FROM SURVIVOR TO FIRED: THE MINISTERIAL EXCEPTION'S IMPACT ON EMPLOYMENT DISCRIMINATION AGAINST VICTIMS OF DOMESTIC VIOLENCE

JACLYN ALSTON[1]

I. INTRODUCTION

In 2013 a second-grade teacher at Holy Trinity School in San Diego was fired after reporting to her employer that she was a victim of domestic violence.[2] When Carie Charlesworth's ex-husband subjected Carie and her children to a weekend of abuse, during which the police were called three times, Carie was compelled to seek assistance from her employer, Holy Trinity School.[3] Carie explained the incidents of domestic violence and requested that the school remain on the lookout for her abuser.[4] After her ex-husband showed up at the school, where their children also attended school, Holy Trinity fired Carie.[5] The school reasoned that for the safety of students and faculty, they could not allow Carie or her children to return.[6] This action was taken without considering the fact that Carie and her children were also members of the faculty and student body that deserved concern for their safety as well.[7] While in the termination letter Holy Trinity claims to have sympathy and recognize the situation was through no fault of her own, the school points out that "whether or not she was aware," Carie's ex-husband had a long history of violent behavior, which reads as if the school implies Carie's fault as she "should have known."[8]

Though it was inherently clear that Carie's religious employer terminated her in discrimination of her status as a victim of domestic

---

[1] Staff Editor, New Developments, Rutgers Journal of Law and Religion: J.D. Candidate May 2022, Rutgers School of Law.

[2] Katie Eagan, *Woman Fired for Being a Domestic Violence Survivor: Why California Needs SB 400*, WOMEN'S FOUNDATION CALIFORNIA, Jun. 24, 2013, https://womensfoundca.org/woman-fired-for-being-a-domestic-violence-survivor-why-california-needs-sb-400/.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id. See also*, Elizabeth Lefebvre, *Catholic School Employee Fired … for Being a Victim of Domestic Abuse?*, U.S. CATH., Jun. 13, 2013, https://uscatholic.org/blog/catholic-school-employee-fired-for-being-a-victim-of-domestic-abuse/.

[7] Eagan, *supra* note 2.

[8] Lefebvre, *supra* note 6.

violence, she had little recourse.[9] This is due to a statutory exemption for religious employers in Title VII of the Civil Rights Act of 1964, which came to be known as the ministerial exception.[10] The ministerial exception bars employees who are deemed "ministers", or individuals employed by religious associations to perform work connected with the activities of that religion, from bringing discrimination claims against their religious employers.[11] This exception was first recognized by the Supreme Court in the 2012 case *Hosanna-Tabor v. EEOC*, only a year prior to Carie's termination.[12] Here, the Court elevated this statutory accommodation to a constitutional mandate under the First Amendment, affirming the existence of a constitutional ministerial exception.[13] This decision ultimately caused extremely varied interpretations in lower courts due to expansive discretion in how to apply the Court's analysis, which led the Court to revisit the issue in 2020 in *Our Lady of Guadalupe Schools v. Morrissey-Berru*.[14] In Morrissey-Berru's decision, the Court greatly expanded the interpretation of who qualifies as a "minister" for the purposes of employment discrimination claims, paving the way for complete immunity from discrimination cases for religious employers.[15]

Though domestic violence victims are not a class that has yet been deemed to be protected under federal anti-discrimination laws, such as Title VII or the ADA, as evidenced by Carie's case, domestic violence victims are the subject of discrimination as well.[16] Because of these lack of protections from discrimination, these individuals are particularly vulnerable. Though states have recognized the lack of protections and enacted statutory protections for these individuals in

---

[9] Eagan, *supra* note 2.

[10] 42 U.S.C. § 2000e-1; *see* Brief for Judicial Watch, Inc. as Amicus Curiae Supporting Petitioners, at 4, Our Lady of Guadalupe Sch. v. Morrissey-Berru, 140 S. Ct. 2049 (2020).

[11] (Brief) *Supra*, note 10 at 3.

[12] *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 173 (2012).

[13] *Hosanna-Tabor*, 565 U.S. at 190.

[14] *See* Fratello *infra*, note 42; *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020).

[15] *Morrissey-Berru*, 140 S. Ct. at 2069.

[16] Roy Maurer, *When Domestic Violence Comes to Work*, SHRM, https://www.shrm.org/resourcesandtools/hr-topics/risk-management/pages/domestic-violence-workplace-nfl-ray-rice.aspx (quoting Meagan Newman, a partner at Seyfarth Shaw and a nationally recognized legal expert on domestic violence in the workplace); Eagan *supra*, note 2.

response,[17] which was the state's response in Carie's case,[18] individuals employed by religious employers are still extremely vulnerable and unprotected from discrimination. This is due to the deference given to religious employers' decisions under the ministerial exception and the religious employer's ability, if needed, to ground their cause for termination in religious doctrines of submission.[19]

This article will first analyze the evolution of the ministerial exception and how the expansion in *Morrissey-Berru* may lead to even greater judicial deference and immunity for religious employers with regard to discrimination. Further, this article will go on to discuss the current protections on federal and state levels for victims of domestic violence, and how these laws fail to provide adequate protection to religious employees, particularly employees of organizations that practice faiths that support and institute the theory that women should submit to their husbands. Finally, this article will discuss how religious employers may treat domestic violence victims due to: religious doctrines that encourage such treatment, expansive protections provided by the ministerial exception, and the rise in domestic violence cases during the COVID-19 pandemic that underscores how domestic violence victims are overlooked and under-protected in the society.

As evidenced in Carie Charlesworth's case, victims of domestic violence had little recourse against their religious employers in 2013.[20] Since then, though states have offered expansion of discrimination protections for domestic violence victims,[21] the constitutionally mandated ministerial exception has been expanded clearing the way for religious employers to follow discriminatory doctrines within the employment context without judicial interference.[22]

---

[17] *See* NEV. REV. STAT. § 613.223 (2018); N.Y. HUMAN RIGHTS LAW § 296(1) (Consol. 2021); WASH. REV. CODE § 49.76.115 (2018); NJ Safe Act, 2013 N.J. Laws 82; N.C. GEN. STAT. § 50B-5.5 (2004); D.C. CODE § 2-1402.11 (2019); CAL. LABOR CODE § 230 (Deering 2018).

[18] Alyssa Newcomb, *New Law Protects Domestic Violence Victims' Jobs After California Teacher Was Fired*, ABC NEWS, Oct. 14, 2013, https://abcnews.go.com/US/law-protects-domestic-violence-victims-jobs-california-teacher/story?id=20565060.

[19] *See* White *infra*, note 69 at 881 (discussing the Christian teachings and writings of wives submitting to their husbands).

[20] Eagan *supra*, note 2.

[21] *See supra* note 17.

[22] *See Morrissey-Berru*, 140 S. Ct. at 2069.

II. DISCUSSION

A. THE EVOLUTION OF THE MINISTERIAL EXCEPTION

The First Amendment of the United States Constitution protects Free Exercise of Religion and prohibits the government from making any law respecting the Establishment of any religion.[23] This protection has necessarily been extended to various areas of the law, particularly in the employment context.[24] While Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits discrimination on the basis of race, color, religion, sex, or national origin,[25] these protections do not apply to religious employers that hire individuals of the associated religion to perform work connected with the activities of that religion.[26] This means that any religious employer - whether a religious corporation, association, educational institution, or society - is not bound to abide by anti-discrimination laws.[27] Citizens' rights often come into direct conflict with one another between the religious liberties enumerated in the First Amendment and employee protections against discrimination in Title VII.[28] As such, Courts must weigh the rights to find a just balance.

Religious employers' freedom from government intervention in employment decisions that is codified in Section 702 of Title VII was first upheld by the Supreme Court in *Presiding Bishop v. Amos*.[29] Here the Court found that the exemption did not violate the Establishment Clause of the First Amendment by allowing religious employers to choose employees for non-religious jobs based on their religion because the exemption served the permissible goal of preventing excessive governmental interference on matters of church governance.[30] This section of Title VII, however, does not provide an answer as to whether religious employers could discriminate on the bases other than religion itself.[31] Thus, Courts began to consider the

---

[23] U.S. CONST. amend. I.
[24] *See* 42 U.S.C. § 2000e-1.
[25] 42 U.S.C. § 2000e-2.
[26] 42 U.S.C. § 2000e-1.
[27] *Id.*
[28] (Brief) *Supra*, note 10 at 3.
[29] Rachel Barrick, *The Ministerial Exception: Seeking Clarity and Precision Amid Inconsistent Application of the Hosanna-Tabor Framework*, 70 EMORY L. J. 465, 467 (2020). *See also*, *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v, Amos*, 483 U.S. 327, 339 (1985).
[30] *Presiding Bishop*, 483 U.S. at 339.
[31] Barrick, *supra* note 29, at 472.

statutory exemption in conjunction with constitutional considerations, as first seen in *McClure v. Salvation Army*, to expand the statutory exemption to forms of discrimination other than religious.[32]

In *McClure*, the Fifth Circuit held that "Congress did not intend, through the non-specific wording of the applicable provisions of Title VII to regulate the employment relationship between the church and minister."[33] This language ultimately gave rise to what we now know as the ministerial exception.[34] The lower courts continued to confront this conflict of rights in cases such as *EEOC v. Roman Catholic Diocese* and *Alicea-Hernandez v. Catholic Bishop of Chicago*, where the Fourth and Seventh Circuits respectively held that the Plaintiffs were barred by the ministerial exception from bringing an employment discrimination lawsuit against their religious employers.[35] In both cases, the Plaintiffs had roles in the religious organization that the Courts deemed to be integral to religious worship and ministerial in nature.[36] Relying on the Court's reasoning in *Roman Catholic,* the Court in *Alicea-Hernandez* explained that "[t]he ministerial exception to Title VII is robust where it applies…the exception precludes any inquiry whatsoever into the reasons behind a church's ministerial employment decision. The church need not…proffer any religious justification for its decision."[37]

In recognition of the ambiguities of the ministerial exception, the Supreme Court finally intervened on the question of whether such exception was constitutional. Chief Justice Roberts authored the opinion in *Hosanna-Tabor v. EEOC* elevating the Title VII statutory accommodation into a constitutional mandate under the First Amendment, affirming the existence of a constitutional ministerial

---

[32] *McClure v. Salvation Army*, 460 F.2d 553 (5th Cir. 1972).
[33] *McClure*, 460 F.2d at 560-61.
[34] (Brief) *Supra*, note 10 at 4.
[35] *See EEOC v. Roman Catholic Diocese*, 213 F.3d 975, 801 (4th Cir. 2000) (considering the question of whether a music school director and part time music teacher at a Catholic Elementary School was considered a minister for the purposes of the employer being exempted from her non-secular employment discrimination lawsuit). *See also Alicea-Hernandez v. Catholic Bishop of Chicago*, 320 F.3d 698, 703-4 (7th Cir. 2003) (considering the question of whether the role of a Hispanic Communications Manager in conveying the church's message qualified the employee as a minister for the purposes of the employer being exempted from her non-secular employment discrimination lawsuit).
[36] *Roman Catholic Diocese*, 213 F.3d at 803; *Alicea-Hernandez*, 320 F.3d at 704.
[37] *Alicea-Hernandez*, 320 F.3d. at 703 (citing *EEOC v. Roman Catholic Diocese*, 213 F.3d at 802).

exception.[38] In considering the question of whether a church school that fired a teacher with a disability falls within the ministerial exception to Title VII under the religion clauses of the First Amendment, the Court answered in the affirmative.[39] In making such determination, the Court used an intentionally "non-rigid" four-factor test which considered: (1) whether the religious institution held the employee out as a minister; (2) whether the employee's title reflected a certain degree of religious training; (3) whether the employee used that title and held herself out to be a minister; and (4) whether the employee's duties reflected a role in conveying and carrying out the mission of the church.[40] In this case, the Court held that the government cannot force a church to keep a minister or punish the church for firing a minister without violating the Free Exercise Clause of the First Amendment, and that government interference with hiring and firing decisions violates the Establishment Clause.[41]

This decision, however, was not as enlightening or certain as many had hoped. Instead, it left lower courts with a significant amount of discretion in deciding how to interpret the test and to what extent they would apply the Court's four-factor analysis.[42] This confusion in the application of the *Hosanna-Tabor* precedent led the Court to face the complexity of the ministerial exception again in 2020. In *Our Lady of Guadalupe Schools v. Morriseey-Berru*, the Court considered a similar question of that posed in *Hosanna-Tabor*.[43] Here, two elementary school teachers at Roman Catholic Schools in the Archdiocese of Los Angeles taught religion in the classroom and worshipped with their students.[44] Both teachers sued the schools after they were terminated for age discrimination and for requesting leave for breast cancer treatment.[45] In both cases, the District Court granted summary judgment, but the Ninth Circuit reversed, reasoning neither party fell within the ministerial exception.[46] The

---

[38] *Hosanna-Tabor*, 565 U.S. at 190.
[39] *Id.* at 192.
[40] *Id.* at 191-192.
[41] *Id.*
[42] *Compare Fratello v. Roman Cath. Archdiocese of N.Y.*, 863 F. 3d 190 (2d Cir. 2017) (holding that a school principal was a minister), *and Grussgott v. Milwaukee Jewish Day Sch., Inc.*, 882 F.3d 665 (7th Cir. 2018) (holding that the teacher was a minister), *with Biel v. St. James Sch.*, 911 F.3d 603 (9th Cir. 2018) (holding that a teacher was not a minister).
[43] *Morrissey-Berru*, 140 S. Ct. at 2049.
[44] *Morrissey-Berru*, 140 S. Ct. at 2055.
[45] *Id.* at 2058-59.
[46] *Id.* at 2058.

Ninth Circuit focused on the lack of evidence of ministerial status as a formal position or title rather than the existence of significant religious functions.[47]

Ultimately, the Supreme Court held that the Plaintiffs did fall within the ministerial exception, and that the Ninth Circuit erred in relying upon the *Hosanna-Tabor* factors as necessary to be satisfied in all ministerial exception cases.[48] Instead, the Court reasoned that courts can consider different factors to determine whether an employee is a minister, and the key inquiry should be what the employee does.[49] The Court explained that the Plaintiffs educating young people in their faith is at the core of a private religious school's mission, and thus, the Plaintiffs qualified for the ministerial exception.[50] Ultimately, the Court purposefully decided this case without developing a rigid formula, leaving the ministerial exception broader than ever before.[51] This expansion invokes the question of whether religious employers can now ever be held accountable for violating laws meant to protect citizens' rights so long as they can (1) provide evidence that the employee is deemed a "minister" within the scope of the Court's non-rigid test, and/or (2) claim a religious doctrine prohibits them from abiding by certain laws.

B. STATUTORY PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE IN THE WORKPLACE

An issue of employment discrimination that may too often be overlooked is discrimination against victims of domestic violence. The common ideology of keeping an employee's personal life separate from their work life is idealistic and infeasible in the matter of domestic violence. The severity of domestic violence impacting the workplace demands the attention of employers, and as a result, the government. One in four women and one in nine men experience severe intimate partner physical violence, and one in seven women and one in eighteen men have been stalked by an intimate partner during their lifetime.[52] These staggering statistics warrant consideration as to how these incidents and traumas would translate into the workplace. For

---

[47] *Id.*
[48] *Id.* at 2066-67.
[49] *Id.* at 2064.
[50] *Morrissey-Berru*, 140 S. Ct. at 2064.
[51] *Id.* at 2069.
[52] *National Statistics*, National Coalition Against Domestic Violence, 2020, https://ncadv.org/STATISTICS.

instance, such victims may need leave from work to seek physical, mental, or emotional treatment, to attend the subsequent legal proceedings, and victims may also need reasonable accommodations in the workplace such as protective measures.

There are no current federal laws that directly address the rights of victims of domestic violence as employees.[53] While the EEOC has proposed guidance on addressing employer obligations to accommodate affected employees under Title VII and the ADA, there has not been a clear answer as to whether these federal statutes actually will provide the necessary federal protections.[54] The Occupational Safety and Health Act ("OSHA") does require employers to maintain a safe workplace, and the Administration has cited employers for lack of workplace violence safeguards under the Act's General Duty clause.[55] However, because these federal laws do not prohibit discrimination against applicants or employees who are victims of domestic violence, potential employment discrimination and retaliation against these individuals may be overlooked.[56]

Likely as a result of the absence of federal protections, many states have enacted statutes to address these concerns. States such as California, the District of Columbia, Nevada, New Jersey, New York, North Carolina, and Washington all have similar legislation protecting the employment of domestic violence victims.[57] For instance, Nevada's statute makes it unlawful for an employer to discriminate in any manner or deny employment or promotion to an employee because the employee requested leave for incidents of domestic violence, the employee participated in domestic violence proceedings, or the employee requested reasonable accommodations regarding domestic violence.[58] Similarly, Washington's statute prohibits the discrimination of domestic violence victims and the retaliation of such individuals with regard to hiring, firing,

---

[53] Mauer, *supra*, note 16.

[54] U.S. Equal Emp. Opportunity Comm'n, *Questions and Answers: The Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic or Dating Violence, Sexual Assault, or Stalking*, (Oct. 10, 2012), https://www.eeoc.gov/laws/guidance/questions-and-answers-application-title-vii-and-ada-applicants-or-employees-who.

[55] Maurer, *supra*, note 16.

[56] *Id.*

[57] *See* NEV. REV. STAT. § 613.223 (2018); N.Y. HUMAN RIGHTS LAW § 296(1) (Consol. 2021); WASH. REV. CODE § 49.76.115 (2018); NJ Safe Act, 2013 N.J. Laws 82; N.C. GEN. STAT. § 50B-5.5 (2004); D.C. CODE § 2-1402.11 (2019); CAL. LABOR CODE § 230 (Deering 2018).

[58] NEV. REV. STAT. § 613.223 (2018).

compensation, or other terms of employment.[59] Moreover, the Washington statute requires employers to provide reasonable accommodations as well and provides examples such as a transfer, reassignment, and implemented safety procedure; however, the statute establishes an exception to this required accommodation if the employer can demonstrate the accommodation would impose an undue hardship.[60] Undue hardship is defined in the statute as an action requiring significant difficulty or expense.[61] California, the District of Columbia, New Jersey, and New York's statutes all mirror these statutes.[62] While North Carolina's statute is a bit less in depth, only prohibiting employment discrimination when an employee took "reasonable time off" due to incidents relating to domestic violence, it does provide some relief for victims.[63]

While these statutes provide more protection for victims of domestic violence than the non-existent federal protections, the statutes are still only the bare minimum. Employees still cannot seek relief for domestic violence discrimination on the federal level, and these state protections only extend so far. Notably, the COVID-19 pandemic has introduced another aspect of domestic violence and employment to consider: working from home.[64] For many, home is a dangerous place, and their workplace was actually a sanctuary from the abuse they endured at home. In a remote world, instances of domestic violence skyrocketed as many were unable to escape their abusers.[65] This raises another question of whether these statutes are sufficient to adequately protect individuals from employment

---

[59] WASH. REV. CODE § 49.76.115 (2018).
[60] *Id.*
[61] *Id.*
[62] N.Y. HUMAN RIGHTS LAW § 296(1) (Consol. 2021) (prohibiting the discrimination of victims of domestic violence and any retaliatory employment actions such as refusal to hire, diminished compensation, or firing); NJ Safe Act, 2013 N.J. Laws 82 (requires employers to provide up to 20 days unpaid leave from work for victims of domestic violence, and includes an anti-retaliation providing); D.C. CODE § 2-1402.11 (2019) (prohibiting employment discrimination against victims of domestic violence through adverse employment actions and requires employers to provide reasonable accommodations); CAL. LABOR CODE § 230 (Deering 2018) (prohibiting discrimination against victims of domestic violence when the individual's victim status is disclosed, and requires employment reasonable accommodations).
[63] N.C. GEN. STAT. § 50B-5.5 (2004).
[64] Carmela Ver, *Intimate Partner Violence During the COVID-19 Pandemic*, AM FAM PHYSICIAN (Jan 1, 2021), https://www.aafp.org/afp/2021/0101/p6.html.
[65] *Id.* (Explaining that in March 2020, U.S. police departments reported an increase in domestic violence calls as high as 27% after stay-at-home orders were implemented.)

discrimination, and whether these accommodations and leave requirements extend to a work-from-home mandate. Finally, as evidenced by the significant expansion of the ministerial exception,[66] it is questionable as to whether even these very minimal statutory protections will be able to be enforced against religious employers without impeding on the constitutionally mandated deference to religious employer's employment decisions.[67]

C. THE INTERSECTION OF RELIGION AND DOMESTIC VIOLENCE

While domestic violence is found across all races, religions, social classes, economic classes, and professions, communities often differ on their perception and response to such incidents.[68] In certain communities, specifically religious communities, attitude towards abused women are not analogous to the broad public perception as reflected in media,[69] and as a result, women who find themselves in such communities tend to be overlooked in lawmaking. While these communities with differential treatment towards domestic violence victims tends to be of certain faiths that embody and enforce religious doctrines that threaten the protection of abused women, experts do not suggest that the frequency of domestic violence is greater within religious communities.[70] Instead, scholars have found that religious women tend to be more vulnerable when abused due to religious

---

[66] *See Morrissey-Berru*, 140 S. Ct. at 2069.
[67] *Id.*
[68] Nancy Nason-Clark, *When Terror Strikes at Home: The Interface Between Religion and Domestic Violence*, 43 J. FOR SCI. STUDY OF RELIGION 303, 303 (2004).
[69] *Compare* Jeffrey Kluger, *Domestic Violence is a Pandemic within the COVID-19 Pandemic*, TIME, Feb. 3, 2021, https://time.com/5928539/domestic-violence-covid-19/, and Amanda Taub, *A New COVID-19 Crisis: Domestic Violence Abuse Rises Worldwide*, N.Y. TIMES, Apr. 6, 2020, https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html (providing two modern examples of the rising level of awareness and effort to address issues of domestic violence, specifically as the number of incidents rose within the COVID-19 pandemic) with Kimberly Diane White, *Covenant Marriage: An Unnecessary Second Attempt at Fault-Based Divorce*, 61 ALA. L. REV. 869, 880-81 (2010) (noting that some Christian and Muslim leaders direct wives to endure abuse to save their marriage at all costs due to the communities' belief that women should be submissive to their husband) and Marie M. Fortune, Salma Elkadi Abugideiri & Mark Dratch, *A Commentary on Religion and Domestic Violence*, FAITH TRUST INST., 1 (2010) (noting that scriptures of most religions have been interpreted to justify spousal abuse and support female submission in families).
[70] Nason Clark, *supra* note 58, at 304.

doctrines, found in some form across many different faiths, that encourage the idea that women should submit to their husbands.[71]

Though the doctrine of submission is followed in several widely practiced faiths, such as Islam and Judaism,[72] for the purpose of this article I will focus on how it is practiced and viewed within Christianity as Christianity is the most dominantly followed religion in the United States.[73] Christian religious leaders across the board in the United States believe that marriage should be saved at all costs, even when domestic violence occurs.[74] Teachings and historical practices within the Christian faith have condoned, or even encouraged, men abusing their wives by the deeply imbedded belief that women are to submit to their husbands.[75] This doctrine is believed to be based upon passages from Christian writings, such as "wives be subject to your husbands as you are the Lord," from Paul's letter to the Ephesians and directives from clergy based upon scriptures that state women must submit to their husbands.[76] While scholars suggest that this does not correctly interpret the Bible's true meaning,[77] the effect of such misinterpretation is far reaching.

Studies of Christian leaders have solidified the notion that this interpretation is implemented in religious teachings and given as a guidance for abused religious women. For instance, a study of conservative Protestant pastors found that almost *all* of the pastors would never advise a woman to leave her abuser and that the woman's lack of submission was at least in part responsible for the abuser's violence.[78] More recently, a study of 158 Christian leaders found that many believed marriage must be saved at all costs, even if domestic

---

[71] *Id.*

[72] Michael Gilad, *In God's Shadow: Unveiling the Hidden World of Victims of Domestic Violence in Observant Religious Communities*, 11 RUTGERS J. L. & PUB. POL'Y 471, 503-04, 517-18 (2014) (noting that in Jewish communities, there is an obligation of the wife to be obedient and compliant with her husband, which makes it difficult for the abused woman to be seen as a victim rather than a blameworthy party. Similarly, Muslim communities, women are expected to be obedient and submissive to their husband, making it difficult for women to resist violence against their abusive husbands.)

[73] *Religious Landscape Study*, PEW RESEARCH CENTER, 2021, https://www.pewforum.org/religious-landscape-study/ (reporting that 70.6% of United States citizens are affiliated with the Christian faith).

[74] Gilad, *supra* note 72, at 525.

[75] White, *supra* note 69, at 880.

[76] *Id*; Gilad, *supra* note 72, at 530.

[77] Gilad, *supra* note 72, at 529-30.

[78] White, *supra* note 69, at 881.

violence is present, and the solution would be to forgive and forget such abuse.[79]

Though this doctrine seems outdated, it has a stronghold in Christian teachings that are foundational doctrines from which religious leaders teach and advise. If these same religious leaders are placed in a position of power, or are influencing religious individuals that hold their own positions of power, the likelihood remains that doctrines of submission will be upheld and will influence decision making when it comes to matters of domestic violence.

D. RELIGIOUS EMPLOYERS' OPPORTUNITY TO UNDERMINE DOMESTIC VIOLENCE PROTECTIONS

Due to the expansion of the ministerial exception in *Morrissey-Berru*, religious employers are given more deference now than ever before.[80] This power to evade laws that protect employees from employment discrimination renders religious employees exceptionally vulnerable.[81] Particularly, with the broad interpretation and framework as to who qualifies as a ministerial employee, religious employers need not even have a religious basis in their adverse employment action against such ministerial employee.[82] As such, religious employees are not afforded the protections under Title VII due to the direct conflict between Title VII protections and the First Amendment's Establishment and Freedom of Expression clause.[83] While Title VII has not yet been interpreted to extend to protect victims of domestic violence, states have instituted employment discrimination laws for such victims to attempt to alleviate such deficiencies in federal protections.[84] Even so, these laws provide minimal protection for victims of domestic violence, particularly when considering those that are employed by religious entities.

---

[79] *Id*.
[80] *See Morrissey-Berru*, 140 S. Ct. at 2069.
[81] Barrick, *supra* note 29 at 502.
[82] *See Morrissey-Berru*, 140 S. Ct. at 2069.
[83] (Brief) *supra* note 10, at 3; *see also Hosanna-Tabor*, 565 U.S. at 190.
[84] Mauer *supra*, note 16; *see* NEV. REV. STAT. § 613.223 (2018); N.Y. HUMAN RIGHTS LAW § 296(1) (Consol. 2021); WASH. REV. CODE § 49.76.115 (2018); NJ Safe Act, 2013 N.J. Laws 82; N.C. GEN. STAT. § 50B-5.5 (2004); D.C. CODE § 2-1402.11 (2019); CAL. LABOR CODE § 230 (Deering 2018).

This is because religious employers would likely have two strong defenses against judicial intervention in their employment decision making. First, the ministerial exception as described provides a constitutional mandate for courts to grant deference to religious employers, even when faced with a valid employment discrimination claim, if the wronged employee qualifies as a minister.[85] Since the interpretation of *who* qualifies as a minister has been broadly expanded in *Morrissey-Berru*, the employee's claim would likely fail regardless of the anti-discrimination laws enacted by states.[86] Moreover, religious employers may ground their reasoning in taking adverse employment action against an employee who is a victim of domestic violence in religious doctrines of submission.[87] The idea that women are to submit to their husbands, and to subsequently endure their abuse, continues to have a stronghold in several prominent faiths.[88] This reasoning - though not even required if the employee is deemed a "minister" - would give rise to yet another confrontation between the First Amendment Freedom of Expression and anti-discrimination laws. As evidenced by the Court's substantial deference it continues to grant to religious employers,[89] it is unlikely that domestic violence victims would ever prevail in employment discrimination claims against their religious employer.

III. CONCLUSION

Domestic violence victims represent a sector of individuals susceptible to discrimination but who are often overlooked in lawmaking and judicial interpretation. As the world navigated the trauma of the COVID-19 pandemic, victims of domestic violence suffered the trauma of a pandemic of their own.[90] As individuals were forced to work remotely due to stay at home orders, or laid off from their jobs completely, they became trapped in the very place that they sought to escape.[91] Just as Carie Charlesworth described of her own

---

[85] *See Morrissey-Berru*, 140 S. Ct. at 2069.
[86] *Id*.
[87] Gilad, *supra* note 72 at 503-04, 517-18, 525 (discussing the doctrines of submission across faiths such as Islam, Judaism, and Christianity).
[88] *Id*.; White, *supra* note 69, at 881.
[89] *See Hosanna-Tabor*, 565 U.S. at 190; *Morrissey-Berru*, 140 S. Ct. at 2069.
[90] Ver, *supra* note 64 (discussing that in March 2020 U.S. police departments reported an increase in domestic violence calls as high as 27% after stay-at-home orders were implemented).
[91] *Id*.

story, work is a "safe place" for most victims since home is where they are most vulnerable to abuse.[92] Beyond providing a safe haven, employment also provides economic stability that victims so desperately need.[93] Abusers often perpetuate their partner's economic insecurity as a mechanism for control because individuals who cannot afford to leave a relationship often will not.[94] This economic control was only amplified for victims during the pandemic who lost their jobs, received pay cuts, or received reduced hours. Likely as a result of loss of sanctuary and economic stability during the pandemic, domestic violence cases soared across the world.[95]

The pandemic has only underscored the critical need for the United States to reconsider the way it responds to incidents of domestic violence, and yet – to be fair, unknowingly – within the same year, the Supreme Court expanded their interpretation of an exemption that immunizes religious employers from discrimination claims.[96] Though on its face the two events seem unrelated, it only seems that way due to the lack of recognition of domestic violence victims' vulnerability as employees. The importance of employment to domestic violence victims cannot be overstated. They not only seek refuge from abuse at their place of employment, but also require the economic stability to aspire to one day be able to free themselves from the abuse.[97] However, victims also may need certain accommodations to be met at work - whether that be secured time off to recover, time off for judicial proceedings, or safety accommodations – and if their employer is not bound to assist the victim in receiving these accommodations, it not only discriminates on the basis of their status but also could make the victim's economic and personal situation worse.

While there are certain states that mandate compliance with accommodations by employers for these exact reasons,[98] religious

---

[92] Newcomb, *supra* note 18.

[93] Robin Bleiweis and Osub Ahmed, *Ensuring Domestic Violence Survivors' Safety*, CENTER FOR AMERICAN PROGRESS, Aug. 10, 2020, https://www.americanprogress.org/issues/women/reports/2020/08/10/489068/ensuring-domestic-violence-survivors-safety/.

[94] *Id.*

[95] Ver, *supra* note 64.

[96] *See Morrissey-Berru*, 140 S. Ct. at 2049.

[97] Bleiweis & Ahmed, *supra* note 93; Ver, *supra* note 64.

[98] *See* N.Y. HUMAN RIGHTS LAW § 296(1) (Consol. 2021) (prohibiting the discrimination of victims of domestic violence and any retaliatory employment actions such as refusal to hire, diminished compensation, or firing); NJ Safe Act, 2013 N.J. Laws 82 (requires employers to provide up to 20 days unpaid leave from work for victims of

employers are essentially fully exempt from being forced to comply with these protections due to the ministerial exception.[99] While religious employers may seem like a small sector of employers that are immune from employee discrimination claims, this is particularly dangerous and burdensome to domestic violence victims as employees of religious entities. Since certain dominant faiths still practice the teachings of spousal submission, suggesting that wife should submit to the husband and endure abuse because it's better than divorcing, its arguably more likely that religious employers will be unwilling to accommodate victims of domestic violence.[100] This is because in certain faiths they are not identified as "victims" but instead blameworthy since they did not submit or obey.[101] This doctrine may then be used in conjunction with the ministerial exception to provide no recourse for domestic violence victims who are subjected to employment discrimination. In a world burdened by a global-health crisis, the silent pandemic of domestic violence was creeping in the background, and at the same time, the protections for victims in the religious employment context plummeted in a catastrophic way. Though this is seemingly a small battle, efforts to ensure the health, safety, and economic security of survivors must be reconsidered in all aspects of the law and employment to improve survivor support across the board for victims like Carie.

---

domestic violence, and includes an anti-retaliation providing); D.C. CODE § 2-1402.11 (2019) (prohibiting employment discrimination against victims of domestic violence through adverse employment actions and requires employers to provide reasonable accommodations); CAL. LABOR CODE § 230 (Deering 2018) (prohibiting discrimination against victims of domestic violence when the individual's victim status is disclosed, and requires employment reasonable accommodations).

[99] *See Morrissey-Berru*, 140 S. Ct. at 2069.

[100] *See* Gilad, *supra* note 72, at 503-04, 517-18, 525 (discussing the doctrines of submission across faiths such as Islam, Judaism, and Christianity) and White, *supra* note 69 at 881 (citing that many pastors would advise victims to never leave their abuser, that the victim's lack of submission was at least part of the reason or the violence, and victims should forgive and forget the abuse).

[101] *Id.*