Eads*, 159 W.Va. 943, 230 S.E.2d 911 (W. Va. 1976).....11

*Chitekwe v. MVBC*, 3:24-0269 (N.D. W. Va. 2025).....10,16

*Gillespie v. Elkins S. Baptist Church*, 177 W. Va. 88, 350 S.E.2d 715 (W. Va. 1986)  
.....5,7,11,12,14,15

*Harless v. First Nat. Bank in Fairmont*, 162 W. Va. 116, 246 S.E. 2d 270 (W. Va. 1978).....12

*Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012)  
.....7,8,9,11,14

*Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 140 S. Ct. 2049 (2020)  
.....7,8,9,11,12,13,14

*Rayburn v. Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164 (4th Cir. 1985)  
.....7,10,13

*Shaliehsabou v. Hebrew Home of Greater Washington, Inc.*, 363 F.3d 299, 306 (4th Cir. 2004)  
.....11, 18

**Other**

*W. Va. Const.* art. III, § 15.....” Syl. Pt. 1.....11

## **STATEMENT OF THE CASE**

The Respondents/Defendants, Mount Vernon Baptist Church, Frank Budd and Ronald McClung (hereinafter referred to collectively as “MVBC”), is a church in Putnam County, West Virginia, whose mission is to make disciples of all nations and baptize them in the name of the Father, Son, and Holy Spirit. The Church’s government is vested in the body, which composes its membership, but because its ministry is worldwide, it recognizes its obligation and privilege to cooperate with other religious bodies having the same objectives. (Appx. Vol. 5 at 258).

Without admitting the allegations, Respondents/Defendants state that Petitioner/Plaintiff’s Statement of the Case appears consistent with the allegations contained in the Amended Complaint.

The circuit court correctly decided the case and Respondents/Defendants move the appellate court to affirm and uphold that decision and dismiss this case with prejudice.

## **ASSIGNMENTS OF ERROR**

Petitioner/Plaintiff stated only one assignment of error: The Circuit Court erred by granting a renewed motion for summary judgment. The Petitioner/Plaintiff lists one heading on page 9: “The Ministerial Exception is Inapplicable to the Petitioner’s Claims Under West Virginia State Law.” Therefore, the Respondents will address the Petitioner’s assignment of error as argued under the heading.

## **SUMMARY OF THE ARGUMENT**

The Amended Complaint alleges that Petitioner/Plaintiff, Amber Elmore, worked for MVBC as the Children’s Minister and Sunday School Teacher for approximately two (2) years until her termination on June 29, 2021. *Amend. Compl.* at “Facts,” ¶ 2.<sup>1</sup> (Appx. Vol. II at pp 39-

---

<sup>1</sup> The Amended Complaint does not contain page numbers to cite to, and paragraph numbering restarts at each section.

73). Petitioner/Plaintiff alleges that she was terminated for reporting her suspicion of potential child abuse in violation of a substantial public policy (Cause of Action I), gender discrimination in violation of the West Virginia Human Rights Act (Cause of Action II), unequal pay based on gender discrimination (Cause of Action III), constitutional violations relating to the Petitioner/Plaintiff's freedom of speech (Cause of Action IV), and for retaliatory termination for the filing of a domestic violence protective order against another MVBC employee (Cause of Action V). *See generally, id.* Plaintiff's request for a domestic violence order was denied and found to be unsubstantiated.

MVBC disputes all allegations asserted in the Amended Complaint, particularly the circumstances and reasoning for Petitioner/Plaintiff's discharge. However, these factual details are not relevant to the appellate court's analysis, as pursuant to controlling federal and West Virginia law, the reasoning behind a minister's termination may not be considered under the ministerial exception. *See Gillespie v. Elkins S. Baptist Church*, 177 W. Va. 88, 350 S.E.2d 715 (W. Va. 1986). It is clear under the law: courts may not consider whether the employer's proffered reason for terminating a minister is merely pretextual. A court's analysis is limited to inquiring whether the congregation met and whether it acted to terminate the minister. In this case, the MVBC Congregation met and voted to terminate Petitioner/Plaintiff's employment by a majority vote.

#### **STATEMENT REGARDING ORAL ARGUMENT**

a) Respondents/Defendants do not request oral argument as it is clear from the Circuit Court's Order that summary judgment was appropriate. There are no factual issues to resolve, and the Circuit Court followed the law as stated in its opinion dated June 2, 2025.

b) The relevant procedural history for this litigation is as follows:

- Petitioner/Plaintiff filed the Amended Complaint on July 4, 2023.
- Respondents/Defendants' Answers filed on September 8 and September 29, 2023.
- Respondents/Defendants issued discovery to Petitioner/Plaintiff and began serving subpoenas on January 18, 2024.
- Approximately ten (10) months after the Amended Complaint was filed, on May 21, 2024, the Respondents/Defendants filed *Defendants' Motion to Dismiss and/or In the Alternative, Motion for Summary Judgment and Incorporated Memorandum of Law*.
- A hearing was held on Respondents/Defendants' motion on July 24, 2024.
- On August 1, 2024, Judge Reeder issued an Order denying the *Defendants' Motion to Dismiss and/or In the Alternative, Motion for Summary Judgment and Incorporated Memorandum of Law*. The Order granted leave to re-file a similar motion in the future and amend the Answers to assert the ministerial exception as a defense.
- The discovery deadline was April 4, 2025. Petitioner/Plaintiff did not file discovery requests. Petitioner/Plaintiff did not take depositions.
- On April 4, 2025, Respondents/Defendants filed their *Renewed Motion for Summary Judgment*.
- On June 2, 2025, Judge Sorsaia granted summary judgment to the Respondents/Defendants.

### **STANDARD OF REVIEW**

This Court reviews a “circuit court’s grant of summary judgment *de novo* . . . and, therefore, [applies] the same standard as a circuit court, reviewing all facts and reasonable inferences in the light most favorable to the moving party.” *Powderidge Unit Owners Assn v. Highland Props.*, 196 W.Va. 692, 698, 474 S.E.2d 872, 878 (1996) (internal citations omitted). The Court shall examine the pleadings and discovery to determine if there is no genuine issue of disputed fact. *Id.* After determining that there no issues of fact in dispute, the Court must determine if the movant has demonstrated that the movant is entitled to judgment as a matter of law. *Id.* Although the review is *de novo*, this Court will not consider evidence or arguments that were not presented to the circuit court and the review is limited to the record of the circuit court. *Id.* at 700, 880.

## ARGUMENT

### **A. Ministerial Exception**

#### **1. The Constitution**

The separation of church and state has been the standard since the enactment of the Bill of Rights. Specifically, as it relates to this matter – an employment decision made by a church regarding a minister who was acting inconsistent with the church’s faith and beliefs – is a wholly independent religious governance decision that the church, and the church alone, is allowed to make. The Establishment and Free Exercise Clauses combine to deny ministers standing to sue their churches for wrongful termination under secular employment discrimination laws, which do not apply to the internal affairs of religious groups. Therefore, state governments and their secular authorities, such as the circuit courts, are prohibited from interfering in, or even considering the reasons for a termination. *See generally, Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732 (2020); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012); *Rayburn v. Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164 (4th Cir. 1985); *Gillespie v. Elkins S. Baptist Church*, 177 W. Va. 88, 350 S.E.2d 715 (W. Va. 1986).

Plaintiff/Petitioner argues that this is a case of first impression for West Virginia courts. Respondents/Defendants disagree to the extent that the same principles have been recognized by West Virginia courts at least fifty (50) years. Respondents/Defendants summarize some of the relevant court decisions on the ministerial exemption below.

#### **2. United States Supreme Court (“SCUS”)**

In *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012), the SCUS held that the ministerial exception prevents courts from considering if a reason is pretextual for the termination of an employee, which would require a court to intertwine itself in

religious matters in violation of a church’s First Amendment protections. In stating that the ministerial exception was so broad as to prevent even a pretext factual analysis, Chief Justice Roberts, in the majority opinion in *Hosanna-Tabor*, stated:

The EEOC and Perich suggest that Hosanna–Tabor's asserted religious reason for firing Perich—that she violated the Synod's commitment to internal dispute resolution—was pretextual. That suggestion misses the point of the ministerial exception. 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*, 565 U.S, at 194-195 (emphasis added) (internal citations omitted).

In Justice Alito and Justice Kagan’s Concurrence, they stated that:

*For civil courts to engage in the pretext inquiry* that respondent and the Solicitor General urge us to sanction *would dangerously undermine the religious autonomy that lower court case law has now protected for nearly four decades*. In order to probe the *real reason* for respondent's firing, a civil court—and perhaps a jury—would be required to make a judgment about church doctrine.

*Id.* at 205 (emphasis added).

Justices Alito and Kagan recognized the danger of allowing a jury to make judgments on church doctrine. In 2020, the SCUS reaffirmed the *Hosanna-Tabor* decision in *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732. *Hosanna-Tabor* recognized that while the ministerial exception established by the First Amendment’s Religion Clause prevented certain employment discrimination claims from being brought against religious organizations, religious institutions do not enjoy a general immunity from secular laws. However, it does protect their autonomy with respect to internal management decisions that are essential to the institution’s central mission. And a component of this autonomy is the selection of the individuals who play certain key roles. *See Hosanna-Tabor*, 565 U.S. at 188; *Our Lady of Guadalupe*, 591 U.S. at 746.

The SCUS stated in *Our Lady of Guadalupe*:

The First Amendment provides that ‘Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.’ Among other things, the Religion Clauses protect the right of churches and other religious institutions to decide matters “of faith and doctrine” without government intrusion. [] State interference in that sphere would obviously violate the free exercise of religion, and any attempt by government to dictate or even to influence such matters would constitute one of the central attributes of an establishment of religion. The First Amendment outlaws such intrusion.

...

But [the ministerial exception] is instructive to consider why a church’s independence on matters “of faith and doctrine” requires the authority to select, supervise, and if necessary, remove a minister without interference by secular authorities. Without that power, a wayward minister’s preaching, teaching, and counseling could contradict the church’s tenets and lead the congregation away from the faith. The ministerial exception was recognized to preserve a church’s independent authority in such matters.

*Our Lady of Guadalupe*, 591 U.S. at 746-747, citing *Hosanna-Tabor*, 565 U.S. at 186.

The *Our Lady of Guadalupe* decision further clarified that whether someone is a “minister” or not in the typical sense matters not, but what must be considered to determine if protections under the ministerial exception apply is whether their job duties reflected a role in carrying out the church’s faith and mission. *Id.* at 752. The *Our Lady of Guadalupe* court adopted Justice Alito’s statement from his Concurrence in *Hosanna-Tabor* that the ministerial exception 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 faith*. *Our Lady of Guadalupe*, 591 U.S. at 752 (emphasis in original) (citing *Hosanna-Tabor*, 565 U.S. at 199).

### **3. Fourth Circuit**

In *Rayburn v. Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164 (4th Cir. 1985), the Fourth Circuit discussed in detail that any attempt by government to restrict a church’s free choice of its leaders constitutes a burden on the church’s free exercise rights. The court acknowledged

there was a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause. Noting that it would be difficult to exaggerate the magnitude of the state's interest in assuring equal employment opportunities for all, regardless of race, sex, or national origin, the balance weighed in favor of free exercise of religion.

Moreover, pastoral care in the church is so significant in the expression and realization of an institution's beliefs that state intervention in the appointment process would excessively inhibit religious liberty. The court rejected the determination of whether the position of associate in pastoral care was important to the spiritual mission of the church because it may not inquire whether the reason for Rayburn's rejection had some explicit grounding in theological belief. "The free exercise clause of the First Amendment protects the act of a decision rather than a motivation behind it. In these sensitive areas, the state may no more require a minimum basis in doctrinal reasoning than it may supervise doctrinal content." *Id.* at 1168–72.

#### **4. Southern District of West Virginia**

In 2025, Judge Chambers granted MVBC's motion to dismiss in a companion case to the current matter, *Chitekwe v. MVBC*. Mr. Chitekwe was also a minister with the Mount Vernon Baptist Church. He was terminated from employment and filed suit against MVBC alleging various discrimination claims.

In the *Chitekwe* decision, Judge Chambers noted "this Court may not consider any pretextual reasons for Plaintiff's termination as his employment falls within the "ministerial exception," grounded in the Establishment Clause of the First Amendment "which protects a religious group's right to shape its own faith and mission through its appointments" and select, retain, or terminate its minister. *See Chitekwe v. MVBC*, 3:24-0269 (N.D. W. Va. 2025, Judge Chambers, *adopting* Magistrate Court Judge Reeder's Findings of Fact and Conclusions of Law)

citing *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (footnote omitted). In *Chitekwe*, the district court found that the ministerial exception also applied to the extent Plaintiff was claiming wage discrimination under the Fair Labor Standards Act. *See id.* at pg. 3 (citing *Shaliehsabou v. Hebrew Home of Greater Washington, Inc.*, 363 F.3d 299, 306 (4th Cir. 2004)).

## 5. West Virginia State Law Recognizes the Ministerial Exception

The West Virginia Supreme Court of Appeals (“WVSCA”) has recognized the same principles for decades and has stated that “[t]he power of the civil courts to interfere with the internal operations of churches is severely limited by the First Amendment to the Constitution of the United States as applied to the states by the Fourteenth Amendment, and by W. Va. Const. Art. III, § 15....” Syl. Pt. 1, *Gillespie v. Elkins S. Baptist Church*, 177 W. Va. 88, 350 S.E.2d 715 (W. Va. 1986), citing Syl. Pt. 1, *Board of Church Extension v. Eads*, 159 W.Va. 943, 230 S.E.2d 911 (W. Va. 1976).

While *Gillespie* and *Eads*<sup>2</sup> were decided by the WVSCA prior to the *Hosanna-Tabor* and *Our Lady of Guadalupe* decisions, the WVSCA clearly recognized the same constitutional principles. Those principles have not changed for decades and are rooted in federal and state law all over the country.

*Gillespie* was an employee at-will, just like Plaintiff/Petitioner in this case. Petitioner/Plaintiff is correct on one thing – unlike in this case, *Gillespie* did not allege a substantial public policy to support his alleged wrongful discharge, nor was there an employment contract. However, the WVSCA disposed of *Gillespie*’s claims under either theory because otherwise, it would require the court to examine the reasons for the pastor’s termination. “Almost inevitably,

---

<sup>2</sup> *Eads* was a property dispute case where fraud was alleged. The Petitioner in this case has alleged fraud in her appeal and that will be further addressed.

this analysis would require the courts to go beyond completely neutral principles of law to inquire into church doctrine or to determine if the termination was arbitrary. This the courts cannot do.” *Gillespie*, at 91-91, 719.

The neutral principle of law at issue here is that a court may not consider any pretextual reasons for Plaintiff’s termination as his/her employment falls within the ministerial exception, grounded in the Establishment Clause of the First Amendment, which protects a religious group’s right to shape its own faith and mission through its appointments and select, retain, or terminate its minister. The WVSCA has recognized the ministerial exception even if it has not referred to it by that label. The *Gillespie* court clearly recognized that alleging a substantial public policy was violated in support of a wrongful termination claim requires the court to inquire as to whether the church’s stated reason for a minister’s dismissal is pretextual – which it cannot do. Therefore, this case is not necessarily a case of first impression because West Virginia courts have followed the same neutral principles that are defined within the ministerial exception.

The fact that *Harless* recognizes a substantial public policy may support a wrongful termination suit does not save Petitioner/Plaintiff’s claims either. The *Gillespie* court considered and disposed of the substantial public policy theory. The Court cited to *Harless* when considering the pastor’s claim for wrongful termination. *See Gillespie*, at 88, 91 and 718; *Harless v. First Nat. Bank in Fairmont*, 162 W. Va. 116, 246 S.E. 2d 270 (W. Va. 1978). The *Gillespie* court determined that even if a substantial public policy existed, that inquiring into the facts would require it to determine whether the church’s reasons for termination were in fact pretext. Therefore, Petitioner/Plaintiff’s premise that the ministerial exception has not been reviewed by the WVSCA is not accurate because it has been thoroughly addressed and decided.

## **B. Plaintiff was a Minister**

To the extent that Petitioner/Plaintiff now argues that she was not a minister, there is no genuine issue of material fact. *See* Petitioner’s Brief at pg. 23. For the ministerial exception to apply, the employee must have been a “minister.” It is indisputable that Petitioner/Plaintiff here was a minister at MVBC. The Amended Complaint is replete with the concession that Petitioner/Plaintiff was a minister. To the extent that she now argues she is not a minister, that argument is disingenuous at best.

In the 2020, the *Our Lady of Guadalupe* decision clarified that whether someone is a “minister” or not: what must be considered to determine if protections under the ministerial exception apply is whether their job duties reflected a role in carrying out the church’s faith and mission. *Id.* at 2064; *see also Rayburn v. Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164 (4th Cir. 1985) (upholding the dismissal of sexual discrimination claims where a female associate pastor led small group Bible studies, instructed children on the faith, and counseled its members – “[a]ny one of these functions so embodies the basic purpose of the religious institution that state scrutiny of the process for filling the position would raise constitutional problems[.]”).

*Our Lady of Guadalupe* clarified that the ministerial exception 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 faith*.” *Our Lady of Guadalupe*, 591 U.S. at 754 (emphasis in original) (citing *Hosanna-Tabor*, 565 U.S. at 199). To determine this, the employee’s job duties are examined to determine if they reflected a role in carrying out the church’s faith and mission. *Id.* at 754.

In this case, the Petitioner/Plaintiff’s job duties were not examined because the fact that she was a minister has never been contested. By her own admission, Petitioner/Plaintiff worked

for MVBC as a Children’s Minister and Sunday School teacher for approximately two (2) years. *Amend. Compl.* at “Facts,” ¶ 2. There truly can be no better evidence that someone is a minister within a church, who “serves as a messenger or teacher of faith,” as emphasized by the *Our Lady of Guadalupe* Court, than the employee responsible for teaching Sunday School and whose title was Children’s Minister. Petitioner/Plaintiff’s job duties revolved around the spreading of the Baptist faith and teaching that faith to the young children of MVBC. In the teaching of those lessons, she led the children in prayer, instructed them on Baptist beliefs, and focused on instilling them with the tenants of the Baptist faith. Moreover, her title was quite literally that of a “Minister” within MVBC. She cannot and has not provided any set of facts that would contradict this.

Therefore, Plaintiff was undisputedly a minister within the meaning of the ministerial exception and moreover, she has never contested this fact. Therefore, raising this issue for the first time on appeal is barred.

**C. The MVBC Congregation met and voted pursuant to its Constitution to terminate Petitioner/Plaintiff.**

The Supreme Court of West Virginia held in *Gillespie* that a court considering a wrongful discharge action may only consider if the congregation met and voted to terminate the minister. The WVSCA recognized that the congregation and church membership control the business of the church.

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.

Syl. Pt. 4, *Gillespie*, 177 W. Va. at 90.

MVBC did just this and this Court cannot further inquire into the Congregation’s basis for terminating Petitioner/Plaintiff. The decision to terminate her employment was a decision made

by MVBC's internal management, the leaders of the church, and Deacons. Presumably, Plaintiff/Petitioner must know this because she sued multiple individuals and factions within the MVBC organization. MVBC adhered to its procedures in voting to end the Petitioner/Plaintiff's employment and that fact has not been contested until now (wherein she has raised for the first time that a "fraud" has been perpetrated). It appears as if Petitioner/Plaintiff is not critical of the form or the process of termination under the church's Constitution and Bylaws, but believes a fraud was perpetrated on the Congregation. There has been no evidence developed to support this allegation.

While MVBC maintains that even this level of analysis would be prevented by the current ministerial exception set forth by the SCUS; at a state level, Syl. Pt. 4 of the *Gillespie* case is applicable. A court may only consider if a congregation met and whether the congregation terminated the minister. Here, MVBC's Congregation did this by meeting and voting to terminate Plaintiff.

The Constitution and Bylaws provide descriptions of what is expected from its personnel, both in the execution of their employment and in the faith. (Pg. 256-278, Appendix, Vol V). For terminating any member of the pastoral staff, the procedure is defined as:

B. Termination by Church

1. By Board of Deacons Recommendation.

The Board of Deacons may recommend termination of any member of the pastoral staff at a called or regularly scheduled meeting the date and purpose of which have been read from the pulpit on two successive, previous Sunday mornings.

2. By Petition

A petition signed by twenty-five (25) members, qualified as in ARTICLE IX, Section 2, may be represented to the Board of Deacons calling for a meeting to recommend termination of any member of the Pastoral Staff. The Board of Deacons shall call such a meeting under the conditions stated in paragraph 1 above.

A quorum of 25% of the active membership as reported to the Church Clerk by the Board of Deacons as of the last day of the preceding calendar year must be in

attendance to consider termination of a member of the pastoral staff in accordance with ARTICLE VIII, Section 5B. A majority vote by secret ballot shall make a valid termination. The Clerk will provide a written notice of termination 30 days prior to the effective date of such termination.

Terminations of office by any member of the Pastoral Staff or by the Church shall be voted at a called, or regularly scheduled Business Meeting. Notice of the called meeting and its purpose shall have been read from the pulpit two (2) successive, previous Sunday mornings. A majority vote shall make a valid termination.

(Pg. 272, Appendix, Vol V).

In accordance with the MVBC Constitution and Bylaws, a statement was read to the Congregation giving notice regarding the vote to terminate Petitioner/Plaintiff on two consecutive Sundays. (Pg. 197-203, Appendix, Vol IV). The MVBC Congregation then voted on Sunday, June 27, 2021. *Id.* With a proper quorum present, the Congregation voted 51 to 16, with 2 abstaining, to terminate Petitioner/Plaintiff. *Id.* She was given formal notice of this termination on June 29, 2021. *Id.*

There has been no dispute raised as to whether the proper process as contained in the Constitution and Bylaws was followed. Therefore, Petitioner/Plaintiff cannot use a civil action to challenge the decision that she should no longer be one of its ministers. *See Chitekwe v. MVBC*, 3:24-0269 (N.D. W. Va. 2025, Judge Chambers, adopting Magistrate Court Judge Reeder's Findings of Fact and Conclusions of Law at pg. 4).

**D. There Was No Fraud in the Termination Procedure under the Constitution and Bylaws**

Petitioner/Plaintiff alleges that there was a fraud perpetrated on the Congregation (and presumably, absent that fraud, she would not have been terminated by the Congregation). First, there is no requirement to disclose the reasons for termination under the Constitution and Bylaws, nor has Petitioner/Plaintiff made such an allegation. However, MVBC did provide the reasons for the proposed termination. The following statement was read to the Congregation as follows:

On Sunday June 20th, 2021 at the end of the 11am morning service Frank Budd, Chairperson of the Deacon Board announced to the members the following statement for the second consecutive Sunday after opening with prayer.

A special Meeting will be held on June 27, 2021 for the purpose of voting for/against Amber Elmore's separation from employment. • As you know, this meeting has been called, in accord with Mount Vernon's Constitution, to ask you to vote on the possible termination of Amber Elmore as an employee of the Church. As with all its decisions, this one was reached by the Deacon Board (in this case, unanimously) after many discussions and the frank exchange of views on the matter. We have devoted considerable, prayerful, consideration to the Church, Church staff, and Amber in reaching our conclusion regarding her continued employment. • The Deacon Board had multiple meetings, conferences with staff members, including Amber, and exchanged hundreds of emails and text messages over the past four months with regard to the staff in general and Amber's working relationships with other staff members in particular. • Through these conversations and deliberations, as well as Amber's previous resignation, which was not acted upon, we concluded that Amber's continued presence on the staff was contrary to the best interests of both the remaining staff and the Church. We gave Amber the opportunity to address those issues, which she declined because she said she "Was unprepared to discuss them at the time. The Deacon Board did not mention any staff members by name in this conversation. • Amber's resignation caused the Deacon Board to seriously question her happiness with her position and the Church as well as her commitment to the Church in general and the duties of her position in particular. • The Deacon Board has concluded that Amber's working relationship with other staff is irreparable and that her continued employment is not in the best interests of the Church. • Once the conclusion was reached that Amber's employment with the Church was no longer tenable, the Deacon Board retained counsel from outside of the Church to guide it through this process. • While some of you may be concerned that we have not addressed particular issues or instances that occurred during Amber's employment, given the Church Constitution's language governing the Deacon Board's mandate to request a membership vote and in consideration of privacy and other legal issues, we cannot open the floor to comments or questions from those present.

Recorded by Sally Blackburn Interim Church Clerk

(Pg. 199, Appendix, Vol V).

Interestingly, the Petitioner/Plaintiff had previously resigned citing reasons that are not part of her lawsuit. The result of the vote was that 51 members voted YES; 16 members voted NO; and 2 members ABSTAINED. There is no count for fraud alleged in the Amended Complaint nor is

there any evidence of fraud. To the Respondent/Defendant's knowledge, the appeal is the first allegation of fraud.

**E. There is No Evidence of Sexual Harassment or Wage Discrimination**

Plaintiff has made allegations that she was terminated in retaliation for reporting the alleged sexual harassment of her daughter by another church minister. There is no evidence that suggests Plaintiff's allegation has any merit, as it has not been developed in the record. However, for the same reasons as discussed above, this claim fails as well.

Plaintiff has also made allegations to support her gender discrimination claims that she received unequal pay compared to the male ministers of the church. This evidence has not been developed either. However, Plaintiff was offered a compensation package which she accepted, and when she asked for a raise, she was provided the same. Pay of the ministers of the church also falls under the ministerial exception because that is a matter of church business and to scrutinize the facts would be to interfere with its autonomy. *See generally, Shaliehsabou*, 363 F.3d 299.

The Respondents/Defendants believe that Plaintiff has sprinkled these types of allegations throughout her Amended Complaint to "see what sticks." However, it is not appropriate to raise new arguments as this appeal is to review the lower court's decision based on the existing record and the arguments presented below.

**CONCLUSION**

The employment decisions of Mount Vernon Baptist Church are protected by the ministerial exception provided for under the Constitution, the decisions by the United States Supreme Court, and the Fourth Circuit. Further, decisions of the West Virginia Supreme Court of Appeals clearly incorporate the legal principles of the ministerial exception and the U.S. Constitution, whether the phrase "ministerial exception" is used or not. Courts may not substitute

their judgment in a congregation's decisions regarding the ministers who are charged with spreading their faith.

To Respondents/Defendants' knowledge, some of the issues raised on the appeal are being raised for the first time. Petitioner/Plaintiff had every opportunity to develop the record. The circuit court permitted more than adequate time to perform discovery. Moreover, the Respondents/Defendants conducted discovery and generously waited to file the initial motion to dismiss until Petitioner/Plaintiff had an ample opportunity to perform discovery. The Respondents/Defendants could have filed their Motion to Dismiss in September 2023, however, waited until May 2024, giving Petitioner/Plaintiff approximately 8-9 months to conduct discovery. After the close of discovery in April 2025 and being put on notice that Respondents/Defendants asserted the ministerial exception, they filed their renewed dispositive motion, which was rightfully granted. The factual issues that Petitioner/Plaintiff seeks to argue now are not relevant to the issues of law, even if more extensive discovery had been performed.

The circuit court did not err in granting the Respondents/Defendants Renewed Motion for Summary Judgment. It is clear that there are no genuine issues of material fact to be decided by a jury. Therefore, the Respondents/Defendants move the appellate court to affirm the circuit court's decision granting summary judgment and dismiss this case with prejudice.

Respectfully Submitted,

**MOUNT VERNON BAPTIST CHURCH  
FRANK BUDD  
RONALD MCCLUNG**

By Counsel,

/s/ Ashley W. French  
Ashley W. French (WVSB #9060)  
Allison M. Subacz (WVSB #11378)  
Cipriani & Werner, PC

500 Lee Street East, Suite 900  
Charleston, WV 25301  
304-341-0500  
304-341-0507 (fax)  
[afrench@c-wlaw.com](mailto:afrench@c-wlaw.com)  
[asubacz@c-wlaw.com](mailto:asubacz@c-wlaw.com)

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

---

AMBER B. ELMORE,

Petitioner/Plaintiff,

v.

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

Respondents/Defendants.

**CERTIFICATE OF SERVICE**

The undersigned counsel for the Respondents/Defendants hereby certifies that on the 2<sup>nd</sup> day of October 2025, the foregoing *Respondents Mount Vernon Baptist Church, Frank Budd and Ronald McClung's Response Brief* was filed and served via File&ServeXpress on the following counsel of record:

Clinton W. Smith, Esquire (WVSB #3458)  
405 Capitol Street  
Mezzanine Suite 4  
Charleston, WV 25301  
*Counsel for Petitioner*

/s/ Ashley W. French  
Ashley W. French (WVSB #9060)  
Allison M. Subacz (WVSB #11378)  
Cipriani & Werner, PC