

STATE OF MICHIGAN
IN THE SUPREME COURT

**THE PILGRIM'S REST BAPTIST CHURCH,
a/k/a PILGRIM REST MISSIONARY
BAPTIST CHURCH, NATHAN MAYFIELD,
and STEPHON BLACKWELL,**

Plaintiffs-Appellees,

-vs-

Supreme Court Case No.

Court of Appeals Case No. 318797

Kent County Circuit Court Case No. 11-12242 CZ

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DEFENDANT-APPELLANT ARTHUR PEARSON SR.'S
APPLICATION FOR LEAVE TO APPEAL
EXHIBITS 1-14

NOTICE OF HEARING

CERTIFICATE OF SERVICE

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STATEMENT OF BASIS OF JURISDICTION

Jurisdiction is proper in the Michigan Supreme Court pursuant to MCR 7.301(A)(2) and MCR 7.302(B)(3),(5), (C)(4)(a).

STATEMENT OF IDENTIFYING JUDGMENT APPEALED FROM

Defendant-Appellant Arthur Pearson timely appeals from the April 23, 2015, Michigan Court of Appeals decision, *Pilgrim's Rest Baptist Church, Et. Al. v Arthur Pearson Sr.*, Case No. 318797, affirming the Kent County Circuit Court's disposal of Defendant-Appellant's counter-claims, by order of summary disposition dated October 7, 2013.¹ Defendant-Appellant requests reversal of the Michigan Court of Appeals decision and the Circuit Court's order of summary disposition regarding Defendant-Appellant's counter-claims. Defendant-Appellant's counter-claims must be remanded to the Kent County Circuit Court for further proceedings.

¹ Exh 1, *Pilgrim's Rest Baptist Church, Et. Al. v Arthur Pearson Sr.*, Case No. 318797, April 23, 2015.

I. STATEMENT OF APPLICATION

The recent Michigan Court of Appeals decision in *Arthur Pearson Sr. v Pilgrim's Rest Baptist Church*, Case No. 318797, released for publication April 23, 2015, transcends the interests of the parties and threatens to throw Michigan religious institutions into chaos. The decision announces to Michigan attorneys, religious leaders, ministerial employees, and church members that the judiciary will not review and enforce internal governance documents of a religious institution, including employment contracts and bylaws, even when neutral principles of law can be used to interpret the documents. Defendant-Appellant Arthur Pearson Sr. appeals the above Court of Appeals decision and opinion affirming the trial court's dismissal of his contract and tort claims on the following grounds:

1. The decision of the Court of Appeals is clearly erroneous and will result in manifest injustice;
2. The decision conflicts with *Borgman v Bultema*, 213 Mich 684, 703; 182 NW 91 (1921) and *Vincent v Raglin*, 114 Mich App 242; 318 NW 2d 629 (1982);
3. The appeal involves legal principles of major constitutional significance to the State of Michigan's jurisprudence; and
4. The issue has significant public interest and policy ramifications for religious institutions and ministerial employees.

The controversy at the independent, congregational Pilgrim's Rest Baptist Church arose over the individual Plaintiffs-Appellees' and Trustees' well-publicized allegations of embezzlement against Pastor Arthur Pearson Sr. during the fall of 2011. The Pastor rejected the individual Plaintiffs-Appellees' demand that he resign. In accordance with the clear and

unambiguous language of the Pastor's employment contract and custom and practices of Pilgrim's Rest Baptist Church, the disciplinary action and dismissal of the Pastor was the exclusive prerogative of the church membership. Acknowledging this fact, the individual Plaintiffs-Appellees scheduled a congregational election to decide whether to terminate or retain the Pastor on November 13, 2011. The congregation, by a 2 to 1 margin, elected to retain Arthur Pearson Sr. as pastor. But the individual Plaintiffs-Appellees and Trustees cast aside the will of the congregation and took action to discipline and terminate the Pastor, thereby breaching his employment contract.

Contrary to the Michigan Supreme Court decision in *Borgman v Bultema* and the Michigan Court of Appeals decision in *Vincent v Raglin*, the trial court and Michigan Court of Appeals erred in ruling the Abstention and/or Ministerial doctrines of the First Amendment preclude judicial review of the Pastor's contract and tort claims. Despite the admonition of *Borgman*, the lower courts' refusal to exercise jurisdiction elevates every church dispute into a doctrinal dispute and fails to protect and implement the Church's own elected polity. **This legal precedent will lead to anarchy in Michigan religious institutions, specifically in congregational churches, where those who hold constitutional authority within a congregation will be thwarted by those who aggressively, and sometimes violently, seize power and act without lawful authority.** Such lawlessness and disorder will inevitably bring about unprecedented governmental intrusion into the affairs of religious institutions by law enforcement and regulatory agencies. The unlawful seizure of power in defiance of the expressed majority will of the congregation is exactly what occurred when the individual Plaintiffs-Appellees and Trustees breached Pastor Pearson's employment contract and acted contrary to the customs and practices of Pilgrim's Rest Baptist

Church. The Michigan Supreme Court must step into the void to assure religious institutions, ministerial employees, directors, trustees, elders, deacons, congregations, and the legal community advising religious institutions that internal governance documents, such as ministerial employment contracts and bylaws, of religious institutions will be enforced in Michigan if judicial review can be accomplished using neutral principles of law.

II. STATEMENT OF FACTS AND MATERIAL PROCEEDINGS

On April 6, 2008, Pilgrim's Rest Baptist Church, operating under the name "Pilgrim Rest Missionary Baptist Church", entered into a personal services employment contract with its new pastor, Defendant-Appellant Arthur Pearson Sr.² The employment contract was negotiated in good faith and at arm's length to avoid any bias towards Pastor Pearson.³ Several Church Trustees including Plaintiff-Appellee Stephon Blackwell, former Trustee Hayes Webster, and former Trustee Tyrone Guy took part in drafting, reviewing, negotiating, approving, presenting, and signing the employment contract.⁴ Prior to Pastor Pearson entering into the employment contract, he had been an Assistant Pastor and Associate minister at Pilgrim's Rest Baptist Church since 2004.⁵ As an Assistant Pastor to former Pastor Maurice Jones, Arthur Pearson received the compensation and benefits promised and specified by Pastor Jones and administered by the Church

² Exh 2, *Arthur L. Pearson Sr. employment contract*; Exh 3, *Arthur L. Pearson Sr. Sworn Affidavit*, ¶18; Defendant/Counter-Plaintiff's Counter-Claims, ¶17, filed August 21, 2013.

³ Exh 4, *Stephon Blackwell preliminary injunction hearing testimony*, p. 71, lines 19-25.

⁴ Exh 2; Exh 4, *Hayes Webster testimony*, p. 55, lines 1-6; *Blackwell testimony*, p. 70, lines 13-25, p. 71, lines 6-14; Defendant/Counter-Plaintiff's Counter-Claims at ¶10.

⁵ Exh 3, ¶¶ 2, 3; Defendant/Counter-Plaintiff's Counter-Claims at ¶18.

financial staff.⁶ Members of the Pilgrim's Rest Baptist Church ad hoc Executive (search) Committee - former Trustee Tyrone Guy, former Trustee Hayes Webster, and former Financial Secretary Gerolanita Bailey - executed the employment contract on behalf of Pilgrim's Rest Baptist Church and bound the Church to the employment contract terms.⁷ The employment contract stated Pilgrim's Rest Baptist Church would provide Pastor Arthur Pearson Sr. with salary, bonus, housing allowance, health insurance, and life insurance, and pay his church expenses in consideration for pastoral services.⁸

In addition, the Church provided customary gifts and benefits to Pastor Arthur Pearson, Sr., and First Lady Gwendolyn Pearson as the Church previously provided to former Pastor Maurice Jones and First Lady Catherine Jones during Maurice Jones' 44- year tenure as pastor.⁹

During Arthur Pearson's tenure as Senior Pastor of Pilgrim's Rest Baptist Church, he attracted hundreds of additional members and significantly increased membership, tithes, offerings, and the Church's bank account balances.¹⁰

Arthur Pearson has continued carrying out his pastoral duties and providing pastoral services to a large faction of the former membership of Pilgrim's Rest Baptist Church to date with said faction of the Church currently operating at a different location under a different corporate

⁶ *Id.* at ¶ 4; Defendant/Counter-Plaintiff's Counter-Claims at ¶9.

⁷ Exh 2; Exh 3, ¶12; Exh 3, *Webster*, p. 55, lines 1-6; Defendant/Counter-Plaintiff's Counter-Claims at ¶10.

⁸ Exh 2; Exh 3, ¶8; Defendant/Counter-Plaintiff's Counter-Claims at ¶11.

⁹ Exh 3 ¶¶ 13, 14; Defendant/Counter-Plaintiff's Counter-Claims at ¶12.

¹⁰ Exh 4, *Nathan Mayfield testimony*, p. 40, lines 7-12.

name for business purposes.¹¹

In September 2011 and October 2011, at Pilgrim's Rest Baptist Church membership meetings, Plaintiffs-Appellees Stephon Blackwell and Nathan Mayfield made detailed accusations of misappropriation of Church funds against Pastor Pearson.¹² As required by Pastor Pearson's employment contract, Blackwell and Mayfield called for a membership vote to determine whether Pastor Pearson should be retained as pastor.¹³

On November 10, 2011, pursuant to the advice of the competent, adversarial legal counsel of the law firm of Drew, Cooper and Anding of Grand Rapids, Michigan, the individual Plaintiffs-Appellees agreed that an affirmative vote of two-thirds of the membership of Pilgrim's Rest Baptist Church was required to terminate Pastor Pearson as stated in the employment contract.¹⁴ At the time the parties met to plan the election, they agreed there were no valid Pilgrim's Rest Baptist Church bylaws in existence.¹⁵

On November 13, 2011, the Pilgrim's Rest Baptist Church membership election was held and, despite the written charges of misappropriation of church funds against Pastor Pearson published to the congregation, it is undisputed *nearly two-thirds of the Pilgrim's Rest Baptist*

¹¹ Exh 3, ¶¶1, 15; Defendant/Counter-Plaintiff's Counter-Claims at ¶13.

¹² Defendant/Counter-Plaintiff's Counter-Claims at ¶14.

¹³ Exh 5, *Drew Cooper law firm, Attorney Adam Sturdivant, correspondence to Arthur L. Pearson Sr.*; Defendant/Counter-Plaintiff's Counter-Claims at ¶14.

¹⁴ Exh 4, *Mayfield*, p. 45, lines 13-19; Exh 5; Exh 6, *Mayfield Notice of Election/election ballot and documents*, Defendant/Counter-Plaintiff's Counter-Claims at ¶15.

¹⁵ Exh 4, *Mayfield*, p. 32, lines 17-21; *Blackwell*, p. 69, lines 10-15, 20-25.

*Church members voted to retain Arthur Pearson Sr. as senior pastor of Pilgrim's Rest Baptist Church.*¹⁶ Two-thirds of the membership of the Pilgrim's Rest Baptist Church have never affirmatively voted to suspend Pastor Arthur Pearson Sr. or his salary and benefits.¹⁷ Two-thirds of the membership of the Pilgrim's Rest Baptist Church have never affirmatively voted to terminate Pastor Arthur Pearson Sr. or his salary and benefits.¹⁸

As of December 27, 2011, the existing members of the Pilgrim's Rest Baptist Church Board of Trustees were appointees of former Pastor Maurice Jones and Pastor Arthur Pearson Sr.¹⁹ As of December 27, 2011, the nine existing members of the Pilgrim's Rest Baptist Church Board of Trustees were Plaintiff-Appellee Stephon Blackwell, William Blunt, Regis Fisher, Donald Mosley, Mary Staten, Manuel Martin, Joe Davis, Artis Osby, and Haywood Ware.²⁰

On December 27, 2011, seven of the nine members of the Pilgrim's Rest Baptist Church Board of Trustees – Plaintiff-Appellee Stephon Blackwell, William Blunt, Regis Fisher, Donald Mosley, Mary Staten, Manuel Martin, Joe Davis - voted to suspend Arthur Pearson Sr., without the contractually required affirmative vote, authorization, and approval of two-thirds (2/3) of the

¹⁶ Exh 3, ¶17; Exh 4, *Mayfield*, p. 45, lines 13-24; Defendant/Counter-Plaintiff's Counter-Claims at ¶16.

¹⁷ Exh 3, ¶19; Defendant/Counter-Plaintiff's Counter-Claims at ¶17.

¹⁸ Exh 3, ¶19; Defendant/Counter-Plaintiff's Counter-Claims at ¶18.

¹⁹ Exh 3, ¶¶18, 19; Exh 4, *Mayfield*, p. 27, lines 15-25, p. 28, line 1, p. 29, lines 3-8, 15-19; p. 37, lines 10-25; p. 44, lines 15-23; p. 45, lines 3-8; *Webster*, p. 53, lines 12-17; *Blackwell*, p. 64, lines 10-13; p. 65, lines 6-12; p. 68, lines 10-17, p. 72, lines 13-19; Defendant/Counter-Plaintiff's Counter-Claims at ¶19.

²⁰ Exh 4, *Mayfield*, p. 37, lines 1-5; Exh 3, ¶19; Defendant/Counter-Plaintiff's Counter-Claims at ¶20.

Church membership, for misappropriation of funds.²¹

When Plaintiffs-Appellees filed this lawsuit on December 30, 2011, the Pilgrim's Rest Baptist Church congregation was divided regarding their support for Pastor Pearson and eventually split into two opposing factions.²² A substantial majority of members had voted to retain Pastor Pearson, only six weeks earlier on November 13, 2011, and did not support the filing of Plaintiffs-Appellees' civil lawsuit.²³

Certain Trustees, acknowledging they lacked the membership support to call for an immediate second membership election, at a Pilgrim's Rest Trustees' meeting held on January 3, 2012, concocted a scheme to purge the Church membership roster and prevent any new members from voting at any upcoming special or annual meeting or election in an effort to ensure their re-election, guarantee Pastor Pearson's termination, and legitimize their past and future actions taken

²¹ Exh 7, *Trustee suspension/Mayfield benefits termination letters to Arthur L. Pearson, Sr.*; Exh 3, ¶19; Defendant/Counter-Plaintiff's Counter-Claims at ¶21.

²² Exh 4, *Mayfield*, p. 23, lines 13-21; *Webster*, p. 48, lines 22-25; Summary Disposition Order and Opinion, J. Leiber, dated October 7, 2013. In Plaintiffs-Appellees' original Verified Complaint, they requested an order to enjoin Pastor Pearson from entering onto the real property of Pilgrim's Rest Baptist Church and require that he return his church credit card and keys. The lower court judge signed an ex-parte 14-day temporary restraining order that Pastor Pearson stay off the real property of the church and have no involvement in the finances of the Church. Pastor Pearson filed an immediate motion to dissolve the temporary restraining order which was denied on January 6, 2012. But the restraining order expired on January 14, 2012, and after taking testimony and entertaining argument during a two-day hearing, the lower court issued an order on January 24, 2012, that granted the request for a preliminary injunction in part and denied it in part. The trial court refused to enter a preliminary injunction further barring Pastor Pearson from the real property of the church; however, the lower court did enjoin Pastor Pearson from any involvement in church finances.

²³ Exh 3, ¶17; Exh 4, *Mayfield*, p. 45, lines 13-24; Exh 8, *Pilgrim's Rest Baptist Church Members Resolution and signed petition sample*; Defendant/Counter-Plaintiff's Counter-Claims at ¶23.

in opposition to Pastor Pearson and his large group of supporters.²⁴ The Trustees also passed a resolution to have Pastor Pearson's employment contract declared by the trial court to be void as a matter of public policy based on his alleged misappropriation of funds.²⁵ On January 17, 2012, Plaintiffs-Appellees filed their Amended Complaint to reflect the Trustees' resolution. In Plaintiffs-Appellees' Amended Complaint, they additionally alleged civil embezzlement and requested both declaratory and injunctive relief.

Pastor Pearson maintains he has never embezzled funds from Pilgrim's Rest Baptist Church.²⁶ The Board of Trustees, Deacon Board, and Ministerial Board were not elected policy-making bodies and had no authority to suspend the pastor of Pilgrim's Rest Baptist Church.²⁷ The authority to discipline, suspend, or terminate the Pastor belonged exclusively to the Pilgrim's Rest Baptist Church congregation.²⁸

On January 24, 2012, the lower court declined to further enjoin Pastor Pearson from entering onto Church property and he was free to resume his pastoral duties. In response to a criminal charge of embezzlement against Pastor Pearson pressed by the individual Plaintiffs-Appellees, the lower court ordered that the civil proceedings be stayed until the criminal

²⁴ Exh 9, *Pilgrim's Rest Baptist Church Board of Trustees, January 3, 2012, Meeting Minutes*, p. 3.

²⁵ *Id.*, p. 1.

²⁶ Exh 3, ¶16.

²⁷ Exh 3, ¶¶ 18, 19; Exh 4, *Mayfield*, p. 27, lines 15-25, p. 28, line 1, p. 29, lines 3-8, 15-19; p. 37, lines 10-25; p. 44, lines 15-23; p. 45, lines 3-8; Webster, p. 53, lines 12-17; Blackwell, p. 64, lines 10-13; p. 65, lines 6-12; p. 68, lines 10-17, p. 72, lines 13-19; Exh 9, p. 2; Exh 10, *Mayfield resignation demand letter to Arthur L. Pearson Sr.*; Defendant/Counter-Plaintiff's Counter-Claims at ¶19.

²⁸ Exh 2; Exh 3, ¶19; Exh 5; Exh 6; Defendant/Counter-Plaintiff's Counter-Claims at ¶¶7, 10, 14-16, 23.

proceedings were concluded. On January 26, 2012, five of the nine members of the Pilgrim's Rest Baptist Church Board of Trustees - Donald Mosley, Regis Fisher, Plaintiff-Appellee Stephon Blackwell, Manuel Martin, Mary Staten - retaliated and voted to terminate Pastor Arthur Pearson Sr.'s pay and benefits without the contractually required affirmative vote, authorization, and approval of two-thirds of the Church membership, for misappropriation of funds.²⁹

From January 26, 2012, through late February 2012, Pastor Arthur Pearson Sr. continued to minister and carry out his pastoral duties to a members of the Pilgrim's Rest Baptist Church congregation without the full pay and benefits described, agreed upon, and promised in his employment contract entered into by the Church.³⁰ Since March 2012 to date, Pastor Pearson has been ministering and carrying out pastoral duties to a large faction of former members of the Pilgrim's Rest Baptist Church, most of whom were forced out of their former church for supporting the pastor.³¹

After the conclusion of the criminal proceedings, on August 21, 2013, Pastor Pearson filed counter-claims against Plaintiffs-Appellees alleging breach of contract, promissory estoppel and unjust enrichment, fraud and innocent/intentional misrepresentation or concealment, tortious interference with a contract and advantageous business expectancy, intentional infliction of severe emotional distress, and civil conspiracy. Plaintiffs-Appellees immediately filed a motion for summary disposition pursuant to MCR 2.116(C)(4), (8), and (10), claiming the lower court did not

²⁹ Exh 7; Defendant/Counter-Plaintiff's Counter-Claims at ¶22.

³⁰ Exh 2, ¶¶11, 15; Exh 6; Defendant/Counter-Plaintiff's Counter-Claims at ¶24.

³¹ Exh 11, Artis Osby Affidavit; Exh 12, Attorney Frederick J. Boncher demand letter to Appellee Nathan Mayfield dated May 17, 2012.

have subject matter jurisdiction over the Pastor's breach of employment contract claim based on the ministerial exception in First Amendment jurisprudence. On October 7, 2013, the Court dismissed Pastor Pearson's contract claims as non-justiciable pursuant to MCR 2.116(C)(8) and then went on to dismiss all of the parties' other legal claims as moot.

Pastor Pearson filed an appeal in the Michigan Court of Appeals on October 28, 2013. Plaintiffs-Appellees filed a cross appeal and the case was subsequently consolidated with the Church factional property dispute in *Pilgrim's Rest Baptist Church Et Al v Nathan Mayfield Et Al*, Court of Appeals Case No. 319571, for oral argument. On April 23, 2015, the Michigan Court of Appeals reversed and remanded the claims of the two opposing Church factions and Appellees-Plaintiffs. But the Court of Appeals affirmed the trial court's decision that the Pastor's contract and tort counter-claims were non-justiciable.

II. ARGUMENT

A. STANDARD OF REVIEW

The trial court dismissed Defendant-Appellant's contract and tort claims as non-justiciable pursuant to MCR 2.116(C)(8). A trial court's grant of summary disposition is reviewed de novo. *Feyz v Mercy Memorial Hosp*, 475 Mich 663; 719 NW2d 1 (2006). Whether the trial court had subject matter jurisdiction is a question of law that an appellate court reviews de novo. *Dlaikan v Roodbeen*, 206 Mich App 591, 592-593 (1994).

A motion for summary disposition based on failure to state a claim upon which relief can be granted tests the legal sufficiency of the complaint. *Kisiel v Holz*, 272 Mich App 168; 725 NW2d 67 (2006); *Haynes v Neshewat*, 477 Mich 29; 729 NW2d 488 (2007). When a challenge to a complaint is made, the motion for summary disposition tests whether the complaint states a

claim as a matter of law, and the motion should be granted only if no factual development could possibly justify recovery. *Feyz*, 475 Mich at 663. The facts stated herein and in Appellant's counterclaims, if taken to be true, justify recovery.

A. APPLICATION FOR LEAVE TO APPEAL MUST BE GRANTED BECAUSE THE DECISION OF THE COURT OF APPEALS IS CLEARLY ERRONEOUS, RESULTS IN MANIFEST INJUSTICE, AND CONFLICTS WITH *BORGMAN v BULTEMA* AND *VINCENT v RAGLIN*

1. The Lower Courts Erred In Failing To Find Whether The Church Acted

Pastor Pearson filed contract and tort claims against the individual Plaintiffs-Appellees and other Pilgrim's Rest Baptist Church Trustees because their unilateral actions did not represent the actions of the congregation, referred to in *Borgman* and *Vincent* as "the Church". Specifically, the unilateral actions of the individual Plaintiffs-Appellees and Trustees were unauthorized and contrary to the congregation's election to retain Arthur Pearson Sr. as Church pastor on November 13, 2011, the existing ministerial employment agreement, and the Pilgrim's Rest Baptist Church Bylaws relied upon by Appellees on appeal.³² Pastor Pearson's legal basis for requesting that Michigan Courts exercise subject matter jurisdiction is the Michigan Supreme Court's decision in *Borgman*, 213 Mich at 703, and the Michigan Court of Appeals decision in *Vincent*, 114 Mich App at 242. Pastor Pearson further argues on appeal the ministerial exception is limited to civil rights cases as specifically stated in *Hosanna Tabor v EEOC*, 132 S Ct 694, 710; 181 L Ed 2d 650, 668 (2012), and not applicable to a breach of a written ministerial employment agreement - an issue of first impression in Michigan and of great significance to thousands of Michigan religious

³² Exh13, Pilgrim Rest Missionary Baptist Church Constitution & Bylaws, Bylaws, II Church Officers, Sec 1, pp. 4-5 (requires an affirmative vote of ¾ of the congregation to terminate the pastor).

organizations and ministerial employees. Finally, Pastor Pearson distinguishes *Dlaikan*, 206 Mich App at 592-593, relied upon by the trial court, as inapplicable to written ministerial employment agreements that could be interpreted and enforced by Michigan Courts using neutral principles of law. These legal issues transcend the controversy between the parties and represent important clarification of First Amendment and contract jurisprudence for all of Michigan's religious organizations who contract with ministerial employees, including religious educational and non-profit institutions and houses of worship who frequently and routinely contract with teachers, administrators, musicians, and pastors.

In the Kent County Circuit Court, Plaintiffs-Appellees filed the motion for summary disposition of the Pastor's breach of employment contract claim based on the ministerial exception that bars inquiry into a church's underlying motivation for a contested employment decision. *Hosanna Tabor*, 181 L Ed 2d at 668; *Weishuhn v Catholic Diocese of Lansing*, 279 Mich App 150, 152; 756 NW2d 483 (2008). The trial court found the claim was not justiciable because the contract was an internal agreement between the church and its pastor. In support of the trial court's summary disposition order, the trial court relied on *Dlaikan*, at 593-594, and *McDonald v Macedonia Missionary Baptist Church*, unpublished opinion of the Michigan Court of Appeals, issued March 27, 2003 (Docket No. 231627).³³

But as a requisite threshold matter, the trial court failed to determine whether it was *the Church* that acted against Pastor Pearson. *Borgman*, at 703; *Berry v Bruce*, 317 Mich 490, 501; 27 NW 2d 67 (1947); *Vincent*, at 247. In *Borgman*, at 703, the Michigan Supreme Court stated:

³³ Exh 14, *McDonald v Macedonia Missionary Baptist Church*, unpublished opinion of the Michigan Court of Appeals, issued March 27, 2003 (Docket No. 231627).

“... the only question is whether the defendant claiming to be pastor should be excluded from its use, this court will only consider whether the church ordered his exclusion, not whether it was right in so doing. Neither will the court as a civil tribunal undertake to determine whether the resolution directing exclusion was passed in accordance with the canon law of the church, **except in so far as it may be necessary to do so in determining whether it was, in fact, the church that acted.**”

In *Vincent*, the Michigan Court of Appeals concluded it was “the duty of this court to determine when, if ever, the church terminated plaintiff’s duties as pastor”. *Id.* The lower courts erred by failing to make this required determination.

2. The Lower Courts Erred In Failing To Rely On *Vincent v Raglin*

The applicable law and analogous facts that dictate the correct outcome of this appeal are found in *Vincent*, a 1982 Michigan Court of Appeals decision. In *Vincent*, Plaintiff Mack Vincent, a Baptist minister like Pastor Pearson, was also embroiled in a dispute with his church’s trustees. The trustees passed a resolution to terminate the pastor’s services. The pastor continued to conduct services at his church after the trustees notified him of his purported termination. The trustees hired security guards who forcibly removed the pastor from the church. The pastor then sued for an injunction to prevent the trustees from further interfering with his relationship to the church.

Unlike Pastor Pearson, Pastor Vincent did not have an employment contract. Still, the Michigan Court of Appeals ruled the absence of the contract to be immaterial because the conduct of the parties clearly indicated an agreement to retain the pastor until his dismissal by the church. Without the benefit of a contract, the Court reviewed the Articles of Association which indicated

the intent that the church be governed according to the Hiscox manual. The Court then reviewed the Hiscox manual to determine whether, under the manual, the board of trustees' dismissal of the pastor was the "*action of the church*". *Id.*, at 247-249; *See Borgman*, at 703 ("the court will only consider whether *the church* has ordered his exclusion" and **courts must make a determination "whether it was, in fact, the church that acted** (emphasis supplied)'), *citing with approval Morris Street Baptist Church v Dart*, 67 SC 338; 45 SE 753 (1903). The Court found the unilateral dismissal of the pastor by the trustees was not permitted by the Hiscox manual. Like Pastor Pearson's employment contract, under the Hiscox manual, the dismissal of a pastor is the exclusive prerogative of the church membership and the pastor could not be dismissed except upon at least a majority vote of the members present. Consequently, the Michigan Court of Appeals found the board of trustees' action was not the "action of the church". Like this case on appeal, the Court could find no evidence the membership ever discharged the pastor. Further, in *Vincent*, as in this case on appeal, there was substantial evidence of a conspiracy based on the fact that the trustees had called for a church membership vote which indicated they knew they did not have the authority to effect a unilateral dismissal of the pastor. *Id.*, at 250-251

Defendant-Appellant disagrees with the Court of Appeal's statement in its published decision, *Pearson v Pilgrim's Rest Baptist Church*, that "Appellant's reliance on *Vincent* is misplaced". *Vincent* has analogous material facts: (1) Both churches at issue are independent congregational Baptist churches; (2) both cases involve a group of trustees that demanded the resignation of the pastor; (3) both churches had internal documents – Appellant's employment agreement, Bylaws relied upon by Appellees, and the Hiscox Manual - that clearly and unambiguously state that the congregation possessed the exclusive authority to discipline and

terminate the pastor; (4) both groups of trustees scheduled congregational elections which is overwhelming evidence that they knew only the congregation could discipline or terminate the pastor; and (5) both groups of trustees unilaterally acted against the pastor without the consent of the congregation.

Pastor Pearson's legal claims are even stronger than the Pastor Vincent's claims. Pastor Pearson's employment contract was clear and unambiguous in requiring an affirmative two-thirds majority vote of the Pilgrim's Rest Baptist Church membership to discipline, suspend, or terminate Pastor Pearson.³⁴ Plaintiffs-Appellees and the Trustees not only called for an election on November 13, 2011, they held the election, lost the election by a large margin, and then knowingly and willfully without authority disregarded the election results by unilaterally disciplining and excluding the pastor from the Church property in December 2011.³⁵

In *Pearson*, the Court of Appeals erroneously stated the issue is whether "the Church exceeded its authority". But Pastor Pearson has never argued or maintained the Church congregation exceeded its authority. In fact, Pastor Pearson stated in his Court of Appeals Brief and reiterated in oral argument that he "is not requesting that the Court substitute its judgment for the Pilgrim's Rest Baptist Church membership and determine whether the reasons for disciplining, suspending, or terminating the pastor are reasonable or justifiable. Such decisions are matters of internal polity and belonged exclusively to the Pilgrim's Rest Baptist Church membership as

³⁴ Exh 2; Exh 3, at ¶18; Defendant/Counter-Plaintiff's Counter-Claims, at ¶7.

³⁵ Exh 3, ¶¶17, 19; Exh 4, p. 45, lines 13-24; Exh 5; Exh 6; Exh 7; Defendant/Counter-Plaintiff's Counter-Claims at ¶¶15, 16, 21, 22.

clearly stated in the agreed upon employment contract”. The issue on appeal is whether the Church acted against Pastor Pearson at all. Like the church in the *Vincent* case, the congregation of Pilgrim’s Rest Baptist Church never acted against Pastor Pearson before the individual Plaintiffs-Appellees and the Trustees took action in December 2011. The Church never disciplined, suspended, or terminated Pastor Pearson.³⁶ To the contrary, the Church acted in his favor to retain him. It is undisputed the individual Plaintiffs-Appellees and Trustees had no authority to act against the Pastor pursuant to the Pastor’s employment contract and even the bylaws relied upon by Plaintiffs-Appellees in the Court of Appeals and Kent County Circuit Court.

3. The Lower Courts Erred In Ruling *Dlaikan* Bars Defendant-Appellant’s Contract and Tort Claims

The trial erred in ruling that *Dlaikan* is a bar to the pastor’s contract and tort claims. Significantly, *Dlaikan* never states that all internal church disputes are non-justiciable. *Dlaikan* relies on *Borgman* in stating that some contract and property disputes may be settled without reference to doctrine or ecclesiastical polity. 206 Mich App at 594, citing *Bennison v Sharp*, 121 Mich App 705; 329 NW2d 466 (1982). Further, a material distinction between Pastor Pearson’s case and *Dlaikan* is pointed out by the *Dlaikan* Court itself: “Moreover in this case, plaintiffs allege *no express written contract*.” *Dlaikan*, at 594. Where there is a written contract between the church and its ministers, such contracts are enforceable by the secular court. *Watson v Jones*, 80 US 679; 20 L Ed 666 (1871); *Jones v Wolf*, 443 US 595, 603 (1979); *Borgman, supra*, at 703; *Bennison, supra*, 121 Mich App 705; *Weishuhn v Catholic Diocese of Lansing, a*, 287 Mich App

³⁶ Exh 3, ¶19; Exh 6; Defendant/Counter-Plaintiff’s Counter-Claims at ¶117, 18.

211, 226; 787 NW2d 513 (2010); *Petruska v Gannon University*, 462 F3d 294, 310-311 (CA 3, 2006)(in Title VII gender discrimination suit involving a written contract, ministerial exception did not bar breach of contract and fraudulent misrepresentation claims); *Minker v Baltimore Annual Conf of United Methodist Church*, 894 F2d 1354, 1360 (CA DC, 1990); Note, *Does the Bible Pre-empt Contract Law?: A Critical Examination of Judicial Reluctance To Adjudicate a Cleric's Breach of Employment Contract Claim Against a Religious Organization*, 81 U Minn L R 263, 265 (1997).

B. APPLICATION FOR LEAVE TO APPEAL MUST BE GRANTED BECAUSE THIS APPEAL INVOLVES LEGAL PRINCIPLES OF MAJOR CONSTITUTIONAL SIGNIFICANCE TO MICHIGAN JURISPRUDENCE AND HAS SIGNIFICANT PUBLIC INTEREST AND POLICY RAMIFICATIONS FOR RELIGIOUS INSTITUTIONS AND MINISTERIAL EMPLOYEES

The Lower Courts Erred In Failing To Review The Pastor's Contract And Church's Internal Governance Documents And Past Practices To Determine Allocation of Decision-Making Authority In The Church

Pastor Pearson's position is that the individual Plaintiffs-Appellees and Trustees conspired and did breach his contract, and committed fraud, when they unilaterally disciplined him in December 2011, terminated his pay and benefits in January 2012, and purportedly terminated him in June 2012, contrary to the will of the congregation expressed by the results of the November 13, 2011, congregational election. This appeal raises significant legal and constitutional issues for religious organizations and ministerial employees in Michigan. The Michigan Supreme Court has never ruled the ministerial exception and abstention doctrines abrogate all written ministerial employment contracts and related tort claims in Michigan. Specifically, the Court has not directly addressed a breach of contract case where at issue is a written employment contract, entered into by a minister and an independent congregational

church, that clearly and unambiguously defines and delineates the allocation of decision-making authority in the church with respect to the discipline and employment status of the minister.

At least one state Supreme Court has held that, in a congregational church, the congregation is the highest authority. *Williams v Wilson*, 349 SC 336; 563 SE 2d 320 (2002). The *Williams* holding is specifically and explicitly supported by the internal documents of Pilgrim's Rest Baptist Church and, additionally, the undisputed custom and past practice of Church ministerial elections.

George Washington University Law Professors Ira C. Lupu and Robert W. Tuttle state that to judicially resolve the question of whether the congregation acted to fire a minister requires scrutiny of congregational documents: corporate charter, constitution, bylaws, employment manual, and *pastor's contract* and even governance and employment practices. *Church Autonomy Conference: "The Things that are not Caesar's: Religious Organizations as a Check on the Authoritarian Pretensions of the State": Courts, Clergy, and Congregations: Disputes Between Religious Institutions and Their Leaders*, 7 *Georgetown Journal of Law and Public Policy* 119, 149-151 (Example E and accompanying analysis). In reviewing the internal documents and practices, the Court needs to determine how the religious body allocates decision-making authority. *Id. at 150*. Civil jurisdiction over the question does not depend on a normative resolution by courts of contested religious positions. *Id.* "Instead the Court is asked to enforce only the allocation of power that the congregation has already adopted. Rather than imposing a resolution on the congregation, the Court's exercise of jurisdiction protects and implements the congregation's own polity. Failure to extend that protection would effectively consign religious bodies to anarchy, as well as those who hold constitutional authority within a congregation could

be thwarted by those who aggressively seized power and acted without lawful authority”. *Id. at 150-151.*

The trial court erroneously refused to review the pastor’s employment contract or the bylaws, relied upon by Plaintiffs-Appellees, to determine whether the individual Plaintiffs-Appellees and Trustees were authorized to discipline and terminate the pastor contrary to the vote of the congregation. In Michigan, churches and their ministers are free to enter into contracts at their will, provided the contract is not based on illegal grounds. *Luttig v Brusher*, 147 Mich App 424; 383 NW2d 224 (1985). “Contract formation is *purely voluntary*, undermining the assertion by religious organizations that they are constitutionally privileged to be free from coercive governmental regulation.” 81 U Minn L R at 265. The voluntary nature of contracts significantly attenuates any perceived burden imposed by secular enforcement. *Id. at 289.* The United States Supreme Court and Michigan Supreme Court have held such voluntary contracts are enforceable: “Where, ... a church controversy involves rights growing out of a contract, recognized by the civil law, civil tribunals cannot avoid adjudicating these rights under the law of the land”. *Borgman*, at 703. Adjudication does not violate the anti-entanglement principle of the Establishment Clause. The United States Supreme Court has required a “permanent and pervasive” contact between religious organizations and the government in order to find entanglement. 81 U Minn L R, at 291. By its nature, secular adjudication of a civil claim produces only a limited and singular contact, thereby avoiding excessive entanglement. *Geary v Visitation of the Blessed Virgin Mary Parish School*, 7 F3d 324, 328 (CA 3, 1993); *DeMarco v Holy Cross High School*, 4 F3d 166, 169-170 (CA 2, 1993). **“By adopting a neutral principles approach**, courts can resolve the secular questions a contract claim raises and still avoid any religious controversies over ‘questions

of religious doctrine, polity, and practice’.” 81 U Minn L R at 292, *citing Jones*, 443 US at 603 (emphasis added); *Geraci v Eckankar*, 526 NW2d 391, 396 (Minn Ct App), *cert denied* 116 S Ct 75 (1995). As long as adjudication of the contract claim does not require the Court to decide such questions, no risk of excessive entanglement with religion exists. *Hernandez v Commissioner*, 490 US 680, 696-697; 109 S Ct 2136; 104 L Ed 2d 766 (1989); *Jones*, at 602-604.

The Michigan Supreme Court in *Borgman*, and the Michigan Court of Appeals in *Bennison*, 121 Mich App at 705, and several courts in other jurisdictions have made it clear that church contracts, whether internal or external, are enforceable:

“All disputes among members of a congregation are not doctrinal disputes. Some are simple disputes as to the meaning of agreements on wills, trusts, contracts, and property ownership. These disputes are questions of civil law and are not predicated on any religious doctrine”... the question of what [the parties] agreed to, or whether they agreed at all are not doctrinal and can be solved without intruding into the sacred precincts. *Mundie v Christ United Church*, 2009 PA Super 262; 987 A2d 794 (2009), *citing Presbytery of Beaver-Butler of United Presbyterian Church v. Middlesex Presbyterian Church*, 507 Pa 255; 489 A 2d 1317 (1985).

“It was not the intent of (the first amendment) ... that civil and property rights should be unenforceable in the civil courts simply because the parties involved might be church members, officers, or the ministry of the church.” *Bodewes v Zuroweste*, 15 Ill App 3d 101, 103; 303 NE 2d 509, 511(1973); *see Gipe v Superior Court of Orange County*, 124 Cal App 3d 617; 177 Cal Rptr 590 (1981)(whether

to pay minister in accordance with contract can be determined without resolving the ecclesiastical controversy between the minister and church); *Jenkins v The Trinity Evangelical Lutheran Church*, 356 Ill App 3d 504; 825 NE2d 1206 (2005); *Bennison*, at 705 (a dispute over title to property between factions of such an organization may well be determined without reference to [religious] doctrine or ecclesiastical polity).

In addition to *Vincent*, there is an abundance of legal authority where civil courts have carried out their duty to review and interpret a religious organization's internal governance documents using neutral principles of law. Several civil courts in other jurisdictions have reviewed internal agreements, bylaws, and manuals using neutral principles of law to determine whether the proper church authority terminated the pastor and have found the abstention and ministerial doctrines are not a bar to judicial resolution. *Abrams v Watchtower & Bible and Tract Society of New York, Inc.* 306 Ill App 3d 1006, 1011; 715 NE 2d 798 (1999) (courts may apply neutral principles of law to interpret provisions of religious documents involving non-doctrinal matters); *Vann v Guildfield Missionary Baptist Church*, 452 F Supp 2d 651 (WD VA, 2006)(Where deacon chairman fired minister, the Court denied Church's motion to dismiss for lack of subject matter jurisdiction and rule of judicial deference to churches' employment decisions is not applicable because the church never took a vote to dismiss the minister, nor did it delegate that authority to the deacon chairman. Thus, the court had subject matter jurisdiction because the decision to fire the minister, as alleged in the complaint, was not the decision of a religious entity or church. As a result, that decision was not constitutionally protected from judicial review); *Morris Street Baptist Church v Dart*, 67 SC 338; 45 SE 753 (1903)(the only

questions [the court] had the power to consider were whether the congregation met, and whether it deposed the pastor); *Ervin v Lilydale Progressive Missionary Church*, 351 Ill App 3d 41; 813 NE 2d 1073 (2004)(Board must follow removal procedure in bylaws that require church membership vote for termination of pastor); *People ex rel Muhammad v Muhammad-Rahmah*, 289 Ill App 3d 740, 744; 682 NE 2d 336 (1997)(Board must follow removal procedure in bylaws that require church membership vote for termination of pastor); *Tibbs v Kendrick*, 93 Ohio App 3d 35, 42; 637 NE 2d 397, 402 (1994)(civil courts can decide whether proper church authority terminated the pastor); *Williams*, 349 SC at 336 (in decision regarding whether proper church authority terminated the pastor, the Court ruled trustees had no authority to dismiss pastor because the congregation is the highest authority in a congregational church in accordance with church bylaws); *Gillespie v Elkins Southern Baptist Church*, 177 W VA 89, 92; 350 SE 2d 715, 719 (1986)(in a congregational church, the membership ultimately controls the business of the church and, therefore, has the power to hire and fire the pastor); *Hemphill v Zion Hope Primitive Baptist Church of Pensacola, Inc.*, 447 So 2d 976, 977 (Fla App, 1984)(civil courts can determine whether a minister's discharge accorded with the corporate charter without addressing ecclesiastic matters).

The fact that Pastor Pearson and the Church voluntarily entered into a contract cannot be over-emphasized in this civil suit. "It is highly improbable that those religious organizations that choose to contract with their clergy do so because of a doctrinal tenet or religious conviction." 81 U Minn L R at 289 - 290. "Instead, religious organizations, like any other entity, enter contractual agreements to obtain some benefit, such as to "lock up" the services of an employee." *Id.*, at 290. "To excuse a religious organization from complying with a commitment into which it

has voluntarily entered is unjust and illogical.” *Id.*, citing *Reardon v Lemoyne*, 122 NH 1042; 454 A2d 428, 432 (1982)(“unfair and unjust to deny access to civil courts in non-doctrinal matters to parties who have voluntarily entered into civil contracts, citing Ellman, *Driven from the Tribunal: Judicial Resolution of Internal Church Disputes*, 69 Cal L R 1380, 1402-1403 (1981)). Indeed some legal commentators have maintained that **a civil court’s refusal to adjudicate a dispute over a contractual obligation simply because one of the litigants is a religious entity or a minister is a denial of equal protection as well as a violation of First Amendment rights.** Adams & Hanlon, *Jones v Wolf: Church Autonomy and the Religion Clauses of the First Amendment*, 128 U Pa L R 1291, 1330 (1980)(quoting Casad, *The Establishment Clause and the Ecumenical Movement*, 62 Mich L R 419, 432 (1964)). “A church is always free to burden its activities voluntarily through contracts, and such contracts are fully enforceable in civil court”. *Minker*, at 1360, citing *Watson*, 80 US at 679; US Const, Amend I; US Const, Amend XIV; accord Const 1963, Art 1, §4.

It is undisputed the parties voluntarily entered into Pastor Pearson’s employment contract pursuant to the Free Exercise Clauses of the Michigan Constitution and United States Constitution. In fact, when the parties voluntarily entered into the employment contract on April 6, 2008, the Church and its Executive Committee, which included Trustees as members, were in the superior contractual bargaining position. They drafted the contract, signed it, and then presented it to Pastor Pearson for his signature.³⁷ There was a meeting of the minds and

³⁷ Exh 1; Exh 2, ¶12; Exh 3, *Blackwell*, p. 70, lines 13-25, p. 71, lines 6-14, 19-25; *Webster*, p. 55, lines 1-6; Defendant/Counter-Plaintiff’s Counter-Claims at ¶10.

sufficient consideration and Pastor Pearson signed the contract.

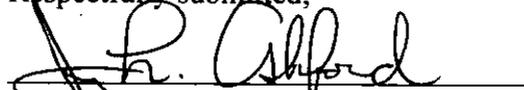
The Court can resolve Pastor Pearson's employment contract financial issues and enforce the Church's allocation of decision-making authority as clearly expressed in the unambiguous, plain language of the contract using neutral principles of law. *Jones v Wolf*, 443 US 595, 603; 99 S Ct 3020; 61 L Ed 2d 775 (1979).³⁸ Interpretation of the Pilgrim's Rest Baptist Church's religious doctrine is not necessary and there is no undue interference in the governance of the Church. Civil jurisdiction over the question does not depend on a normative resolution by courts of contested religious positions. *Georgetown Journal of Law & Public Policy*, at 150. "Instead the Court is asked to enforce only the allocation of power that the congregation has already adopted. *Id.* Rather than imposing a resolution on the congregation, the Court's exercise of jurisdiction protects and implements the congregation's own elected polity". *Id.*

³⁸ Exh 1; Exh 2, ¶¶17, 19; Exh 3, *Mayfield*, p. 45, lines 13-24; Exh 5; Exh 6, *Trustee suspension/Mayfield benefits termination letters to Arthur L. Pearson, Sr.*; Defendant/Counter-Plaintiff's Counter-Claims at ¶¶7, 10, 14-18, 21-24.

III. REQUEST FOR RELIEF

Based on the issues raised by Defendant-Appellant Arthur Pearson Sr. which are of major constitutional significance to Michigan jurisprudence and public policy and the factual support and legal authority cited herein, Defendant-Appellant requests that this honorable court grant Defendant-Appellant's Application For Leave To Appeal.

Respectfully submitted,



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DATED: June 1, 2015

STATE OF MICHIGAN
IN THE SUPREME COURT

THE PILGRIM'S REST BAPTIST CHURCH,
a/k/a PILGRIM REST MISSIONARY
BAPTIST CHURCH, NATHAN MAYFIELD,
and STEPHON BLACKWELL,

Plaintiffs-Appellees,

-vs-

Supreme Court Case No.

Court of Appeals Case No. 318797

Kent County Circuit Court Case No. 11-12242 CZ

ARTHUR PEARSON, SR.,

Defendant-Appellant,

BERNARD SCHAEFER (P-40114)

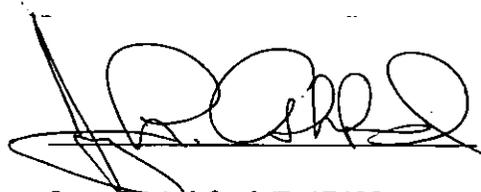
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NOTICE FOR HEARING

PLEASE TAKE NOTICE that *Defendant-Appellant Arthur Pearson Sr.'s Application For Leave to Appeal* will be submitted to the Michigan Supreme Court in the above captioned case on Tuesday, June 23, 2015.



Jerry L. Ashford (P-47402)

June 1, 2015

STATE OF MICHIGAN
IN THE SUPREME COURT

**THE PILGRIM'S REST BAPTIST CHURCH,
a/k/a PILGRIM REST MISSIONARY
BAPTIST CHURCH, NATHAN MAYFIELD,
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Appellees,

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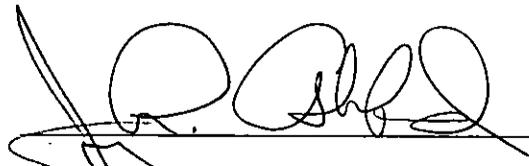
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CERTIFICATE OF SERVICE

I state that on Monday, June 1, 2015, I served a copy of *Defendant-Appellant Arthur Pearson Sr.'s Application For Leave To Appeal*, the *Notice For Hearing, Notice of Filing Application For Leave To Appeal* to Michigan Court of Appeals, *Notice of Filing Application For Leave to Appeal* to Kent County Circuit Court, and **this Certificate of Service** upon the above counsel of record, BERNARD SCHAEFER, ESQ., by United States mail delivery at the above captioned address.

A Notice of the filing of the Application was served on the clerks of the Michigan Court of Appeals and Kent County Circuit Court by United States mail at their respective business addresses.



Jerry L. Ashford