

#ChurchToo: How Non-Disclosure Agreements are Unconscionable Contracts that Perpetuate the Subjugation of Women in the Evangelical Church

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I. INTRODUCTION

In the fall of 2014, Lori Anne Thompson met Ravi Zacharias for the first time at a business luncheon in Ontario.¹ Ravi Zacharias, a renowned Christian apologist, recently passed away in May of 2020.² Reflecting upon her first time meeting Zacharias, Lori Anne remarked, “[Zacharias] appeared to be one of the safest, most well respected, and honourable persons in whom to confide and seek wise counsel. His position as a global representative of the gospel was one of extraordinary and unquestioned trust.”³ At the time of meeting, Lori Anne was a mother of five children, finishing her undergraduate degree, and about to enter into her dream career.⁴

Over time, Zacharias groomed Lori Anne, eventually developing an illicit online relationship with her.⁵ When Lori Anne disclosed the nature of her relationship with Zacharias to two Christian counselors in a counseling intensive in 2016, they collectively drafted an email to cut off all contact with Zacharias.⁶ Additionally, the counselors encouraged Lori Anne to tell her husband about the abuse.⁷ In response to her email, Zacharias threatened to commit suicide if Lori Anne broke her silence.⁸ Lori Anne shared, “I was terrified in that moment and for a long time to come. To my betrayer, telling anyone was betrayal. Abusers not only demand silence — they enforce it.”⁹

Upon telling her husband, Lori Anne described, “[n]o one slept that Saturday night and for many years of Saturdays to come. Life as we knew it was ripped apart. We were torn asunder. I can hardly find the words to describe the complete and utter relational, emotional, psychological, and physical implosion.”¹⁰ Due to the toll the abuse took on Lori Anne and her family, she decided to take a leave of absence from her work, seek trauma-informed care, and muster through “a full year and a half of very hard work

¹ Lori Anne Thompson, *Victim Impact Statement*, WORDPRESS (Feb. 8, 2021), <https://lorianne-thompson.com/2021/02/08/lori-anne-thompson-victim-impact-statement> [<https://perma.cc/5R8G-VLMW>].

² Daniel Silliman, *Ravi Zacharias Dies of Cancer*, CHRISTIANITY TODAY (May 19, 2020, 7:00 AM), <https://www.christianitytoday.com/news/2020/may/ravi-zacharias-death-cancer-rzim-apologist.html> [<https://perma.cc/NCZ9-WSC6>].

³ See Thompson, *supra* note 1.

⁴ *Id.*

⁵ Julie Roys, *Betrayed Trust, Part One: New Testimony, Emails & Other Documents Portray Ravi Zacharias as Predator in Sexting Scandal*, THE ROYS REP. (Sept. 14, 2020, 7:36 PM), <https://julieroys.com/ravi-zacharias-sexting-predator> [<https://perma.cc/3ZH6-SN35>].

⁶ See Thompson, *supra* note 1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

just to establish some semblance of safety and stability.”¹¹

Once the initial shock from sharing the abusive relationship with Zacharias subsided, the Thompsons began to review various options to hold Zacharias accountable. Ultimately, they decided to confront Zacharias with a lawyer and sent him a demand letter.¹² After Zacharias’s legal team asked for more time to respond to Lori Anne’s demand letter, the Thompsons graciously granted an extension.¹³ Nevertheless, Zacharias responded by filing a federal lawsuit against the Thompsons for alleged extortion and racketeering.¹⁴ Burdened by the weight of the lawsuit, coupled with the realities of the Thompsons’ limited amount of resources in comparison to the immense amount of power and financial capability Zacharias had, the Thompsons believed that signing a mutual non-disclosure agreement was the only viable option.¹⁵

Nevertheless, Zacharias broke the agreement almost immediately when he took a fabricated version of the series of events to the press.¹⁶ After the release of the story on December 3, 2017, in Christianity Today magazine, the Thompsons promptly moved, for they could no longer remain in their neighborhood due to their trauma.¹⁷ Subsequently, Lori Anne left her professional career to pursue graduate studies in the field of abuse.¹⁸ In the wake of the abusive relationship and its aftermath, Lori Anne described,

Even though I was a survivor before I met [Zacharias], having met and come to know him was one of the most traumatizing, soul destroying, faith crushing seasons in my life. He tore down everything I had built and that I thought was beautiful. My marriage, my husband, my home, my faith, my families [sic] faith, my capacity to mother, my mental and physical health, what little good repute I had, and ultimately my entire career path.¹⁹

¹¹ *Id.*

¹² *See* Thompson, *supra* note 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *See* Thompson, *supra* note 1.

¹⁹ *Id.*

Unfortunately, the Thompsons were not Zacharias's only victims. In the wake of Lori Anne's story being brought into the light, many other victims came forward with their own stories of abuse alleged against Zacharias.²⁰ These stories launched an investigation into the allegations, and, in February of 2021, a twelve-page report released by Ravi Zacharias International Ministries (RZIM) confirmed the abuse committed by Zacharias.²¹ The report detailed abuse that occurred at day spas he owned in Atlanta, uncovered five additional victims in the United States, and revealed evidence of sexual abuse committed in Thailand, India, and Malaysia.²²

More specifically, one woman told the RZIM investigators that "after [Zacharias] arranged for the ministry to provide her with financial support, he required sex from her."²³ This detailed report verified what Lori Anne already knew—that Ravi Zacharias was an unrepentant abuser until the day he died. Even though the truth of the abuse has come to light, despite the wishes of the Thompsons and a corresponding petition in support of voiding the non-disclosure contract, Lori Anne remains bound by the agreement.²⁴

This story, while devastating, is unfortunately not unique. Through countless other stories like Lori Anne's, it is clear that the church is not immune to the #MeToo movement. Beyond this, the church and other similar religious institutions are no stranger to the use of non-disclosure agreements in instances of abuse, oftentimes for the purpose of protecting the institution and defending its religious leaders. Thus, this Note asserts three central arguments regarding the use of non-disclosure agreements in religious spaces.

First, this Note asserts that non-disclosure agreements used in instances of sexual abuse within the evangelical church are unconscionable contracts that should be void as against public policy. Second, this Note contends that lawyers have an ethical duty not to engage in the development and facilitation of such contracts. Finally, this Note argues that the ongoing use of such non-disclosure agreements contributes to the perpetuation of the male dominated hierarchy in white evangelical spaces, which, in turn, perpetuates the subjugation of women in these evangelical institutions.

²⁰ Daniel Silliman & Kate Shellnut, *Ravi Zacharias Hid Hundreds of Pictures of Women, Abuse During Massages, and a Rape Allegation*, CHRISTIANITY TODAY (Feb. 11, 2021, 4:29 PM), <https://www.christianitytoday.com/news/2021/february/ravi-zacharias-rzim-investigation-sexual-abuse-sexting-rape.html> [https://perma.cc/3PP9-KVD7].

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Kara Million, *Release Lori Anne Thompson from her NDA Regarding Ravi Zacharias*, CHANGE.ORG (Jan. 26, 2021), <https://www.change.org/p/ravi-zacharias-international-ministries-release-lori-anne-thompson-from-her-nda-regarding-ravi-zacharias> [https://perma.cc/HQQ5-A7H3].

In sum, lawyers must be held to a higher standard when engaging in the creation of non-disclosure agreements and courts must have a more active role in intervening in these agreements when they prove to be unconscionable contracts. In turn, both attorneys and the courts can better be geared toward the pursuit of justice within the United States legal system. And, most importantly, such changes will help hold white evangelical institutions accountable, hopefully ushering in a new era of reconciliation, restoration, and growth within these spaces.

II. BACKGROUND

The past decade has brought to light countless stories of abuse, both within broader culture and within the white evangelical sphere. Given this, it is important to understand the systems in place that have led to this reality. This section explores the following eight concepts to help paint a fuller picture of the relevant dynamics and structures: A) the background of the #ChurchToo movement, B) the relationship between the #ChurchToo and #MeToo movements, C) the prominent characteristics of white evangelicalism, D) the social dynamics within white evangelical spaces, E) the contours of non-disclosure agreements, F) recent legislation and the National Labor Relations Board ruling, G) the role of attorneys in crafting these agreements, and finally, H) the use of alternative dispute resolution.

A. What Is The #Churchtoo Movement

The #ChurchToo movement was founded in 2017 by Hannah Paasch and Emily Joy, two women who grew up in white evangelicalism and experienced sexual abuse within these church contexts.²⁵ This movement began as a response to the stories of sexual abuse emerging across religious institutions, including the Roman Catholic church, the Southern Baptist denomination, and non-denominational evangelical congregations.²⁶ Each new story that was brought to light inspired others to come forward with their own story of abuse. Jules Woodson, a survivor of sexual abuse, shared her story on a blog for victims of church abuse after confronting her abuser via email and never receiving a response.²⁷

²⁵ Kelly Colwell & Sheryl Johnson, *#MeToo and #ChurchToo: Putting the Movements in Context*, 117 REV. & EXPOSITOR 183, 186 (2020).

²⁶ *Id.*

²⁷ Opinion, *I Was Assaulted. He Was Applauded.*, N.Y. TIMES (Mar. 9, 2018), <https://www.nytimes.com/2018/03/09/opinion/jules-woodson-andy-savage-assault.html> (on file with the

When Jules was a high school student, she had formed a trusted relationship with her youth pastor, Andy Savage.²⁸ One evening, when Jules was seventeen, she obtained parental permission for Savage to drive her home after a youth group event.²⁹ When Savage missed a turn, Jules innocently believed that he was taking her out for ice cream before bringing her home.³⁰ Instead, she was taken down a dark dirt road and molested.³¹ After bringing her story to the leaders within her church, Jules expected to be protected and cared for by them.³² However, the church leaders largely sat silently.³³ Therefore, in 2018, amidst the beginnings of the #ChurchToo movement, Jules bravely shared her story with the general public online.³⁴ In her post, Jules powerfully shared:

My hope in finally coming forward with my story is not only that I can begin to get closure and healing for all that has happened to me, but more so, that my story might have a positive impact on others and effect positive change in how these types of situations are handled within the church. To anyone who has suffered from sexual abuse in the church and the subsequent cover up and pressure to remain silent, I want you to know that it is not your fault. Most importantly, I want you to know that you are not alone.³⁵

As 2018 carried on, more stories like Jules' began to rapidly surface. Within the Southern Baptist denomination alone, abuse accusations have been made against 380 pastors, employees, and volunteers, impacting at least 700 victims.³⁶ More broadly speaking, "[i]n the average American congregation of 400 persons, with women representing, on average, 60% of the congregation, there are, [a]n average of 7 women who have experienced

author).

²⁸ Amy Smith, *Silent no More: A Survivor Story of Sexual Assault by Prominent Memphis Pastor Andy Savage Shares Her Story*, WATCHKEEP (Jan. 5, 2018), <https://watchkeep.org/2018/01/silent-no-more-a-survivor-of-sexual-assault-by-prominent-memphis-pastor-andy-savage-shares-her-story-metoo-churchtoo-silenceisnotspiritual> [<https://perma.cc/52R2-M78L>].

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ See Smith, *supra* note 28.

³⁵ *Id.*

³⁶ John Tedesco et al., *Abuse of Faith: Silence, Survival, Speaking Out: Survivors of Baptist Sexual Abuse Come Forward to Help Others*, HOUSTON CHRON. (June 6, 2019),

<https://www.houstonchronicle.com/news/houston-texas/houston/article/Abuse-of-Faith-Survivors-of-Baptist-sexual-abuse-13938643.php> [<https://perma.cc/5MWA-HLA4>].

clergy sexual misconduct.”³⁷ Further, beyond just church institutions, instances of abuse within parachurch organizations have come to light, including Kanakuk, a large and well-known Christian camp in Missouri.³⁸

Thus, instances of church abuse are widespread across religious institutions. Given this reality, survivors of abuse within religious spaces have joined the #MeToo movement and tailored it to their context, developing their own version of #MeToo via the emergence of the #ChurchToo movement. Through this movement, while justice has been fraught, survivors continue to bravely speak out about in an attempt to hold their abusers accountable, seek healing for themselves, and make the institutional church a safer place for those who have been deeply wounded by those in power.

B. *How Does The #Churchtoo Movement Fit Within The Larger #Metoo Movement*

The #MeToo movement originated with activist Tarana Burke in 2006.³⁹ It then exploded on Twitter on October 15, 2017, when actress Alyssa Milano posted, “[i]f you’ve been sexually harassed or assaulted write ‘me too’ as a reply to this tweet.”⁴⁰ While Tarana Burke, a Black woman, founded the movement, the #MeToo movement has largely been attributed to Milano, a white woman, despite various activists and others’ efforts to correct this misattribution.⁴¹ Therefore, this ten-year gap likely is due to the effects of white supremacy that consistently centers white voices in mainstream culture.

Later in October 2017, several more stories came to light in the media that exposed accounts of sexual harassment and abuse instigated by prominent people. First, Ashley Judd brought allegations of sexual assault against Hollywood producer Harvey Weinstein in a New York Times article on October 5.⁴² Then, on October 12, Amazon Studios head producer Roy

³⁷ Diana R. Garland, *The Prevalence of Clergy Sexual Misconduct with Adults: A Research Study—Executive Summary*, BAYLOR SCHOOL OF SOCIAL WORK, <https://socialwork.web.baylor.edu/executive-summary> [https://perma.cc/V2Z9-646C].

³⁸ David French & Nancy French, ‘They Aren’t Who You Think They Are:’ *The Inside Story of How Kanakuk—One of America’s Largest Christian Camps—Enabled Horrific Abuse*, THE DISPATCH (Mar. 28, 2021), <https://thedispatch.com/newsletter/frenchpress/they-arent-who-you-think-they-are> [https://perma.cc/298H-BTAA].

³⁹ Colwell & Johnson, *supra* note 25, at 191.

⁴⁰ *Id.* at 183.

⁴¹ *Id.* at 191.

⁴² *Id.* at 184.

Price resigned after allegations of sexual harassment and assault by producer Isa Hackett.⁴³ Given these stories, Alyssa Milano bravely posted her tweet to encourage victims of abuse to speak out about their stories as a means to stand in solidarity with one another.

The end of 2017 ushered in many more allegations of abuse, including those against Olympic doctor Lawrence G. Nassar, actor Kevin Spacey, United States Senate nominee Roy Moore, and other well-known figures.⁴⁴ In 2018, more stories came to light, including allegations against then Supreme Court nominee Brett Kavanaugh by Christine Blasey Ford.⁴⁵ Overall, survivors bravely came forward with their stories during the #MeToo movement for the purpose of building empathy, supporting one another, exposing abuse, correcting systems of oppression, and empowering survivors of abuse.⁴⁶ These stories, in turn, inspired newfound accountability for those in power and led to holistic system change.

It is clear that the origins of the movement are tenuous, however. While this Note largely discusses the experiences of white women, as white women comprise a large amount of the affected demographic in white evangelical spaces, it is important to understand how sexual abuse and church abuse affects all people. Women of color should not be marginalized in the #MeToo conversation. Therefore, it is helpful to use an intersectional lens when discussing and analyzing this movement on a broader scale.

Kimberlé Crenshaw, a critical race theorist, first coined the term intersectionality in 1989 to show how different identities are multiplicative and create varying realities of discrimination.⁴⁷ By using this intersectional lens, the experiences of women of color can be better understood, especially regarding instances of sexual abuse within the #MeToo movement. Nevertheless, this Note will center the experiences of those in white evangelical circles and thus may not do justice to an intersectional analysis due to the current racial dynamics that are present within white evangelicalism.

C. *Who Are White Evangelicals, and What Is the White Evangelical Church Like in The United States*

Evangelicals claim to be defined by their theological beliefs, but the truth of this claim has been debated. Historically speaking, evangelicals have clung

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Colwell & Johnson, *supra* note 25, at 185.

⁴⁶ *Id.* at 184.

⁴⁷ Jane Coaston, *The Intersectionality Wars*, VOX (May 28, 2019),

<https://www.vox.com/the-highlight/2019/5/20/18542843/intersectionality-conservatism-law-race-gender-discrimination> [<https://perma.cc/5MTF-A3SH>].

to the Bebbington quadrilateral⁴⁸ to define their collective identity.⁴⁹ The four pillars of this quadrilateral are as follows: biblicism (upholding the Bible as the ultimate authority), crucicentrism (the centrality of the cross, or Christ's atonement), conversionism (believing in a born-again religious conversion experience), and activism (to actively work to spread the good news of Christ and to reform society accordingly).⁵⁰ However, as historian Kristin Kobes Du Mez writes:

In truth, what it means to be an evangelical has always depended on the world beyond the faith. In recent years, evangelical leaders themselves have come to recognize (and frequently lament) that a “pop culture” definition has usurped “a proper historical and theological” one, such that today many people count themselves “evangelical” because they watch Fox News, consider themselves religious, and vote Republican.⁵¹

Thus, as Du Mez describes, evangelicalism is defined by its consumer culture.⁵²

Beyond the religious commitments of evangelicals, over the past fifty years white evangelicals have become a powerful voting bloc. For example, in 2016, 81% of self-identifying white evangelicals voted for Donald Trump.⁵³ Consequently, Black Protestants have long resisted embracing the evangelical label because of the baggage that is associated with evangelicalism in the United States, particularly regarding political involvement and social beliefs.⁵⁴ Therefore, this Note will refer to the religious organizations mentioned here as white evangelical institutions for the following three reasons.

⁴⁸ D. W. BEBBINGTON, *EVANGELICALISM IN MODERN BRITAIN: A HISTORY FROM THE 1730S TO THE 1980S* 2–3 (1989).

⁴⁹ KRISTIN KOBES DU MEZ, *JESUS AND JOHN WAYNE: HOW EVANGELICALS CORRUPTED A FAITH AND FRACTURED A NATION* 5 fn.7 (2020) (citing *What is an Evangelical*, NATIONAL ASSOCIATION OF EVANGELICALS, <https://www.nae.net/what-is-an-evangelical/> (last visited 10/19/2024)).

⁵⁰ *Id.* at 5.

⁵¹ *Id.*

⁵² *See id.* at 11.

⁵³ Seth Dowland, *American Evangelicalism and the Politics of Whiteness*, *THE CHRISTIAN CENTURY* (Jul. 4, 2018), <https://www.christiancentury.org/article/critical-essay/american-evangelicalism-and-politics-whiteness> [<https://perma.cc/5DQB-ULFZ>].

⁵⁴ *See* DU MEZ, *supra* note 49, at 6.

First, many of the issues that arise regarding the widespread abuse in the church pertains distinctly to white evangelical institutions. To group all of these institutions under the same umbrella would be an injustice to the institutions that are not perpetuating this harm. Second, the term “white evangelical church” does not mean that there are no racialized minority congregants that participate in these spaces, nor does it mean that these institutions are essentially “white,” but rather that they are defined largely by what it means to be a white evangelical in the United States in the modern day.

Finally, white evangelical institutions in the United States greatly differ from the global church at large. While evangelicals can be found across the world, the global church is vastly diverse in thought and belief, and thus evangelicals can look very different depending on the context. For example, evangelicalism in the global south is generally much more concerned with the plight of the poor, systemic injustice, and political repression than its northern counterparts.⁵⁵

In sum, it is important to be precise about the nature of religious institutions that are the predominant instigators of non-disclosure agreements in instances of abuse. While the white evangelical church can be a rather niche component of the global church, it also has become an incredibly powerful political base and vastly affects many aspects of society, for better or for worse. Therefore, this Note will work to properly analyze the role of white evangelical institutions regarding the use of non-disclosure agreements in a just and defined manner.

D. What Are the Social Dynamics Within White Evangelical Spaces

While the social dynamics within white evangelical institutions vary between each individual church congregation or parachurch organization, there are some consistencies among these institutions across the board. For the purposes of this Note, the following three characterizations of white evangelical spaces are especially informative: 1) the prevalent role of purity culture, 2) the emphasis on male leadership, and 3) the centrality of conservative family values.

First, purity culture is often strongly definitive within white evangelical institutions.⁵⁶ Purity culture embodies a host of different teachings, including a strong emphasis on abstinence and chastity prior to heterosexual

⁵⁵ Gina A. Zurlo, *Local vs. Global Evangelism*, GORDON CONWELL THEOLOGICAL SEMINARY (Apr. 28, 2021), <https://www.gordonconwell.edu/blog/local-vs-global-evangelicalism> [https://perma.cc/MCM6-LXFM].

⁵⁶ Leslie Goldman, *To End Sexual Abuse in Churches, Dismantle Purity Culture*, MARIE CLAIRE (Oct. 28, 2020),

<https://www.marieclaire.com/culture/a34363222/purity-culture-churchtoo-movement-sexual-abuse-in-religious-settings> [https://perma.cc/F64F-VG3C].

marriage.⁵⁷ One manifestation of this culture is the development of strict gender roles and gender essentialism, or the idea that gender is “natural, immutable, discrete, informative, historically and cross-culturally invariant, and grounded in deep-seated, biological, factors.”⁵⁸

This belief system has been deeply ingrained in many white evangelical spaces, as evidenced by the popular evangelical book *Wild at Heart: Discovering the Secret of a Man's Soul*, by John Eldredge.⁵⁹ Published in 2001, *Wild at Heart* was arguably the most popular book on evangelical masculinity that year.⁶⁰ Eldredge's book was based on the premise that “God created all men to long for ‘a battle to fight, an adventure to live, and a beauty to rescue.’”⁶¹ For Eldredge, “God was a warrior God” and “aggression, not tenderness, was part of the masculine design.”⁶² Masculinity was “thoroughly militaristic,” for “God made men to be dangerous,” Eldredge confidently conveyed.⁶³ Deeply influential in white evangelical spaces, *Wild at Heart* sold more than four million copies in the United States.⁶⁴

Essentialized masculinity was not only on display in Eldredge's work—it also permeated the evangelical book market. The same year, James Dobson, a popular evangelical psychologist, published *Bringing up Boys*.⁶⁵ Dobson's book centered around the role testosterone plays in young men, believing that this hormone makes boys “competitive, aggressive, assertive, and lovers of cars, trucks, guns, and balls.”⁶⁶ Eventually selling more than 2 million copies,⁶⁷ Dobson's book was also highly received among white evangelicals.

⁵⁷ Madison Natarajan et al., *Decolonizing Purity Culture: Gendered Racism and White Idealization in Evangelical Christianity*, 46 PSYCH. OF WOMEN Q. 316, 316 (2022).

⁵⁸ Lea Skewes et al., *Beyond Mars and Venus: The Role of Gender Essentialism in Support for Gender Inequality and Backlash*, PUB. LIBR. OF SCI. ONE, July 2018, at 1, 1 <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200921>.

⁵⁹ See generally JOHN ELDREDGE, *WILD AT HEART: DISCOVERING THE SECRET OF A MAN'S SOUL* (2001).

⁶⁰ DU MEZ, *supra* note 49, at 173.

⁶¹ *Id.* at 174.

⁶² *Id.* at 173.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See generally, JAMES DOBSON, *BRINGING UP BOYS: PRACTICAL ADVICE AND ENCOURAGEMENT FOR THOSE SHAPING THE NEXT GENERATION OF MEN* (1st ed. 2001).

⁶⁶ DU MEZ, *supra* note 49, at 175.

⁶⁷ *Id.* at 177.

Books were not the only means of disciplining evangelicals into these modes of thinking, as Dobson had his own radio program which “reportedly carried on over 4200 stations around the world and heard daily by 200 million people.”⁶⁸

While it is hard to pin down exactly when the seeds of this muscular and militant Christian masculinity were planted, the fruits of these seeds continue to grow. Today, survey data shows:

More than any other religious demographic in America, white evangelical Protestants support preemptive war, condone the use of torture, and favor the death penalty. They are more likely than members of other faith groups to own a gun, to believe citizens should be allowed to carry guns in most places, and to feel safer with a firearm around. . . . For evangelicals, domestic and foreign policy are two sides of the same coin. Christian nationalism—the belief that America is God’s chosen nation and must be defended as such—serves as a powerful predictor of intolerance toward immigrants, racial minorities, and non-Christians. It is linked to opposition to gay rights and gun control, to support for harsher punishments for criminals, to justifications for the use of excessive force against [B]lack Americans in law enforcement situations, and to traditionalist gender ideology.⁶⁹

Needless to say, these essentialized views of masculinity are not fringe for white evangelicals but are rather central to their social and political understanding. As Du Mez concludes, “[w]hite evangelicals have pieced together this patchwork of issues, and a nostalgic commitment to rugged, aggressive, militant white masculinity serves as the thread binding them together into a coherent whole.”⁷⁰ Two decades after the publication of *Wild at Heart*, this same framework persists.

The counterpart to this rugged masculinity is a docile femininity. As Doug Wilson, another popular evangelical pastor and author, describes marriage in his book *Future Men: Raising Boys to Fight Giants*: “a man penetrates, conquers, colonizes, plants. A woman receives, surrenders, accepts.”⁷¹ This description reflects the complementarian view regarding gender roles, or the idea of male headship within Christian marriages and broader evangelical spaces, discussed more below. In sum, because of these various purity culture underpinnings, this culture, in some circumstances, has also led to the

⁶⁸ *Id.*

⁶⁹ *Id.* at 3–4.

⁷⁰ *Id.* at 4.

⁷¹ *Id.* at 178.

oppression of women's bodies, fostered a culture of shame, and perpetuated an environment ripe for sexual abuse.⁷² Thus, one in ten young protestants have left a church over abuse within the institution—oftentimes a byproduct of strict purity culture.⁷³

Second, white evangelicals heavily endorse male leadership. In 1987, prominent evangelical leaders John Piper and Wayne Grudem helped found the Council on Biblical Manhood and Womanhood (CBMW) to further complementarian teachings and practices.⁷⁴ CBMW created the Danver's Statement, which affirms views including: “[d]istinctions in masculine and feminine roles are ordained by God as part of the created order, and should find an echo in every human heart.”⁷⁵ For those that espouse this complementarian view, male headship in marriages and within the church is not a recommendation, but rather a biblical mandate. This view is juxtaposed with the egalitarian view, which asserts that there is no hierarchy among the sexes and that men and women are fundamentally equal. While both views are reflected in white evangelical spaces, most white evangelicals nevertheless hold themselves out as complementarians.

Because of this, church leadership is largely male dominated. Since 1998, there has been no increase in the number of congregations led by women, currently reported at 11% of existing congregations.⁷⁶ According to a Barna study, only 39% of self-identifying evangelicals are comfortable with a female priest or pastor, whereas 79% of Americans overall would be comfortable.⁷⁷ Further, only 3% of evangelical congregations and 30% of mainline congregations have a female senior pastor.⁷⁸

⁷¹ See Goldman, *supra* note 56 (“[W]hen sexual abuse or assault, committed by a religious leader or not, is reported by a woman within the context of the church, the *survivor* is often blamed. . . for her looks, for her sexuality, for her purported lack of modesty.”).

⁷³ Kate Shelnett, *1 in 10 Young Protestants Have Left a Church Over Abuse*, CHRISTIANITY TODAY (May 21, 2019, 10:00 AM),

<https://www.christianitytoday.com/news/2019/may/lifeway-protestant-abuse-survey-young-christians-leave-chur.html> [<https://perma.cc/PBC8-3DBQ>].

⁷⁴ *Our History*, THE COUNCIL ON BIBLICAL MANHOOD AND WOMANHOOD, <https://cbmw.org/about/history> [<https://perma.cc/7QYN-RPP9>].

⁷⁵ The Danvers Statement, THE COUNCIL ON BIBLICAL MANHOOD AND WOMANHOOD, <https://cbmw.org/about/danvers-statement> [<https://perma.cc/FZ72-YYME>].

⁷⁶ Eric Ferreri, *Study: Female Church Leaders Face Stained-Glass Ceiling*, DUKE TODAY (Dec. 9, 2015), <https://today.duke.edu/2015/12/chavesstudy> [<https://perma.cc/38V8-G4NQ>].

⁷⁷ *What Americans Think About Women in Power*, BARNA (Mar. 8, 2017), <https://www.barna.com/research/americans-think-women-power> [<https://perma.cc/XDV2-TDF5>].

⁷⁸ Andy Rowell, *Some Statistics on Women in Church Ministry*, ANDY ROWELL BLOG (Feb. 8,

Even beyond church leadership, women lack representation in positions of power among parachurch organizations and religious non-profits.⁷⁹ In the nonprofit sector at large, women comprise 48% of all board members, and over a third of CEOs.⁸⁰ In contrast, among evangelical nonprofit organizations, these numbers amount to less than half of their secular counterpart.⁸¹ Data shows that “[i]n evangelical nonprofit organizations with expenses over \$10 million, women compose 17% of the board (versus 40% [within secular nonprofit organizations]) and 5% (versus 24%) of CEOs.”⁸² Therefore, while attitudes regarding the role of women in religious leadership roles vary across individuals within white evangelical spaces, it is clear that the institutions at large are definitively not in favor of women preaching and leading at a macro-level.

Finally, white evangelicals tend to vote for right-wing candidates, support politically conservative issues, and prioritize family values. The religious right began to become a powerful voting bloc in the 1980s, originating with the creation of conservative pastor Jerry Falwell’s Moral Majority in the 1970s.⁸³ The Moral Majority developed in opposition to political, social and cultural transformations, including the civil rights, women’s, and gay rights movements, that occurred throughout the United States in the 1960s and 70s.⁸⁴ Since the creation of the Moral Majority, evangelicals by-and-large have voted for conservative Christian candidates in the United States, greatly shifting the field of US politics.⁸⁵

Additionally, family values are central to white evangelicalism. These values are exemplified by the core values of Focus on the Family, a flagship white evangelical institution. Focus on the Family’s six foundational values are as follows: the preeminence of evangelism (sharing the faith), the permanence of marriage, the value of children, the sanctity of human life, the

2022), https://andyrowell.net/andy_rowell/2022/02/some-statistics-on-women-in-church-ministry.html [https://perma.cc/KDR8-8PBH] (citing Mark Chaves et al., CONGREGATIONS IN 21ST CENTURY AMERICA 36 (2021) https://sites.duke.edu/ncsweb/files/2022/02/NCSIV_Report_Web_FINAL2.pdf).

⁷⁹ Amy Reynolds et al., *Women in Leadership: Gender Dynamics in Evangelical Institutions*, GORDON COLLEGE 3 (2016), https://www.wheaton.edu/media/global-and-experiential-learninggps/ntwk-initiv-gender-dev-christianity/FINAL_WILNSP1P2_December2016.pdf [https://perma.cc/8LA4-29V8].

⁸⁰ *Id.*

⁸¹ *Id.* at 8.

⁸² *Id.* at 9.

⁸³ Clyde Haberman, *Religion and Right-Wing Politics: How Evangelicals Reshaped Elections*, N.Y. TIMES (Oct. 28, 2018), <https://www.nytimes.com/2018/10/28/us/religion-politics-evangelicals.html> (on file with author).

⁸⁴ Amy Tikkanen, *Moral Majority*, BRITANNICA, <https://www.britannica.com/topic/Moral-Majority> [https://perma.cc/3AVE-4QZC].

⁸⁵ See Haberman, *supra* note 83.

importance of social responsibility, and the value of male and female.⁸⁶ These values, grouped together, demonstrate white evangelicals' commitment to conservative political policies and the nuclear family.

E. *Non-Disclosure and Non-Disparagement Agreements*

Non-disclosure and non-disparagement agreements are often used within white evangelical institutions in various circumstances including occurrences of church abuse. In these cases, representatives of the institution often approach the victim of abuse with a promise of compensation for their agreement to remain publicly silent. While the reasons why these agreements are presented differ from institution to institution, there are common themes or motives behind why non-disclosure and non-disparagement agreements are enacted, discussed further below. However, these agreements do not always need to be enforced, for they are subject to the standard contract defenses. Therefore, it is essential to gain a deeper understanding of what these agreements are, why they are created, and what relevant contractual defenses apply.

1. What Are Non-Disclosure Agreements

Non-disclosure agreements are best defined as “provisions in a settlement agreement that obligate parties to maintain confidentiality regarding the disputed matters at issue.”⁸⁷ They can either be unilateral or bilateral contracts.⁸⁸ Additionally, “[c]orporations, institutions, and individuals accused of, and seeking to avoid publicity concerning, serious misconduct may insist upon [a non-disclosure agreement] and in exchange pay ‘hush money’ to settle a dispute.”⁸⁹ Non-disclosure agreements often are either interchangeable or go hand-in-hand with non-disparagement agreements used within white evangelical institutions. Scot McKnight, New Testament scholar and author of *A Church Called Tov: Forming a Goodness Culture that Resists Abuses of Power and Promotes Healing*, defines the two as follows:

⁸⁶ Focus on the Family, *Our Vision* (2024), <https://www.focusonthefamily.com/about/foundational-values> [https://perma.cc/M8D4-88UU].

⁸⁷ Maureen A. Weston, *Buying Secrecy: Non-Disclosure Agreements, Arbitration, and Professional Ethics in the #MeToo Era*, 2021 U. ILL. L. REV. 507, 514 (2021).

⁸⁸ Catherine Bragg, *Non-Disclosure Agreements in Review*, AM. BAR ASS'N (Aug. 20, 2019), https://www.americanbar.org/groups/construction_industry/publications/under_construction/2019/summer/non-disclosure-agreement [https://perma.cc/MEG8-3A2N].

⁸⁹ See Weston, *supra* note 87, at 515.

Non-disclosures . . . pertain to intellectual property like a church creating a discipleship computer program with a person's knowledge; that person leaves and is asked/required not to talk about that program. Non-disparagements pertain to not talking bad[ly] about the institution, not telling dirty secrets, not disparaging the institution or the pastor or the people at the institution.⁹⁰

Attorneys play a central role in the drafting and facilitation of non-disclosure or non-disparagement agreements. Public policy favors the voluntary settlement of legal disputes, and lawyers are at the forefront of this process. Currently, professional conduct rules do not prohibit lawyers from drafting non-disclosure agreement provisions in a confidential settlement regarding sexual harassment or misconduct.⁹¹ However, a lawyer cannot counsel his or her client to break the law.⁹² A lawyer can ethically withdraw from legal representation, though, if they no longer desire to represent a client with whom they disagree.⁹³ Nevertheless, this process is largely up to the moral conscience of each attorney, as there are no professional conduct requirements regarding this matter.⁹⁴

In the context of religious institutions, non-disclosure agreements are oftentimes instigated by those in positions of power to trade severance pay for the victim's silence. Church institutions will offer those who come forward with complaints or allegations against a leader some form of compensation in return for their promise to refrain from sharing information regarding the allegations and to not disparage the institution as a whole. If the consenting party breaches the terms of the contract, then the court can hold the violator liable and demand that damages be paid to the aggrieved party. Thus, non-disclosure agreements have become incredibly common within white evangelical institutions—particularly megachurches⁹⁵—regarding multiple situations including employee termination and instances of sexual abuse.

⁹⁰ Scot McKnight, *Non-Disparagement Agreements and Truth-Telling in The Church: Willow Creek*, PATHEOS (Sept. 13, 2018, 8:52 AM), <https://www.patheos.com/blogs/jesuscreed/2018/09/13/non-disclosure-non-disparagement-agreements-and-truth-telling-in-the-church-willow-creek> [https://perma.cc/T4B8-K3GE].

⁹¹ See Weston, *supra* note 87, at 522.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See *id.*

⁹⁵ Megachurches commonly refer to “a church with an average weekly attendance of 2,000 or greater.” There are over 1,000 megachurches in the United States. *Megachurches*, CHRISTIANITY TODAY, <https://www.christianitytoday.com/topics/megachurches/> (on file with the author).

2. Why NDAs Are Used

White evangelical institutions use non-disclosure or non-disparagement agreements for a variety of reasons. In 2018, allegations of abuse against former pastor Bill Hybels of Willow Creek Community Church located in South Barrington, Illinois, first came to light.⁹⁶ Since 2018, Hybels has had more than a dozen women bring forth allegations of abuse against him.⁹⁷ While not all related to Hybels' alleged abuse, Willow Creek has admittedly signed several non-disclosure or disparagement agreements and has initiated more than fifty restraining order-type letters since they first opened their doors.⁹⁸ When asked why such agreements are used, Willow Creek's leadership team replied:

We believe the questions raised regarding NDAs (non-disclosure agreements) are likely referring to the church's financial care package offered to staff who are transitioning from their roles. If an individual leaves staff due to performance-related matters, and the timing places an undue hardship on the person and their family, the church offers an extension of compensation to help bridge the gap in finding new employment. . . . The legal document that extends the compensation and benefits includes a brief paragraph that asks the staff member to refrain from making disparaging or untrue statements about the church for the duration of the financial care agreement. The acceptance of the financial package does not prohibit a person from reporting any type of abuse or ethical violation, or from sharing their experience on staff.⁹⁹

Notably, while Willow Creek claims to allow persons bound to a non-

⁹⁶ Laurie Goodstein, *He's a Superstar Pastor. She Worked for Him and Says He Groped Her Repeatedly*, N.Y. TIMES (Aug. 5, 2018), <https://www.nytimes.com/2018/08/05/us/bill-hybels-willow-creek-pat-baranowski.html>.

⁹⁷ Julie Roys, *Alleged Victim of Bill Hybels Tells Story of How Church Tried to Silence Her*, THE ROYS REP. (Feb. 28, 2020, 7:09 PM), <https://julieroys.com/alleged-victim-of-bill-hybels-tells-story-of-how-church-tried-to-silence-her/#:~:text=The%20senior%20leader%20is%20Keri,Creek%20Senior%20Pastor%20Bill%20Hybels> [https://perma.cc/3J3A-8ZQJ].

⁹⁸ See McKnight, *supra* note 90.

⁹⁹ Stoyan Zaimov, *Willow Creek Explains Why Staff Sign Non-Disparagement Agreements after Scot McKnight Raises Questions*, THE CHRISTIAN POST (Sept. 15, 2018), <https://www.christianpost.com/news/willow-creek-explains-why-employees-sign-non-disparagement-agreements-in-response-to-scot-mcknight.html> [https://perma.cc/N89H-RMUC].

disclosure agreement to report instances of abuse, they do not allow individuals to take their stories to the media, as doing so could be regarded as sharing a disparaging statement.

Willow Creek is not the only evangelical institution to utilize non-disclosure agreements, however.¹⁰⁰ Mars Hill Church, Harvest Bible Chapel, Hillsong Church, Ramsey Solutions and the Acts 29 Network are other well-known evangelical institutions that have also faced scandal in recent years and used non-disclosure agreements at mitigation tactics.¹⁰¹ While not always the case, “[i]n many of these instances, NDAs stemmed from cultures of intense loyalty and fear of leadership’s wrath. Employees felt they had no choice but to sign in order to receive compensation.”¹⁰² Common other reasons for using non-disclosure agreements include maintaining control, protecting the brand, and keeping “damning and damaging information from coming to light.”¹⁰³

Admittedly, non-disclosure agreements are not always harmful within church contexts. A good reason to utilize non-disclosure agreements is to protect people’s private information—including contact information, information from counseling sessions, financial information and giving records—and to protect the database and passwords.¹⁰⁴ However, it is important to note that “you can protect all of those things without including a non-disparagement agreement, and you can protect all of those things without a severance, with no hush money involved.”¹⁰⁵ In sum, while the use of non-disclosure agreements can be helpful in some regards, when they are used to control congregants or staff members, to protect the reputation of the institution, or to suppress stories of abuse from coming to light, they can be harmful tools. Thus, as Katelyn Beaty, author of *Celebrities for Jesus: How Personas, Platforms, and Profits Are Hurting the Church*, powerfully writes, “[i]f there is nothing to hide, then there’s nothing to fear.”¹⁰⁶

3. Available Defenses to NDA Enforcement

There are four common affirmative defenses to non-disclosure agreements: unconscionability, duress, public policy, and illegality. The first

¹⁰⁰ Katelyn Beaty, *NDAs Are a Tool for Toxic Church Cultures*, RELIG. NEWS SERV. (Sept. 8, 2022), <https://religionnews.com/2022/09/08/ndas-are-a-tool-for-toxic-church-cultures> [<https://perma.cc/62LW-AWV7>].

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Jeff Cochran, *018: Evangelical Secrets Part 2: Arguments for and Against NDAs in the Church*, CHURCH DISRUPTED, at 16:31 (Dec. 19, 2023), <https://open.spotify.com/episode/0pLEV9rjBhSQE4hwNGDtNR?si=b6ddc55a30fb4f96> [<https://perma.cc/2FW3-JN6P>].

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See Beaty, *supra* note 100.

of these defenses, unconscionability, requires showing both substantive and procedural unconscionability within a contract.¹⁰⁷ The substantive analysis includes whether the substantive contractual terms are unfair, oppressive, or “shock the conscience.”¹⁰⁸ Procedurally, the analysis includes whether the contracts involved parties with significantly unequal bargaining power or whether one party attempted to take advantage of the weaker party.¹⁰⁹ Unconscionability is a stated defense to an arbitration agreement, but state courts vary in their employment of invalidation during these modes of dispute resolution.¹¹⁰ An unconscionability defense also may be asserted as grounds to invalidate a non-disclosure agreement obligation.¹¹¹

The second common affirmative defense to a non-disclosure agreement is duress. A contract created by duress involves one party forcing or coercing another to agree to contractual terms where there is no other reasonable alternative but to enter into the contract.¹¹² Examples include blackmail, threats, or physical force in the creation of an agreement.¹¹³ If a contract is found to be made under extreme pressure, a court will hold the contract invalid.¹¹⁴

Third, contracts can be voided if they are deemed to be in violation of public policy.¹¹⁵ The public policy exception to contract validity is narrowly construed and generally requires a violation of a specifically articulated law or policy that outweighs enforcement of the contract.¹¹⁶ The factors considered are: the strength of the policy as manifested by legislation or judicial decisions; the likelihood that refusing to enforce the term will further public policy; the seriousness of any wrongdoing and whether it was deliberate; and the connection between the misconduct and the term of the contract.¹¹⁷ While this public policy exception is narrowly construed, courts

¹⁰⁷ See Weston, *supra* note 87, at 528.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See *id.*

¹¹¹ *Id.*

¹¹² See Weston, *supra* note 87, at 528–29.

¹¹³ *Id.*

¹¹⁴ See *id.*

¹¹⁵ *Id.* at 529.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

do have significant leeway in determining whether the creation of a morally reprehensible contract, or a contract that is objectionable on some other grounds, will be enforced.

The fourth and final common affirmative defense to a non-disclosure agreement is illegality. Contracts cannot protect criminal acts, and these contracts include certain non-disclosure agreements.¹¹⁸ While a non-disclosure agreement cannot prohibit a sexual assault victim from reporting a crime, it can restrict someone from reporting unwanted advances or noncriminal sexual behavior.¹¹⁹ Thus, if a non-disclosure agreement of this kind is found to be protecting illegal activity, a court can invalidate the contract.

F. *Recent Legislation and National Labor Relations Board Ruling*

In the past couple of years, both Congress and the National Labor Relations Board (NLRB) have enacted several important protections for survivors of sexual assault. In 2022, former President Joe Biden signed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, which banned compulsory, pre-dispute arbitration clauses in cases of workplace sexual harassment and assault.¹²⁰ The goal of this bill was to create increased opportunities for victims of workplace sexual misconduct to bring their claims to court.¹²¹

Later that year, President Biden signed into law the Speak Out Act, which prohibits the enforcement of pre-dispute non-disclosure and non-disparagement clauses in cases of sexual harassment or assault.¹²² This Act recognizes that while more than one in three women have faced sexual harassment in the workplace, an estimated ninety percent of the alleged victims never file a complaint.¹²³ Thus, Congress attributed this reality to the overwhelming use of non-disclosure agreements in employment contracts.¹²⁴ Within this Act, Congress explains that these agreements “perpetuate illegal conduct by silencing those who are survivors of illegal sexual harassment and

¹¹⁸ See Weston, *supra* note 87, at 530.

¹¹⁹ *Id.*

¹²⁰ See Aaron S. Nava & Robin G. Shaughnessy, *Employees ‘Speak Out!’: How the Speak Out Act Will Affect Employee Non-Disclosure Agreements*, LOCKE LORD (Feb. 2023), <https://www.lockelord.com/newsandevents/publications/2023/02/speak-out-act-employee-non-disclosure-agreements#:~:text=The%20Speak%20Out%20Act%20prohibits%20nondisclosure%20and%20non%2Ddisparagement%20clauses,dispute%20involving%20sexual%20misconduct%20arise%20s> [https://perma.cc/G5RQ-QA57].

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

assault and retaliation.”¹²⁵ Therefore, the creation of this law likely will significantly help victims of abuse in employment spaces, as it “bars courts from enforcing NDAs that were signed before someone claimed they were sexually harassed or assaulted.”¹²⁶

Finally, in February of 2023, the NLRB issued a ruling in *McClaren Macomb* that employers may not offer severance agreements requiring employees to broadly waive their labor law rights.¹²⁷ Therefore, “companies can no longer offer severance agreements that prevent employees from making disparaging remarks about their former employer . . .”¹²⁸ However, regarding religious organizations, the ruling maintains the NLRB’s common jurisdictional standards:

The Board will not assert jurisdiction over employees of a religious organization who are involved in effectuating the religious purpose of the organization, such as teachers in church-operated schools. The Board has asserted jurisdiction over employees who work in the operations of a religious organization that did not have a religious character, such as a health care institution.¹²⁹

Therefore, while there are legal protections for the non-religious employment sphere under this ruling, religious organizations are still able to utilize non-disclosure and non-disparagement agreements at their discretion.¹³⁰

¹²⁵ *Id.*

¹²⁶ Sarah Einselen, *Survivor Advocates Praise Bill Passed by Congress Limiting NDAs in Sex Harassment Cases*, THE ROYS REP. (Nov. 16, 2022, 5:50 PM), <https://julieroys.com/survivor-advocates-praise-bill-passed-by-congress-limiting-ndas-in-sex-harassment-cases> [https://perma.cc/2A37-G9AK].

¹²⁷ *Board Rules that Employers May Not Offer Severance Agreements Requiring Employees to Broadly Waive Labor Law Rights*, NAT’L LAB. REL. BD. (Feb. 21, 2023), <https://www.nlr.gov/news-outreach/news-story/board-rules-that-employers-may-not-offer-severance-agreements-requiring> [https://perma.cc/VW23-NT7H].

¹²⁸ Herb Scribner, *Companies Can’t Enforce Silence for Severance Pay, Labor Board Rules*, AXIOS (Feb. 21, 2023), <https://www.axios.com/2023/02/21/severance-agreement-speak-out-laid-off-nlr> (on file with author).

¹²⁹ *About NLRB: Jurisdictional Standards*, NAT’L LAB. REL. BD., <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/jurisdictional-standards#:~:text=Religious%20organizations%3A%20The%20Board%20will,teachers%20in%20church%2Doperated%20schools> [https://perma.cc/Z7ZW-MNFL].

¹³⁰ *Id.*

G. *Attorney Professional Responsibility Guidelines and Ethical Standards*

Beyond the role of the courts, attorneys play a significant part in the creation and facilitation of non-disclosure agreements. Currently, the Model Rules of Professional Conduct set national standards for the ethical practice of law.¹³¹ While the rules are quite expansive, a few rules are especially pertinent regarding an attorney's facilitation of a non-disclosure agreement. Overall, a lawyer's duties include loyalty, diligence, fairness, and conflict-free representation.¹³²

Further, an attorney must maintain attorney-client privilege unless it falls under one of several exceptions including: 1) the client gives informed consent, 2) the disclosure is impliedly authorized for the purposes of sufficient representation, 3) disclosure is required to prevent reasonably certain death or substantial bodily harm, 4) disclosure is necessary to inhibit a client from committing a crime or fraud that is reasonably certain to result in injury to another's finances or property, 5) disclosure is necessary to prevent, mitigate or rectify injury caused or reasonably will be caused by the client's commission of a crime or fraudulent practice, or 6) disclosure is necessary for the attorney to seek legal advice about compliance with the Model Rules.¹³³

Beyond these parameters, lawyers are obligated to be truthful in dealing with others, and they cannot assist with a client's crime or fraud.¹³⁴ They also cannot engage in misrepresentation, exploitation, discriminatory behavior, or harassment.¹³⁵ While attorneys have some guidelines as to the standard of legal representation that they enact, the Model Rules of Professional Conduct leave significant room for interpretation when it comes to the drafting of non-disclosure and non-disparagement agreements.

H. *Alternative Dispute Resolution*

Another avenue of settling a dispute, aside from courtroom litigation, is through the employment of alternative dispute resolution. Alternative dispute resolution (ADR) "means any procedure, agreed to by the parties of a dispute, in which they use the services of a neutral party to assist them in reaching [an] agreement and avoiding litigation."¹³⁶ ADR includes arbitration,

¹³¹ See generally, MODEL RULES OF PRO. CONDUCT, AM. BAR ASS'N (2024), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct

¹³² *Id.* at PREAMBLE & SCOPE ¶¶ 4, 9 (AM. BAR ASS'N 2024).

¹³³ See *id.* at r.1.6(a), r.1.6(b)(1–6) (AM. BAR ASS'N 2024).

¹³⁴ *Id.* at r.4.1.

¹³⁵ *Id.* at r.8.4(c)(g).

¹³⁶ *Alternative Dispute Resolution*, U.S. DEP'T OF LAB., [https://www.dol.gov/general/topic/la](https://www.dol.gov/general/topic/labor-relations/adr#:~:text=The%20term%20alternative%20dispute%20resolution,reaching%20agreement%20and%20avoiding%20litigation)bor-relations/adr#:~:text=The%20term%20alternative%20dispute%20resolution,reaching%20agreement%20and%20avoiding%20litigation [https://perma.cc/TW2M-8QZA].

mediation, negotiated rulemaking, neutral factfinding, and minitrials.¹³⁷ Except for binding arbitration, ADR provides an avenue for parties “to work toward a voluntary, consensual agreement, as opposed to having a judge or other authority decide the case.”¹³⁸ Serving as a vehicle of communication for two parties within a dispute, ADR presents a means of avoiding the expense, uncertainty, and time that accompanies traditional litigation.¹³⁹

Given this, ADR offers a different vehicle for survivors of abuse to challenge their binding non-disclosure or non-disparagement agreements. Because of the vastly unequal bargaining power among survivors of abuse and the institution that mandated their silence, ADR likely is an attractive avenue for survivors who have significantly less time and resources in comparison to well-funded evangelical churches.

III. ANALYSIS

As articulated above, non-disclosure and non-disparagement agreements are all too often used in white evangelical institutions. Because these agreements are legally enforceable contracts, the legal system has an important role to play when deciding how to navigate their use, especially in instances of abuse. Therefore, this section of the Note asserts that courts should intervene in agreements that are designed to hide abuse, that current legislative and administrative protections for survivors of abuse within church contexts are helpful, but not fully adequate, and that attorneys have a duty to refrain from assisting in the creation of such agreements. By following suit, the legal system will further the pursuit of justice and the elevation of women within white evangelical spaces.

A. When Courts Should Intervene in Non-Disclosure Agreements

The judicial system today is too laissez-faire in its navigation of non-disclosure agreements, particularly when such agreements regard instances of sexual abuse and harassment. Instead of remaining hands-off in the face of such agreements, the courts can and should intervene in non-disclosure agreements when there are issues of abuse that the contract seeks to conceal. Thus, courts need guiding principles on when not to enforce private agreements.

This Note asserts that in order to discern when to intervene, courts

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

should 1) scrutinize such agreements to evaluate whether they violate any of the four main contract defenses, and 2) balance the competing interest of respecting and validating legal agreements with the interest in protecting victims and those with less bargaining power. By following these two principles, the judicial system will not only lessen their role in perpetuating abuse but will also become a better advocate of justice.

First, when a non-disclosure agreement is challenged before the court, courts must scrutinize the agreement to determine whether any defense applies. At its most fundamental level, a contract requires mutual assent.¹⁴⁰ With the presence of mutual assenting parties and the standard contractual requirements of offer, acceptance and consideration, parties are generally free to commit to being silent about almost anything within a non-disclosure agreement.¹⁴¹ While parties are typically granted freedom to contract, though, this freedom is not without limits.¹⁴² These contracts are still subject to standard defenses, such as fraud, duress, unconscionability, illegality and public policy.¹⁴³

Therefore, courts should examine non-disclosure agreements, specifically when they arise in instances of church abuse, to evaluate whether they violate any of these four main contract defenses and err on the side of non-enforcement in the absence of clarity one way or another. Additionally, this heightened level of scrutiny will create a presumption of a defense when a victim desires to speak out about the nature of their abuse and therefore breaches the non-disclosure agreement.

Second, courts must balance the competing interest of respecting and validating legal agreements with the interest in protecting victims and those with less bargaining power. The role of the courts is to be an executor of justice. Accordingly, when justice requires the non-enforcement of an agreement, a court should intervene in the private agreement, even against the competing interest of upholding a privately made contract. By doing so, courts will better fulfill their duty to seek justice, protect victims, and restore perpetrators of harm.

Given these guiding principles, when white evangelical institutions instigate non-disclosure or non-disparagement agreements with victims of sexual abuse, many of these contracts should be held void as subject to these defenses and pursuant to the overall goal of justice. As Lee Furney, an advocate for survivors of sexual abuse, claims: “In some ways, an NDA can look reasonable . . . But find for me the perfect NDA, and it’s still not perfect. There’s no transparency. No accountability. You can’t track them or how

¹⁴⁰ See Weston, *supra* note 87, at 527.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.* at 528.

they're used."¹⁴⁴ Additionally, as Lori Anne Thompson, a survivor of grooming and abuse by late apologist Ravi Zacharias writes,

After the initial sexual assault/harassment that victims suffer, they lose their ability to communicate their own narrative, to in effect participate in public and private truth telling due to NDAs. . . . Truth telling, so essential for recovery, is wrapped in legal secrecy and subsequent legal threat if they dare raise their voice against their offender.¹⁴⁵

And finally, as Laura Barringer, another advocate, powerfully shares,

Non-disclosure or non-disparagement agreements too often prevent the truth from being told. They are used to silence the victim and preserve the church's public reputation. We have seen them create division and discord between folks who believe the false narrative about an employee and others who feel something isn't quite right. The former employee can't tell the truth, so disagreement continues. Those who sign them are rendered incapable of establishing justice by speaking truthfully about what they know or have seen or heard. . . . Furthermore, NDAs are too often presented to an employee under duress, who is told to sign or his/her severance will be withheld. The employee leaves disoriented, wondering what just happened. . . . I can imagine situations where NDAs are perhaps necessary—but never as a weapon to silence. Never as a means to control a narrative.¹⁴⁶

Because of these reasons, many advocates are rightfully wary about the use of non-disclosure agreements within church contexts.¹⁴⁷ Nevertheless, as mentioned previously, non-disclosure agreements are widely used within white evangelical institutions.¹⁴⁸ In many of those contexts, the non-

¹⁴⁴ Daniel Silliman, *NDAs Kept These Christians Silent. Now They're Speaking Out Against Them.*, CHRISTIANITY TODAY (July 7, 2021), <https://www.christianitytoday.com/news/2021/july/ndafree-campaign-confidentiality-nondisclosure-abuse.html> [https://perma.cc/2J68-Z56S].

¹⁴⁵ Einselen, *supra* note 126.

¹⁴⁶ Paul Moldovan, *Church Abuse, Non-Disclosure Agreements, and the Billy Graham Rule: An Interview with Laura Barringer*, OVERTHINKING CHRISTIAN BLOG (May 26, 2021), <https://overthinkingchristian.com/2021/05/26/church-abuse-non-disclosure-agreements-and-the-billy-graham-rule-an-interview-with-laura-barringer> [https://perma.cc/L5VG-3TMX].

¹⁴⁷ *See id.*

¹⁴⁸ *See* Beaty, *supra* note 100.

disclosure agreements emerged from a culture of intense loyalty and fear of harsh repercussions by the hands of leadership.¹⁴⁹ Employees felt as though they had no choice but to sign the agreements in order to receive compensation.¹⁵⁰ As survivor Lori Anne described, she signed her non-disclosure agreement “under excruciating circumstances.”¹⁵¹ Therefore, many advocates and church congregants have spoken out against the use of non-disclosure agreements for these reasons.¹⁵²

In sum, courts should be quicker to intervene in non-disclosure agreements by not enforcing them due to the social context that many of these agreements are formed within. By evaluating whether a defense of fraud, duress, unconscionability, or illegality applies—contrary to their current mode of evaluation—and by balancing the interests of upholding agreements with not enforcing unjust contracts, courts will better stand with victims in their common goals of executing justice and protecting the most vulnerable.

B. *Limitations on Other Protections for Survivors of Abuse*

Thankfully, in the past couple of years, the Congress and the National Labor Relations Board have passed bills and issued rulings to enhance protections for victims of sexual assault and harassment.¹⁵³ These protections include the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act and the Speak Out Act, both signed into law by President Joe Biden in 2022, as well as NLRB’s *McClaren Macomb* decision issued in early 2023. Collectively, the two Acts and ruling have increased opportunities for survivors of sexual abuse in the workplace to bring their claims to court, as well as have prohibited the enforcement of pre-dispute non-disclosure and non-disparagement clauses in cases of sexual abuse.

At the same time, there are rightful concerns about anti-non-disclosure legislation that must be mentioned. First, while many victim rights advocates are pro-non-disclosure legislation, others point out that non-disclosure agreements may be desired by victims to protect their privacy and ensure their safety from employer retaliation.¹⁵⁴ In addition to these concerns, victims of harassment may desire to avoid publicity.¹⁵⁵ Thus, banning non-disclosure agreements raises the possibility that victims will be “denied a

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Julie Roys, *Betrayed Trust, Part Two: Woman Accused in Sexting Scandal Claims Ravi Zacharias Groomed and Exploited Her*, THE ROYS REP. (Sept. 15, 2020, 9:23 AM), <https://julieroys.com/ravi-zacharias-groomed-woman> [https://perma.cc/3PLZ-TMWV].

¹⁵² *See id.*

¹⁵³ *See* Nava & Shaughnessy, *supra* note 120.

¹⁵⁴ *See* Weston, *supra* note 87, at 536.

¹⁵⁵ *Id.*

major bargaining chip” and thus discouraged from coming forward with their story.¹⁵⁶

Further, victims may lose out on monetary settlements if employers are not guaranteed confidentiality.¹⁵⁷ Finally, while the Speak Out Act offers some protection against unjust uses of non-disclosure agreements, it does not fully eliminate the use of such agreements.¹⁵⁸ Rather, it just makes a non-disclosure agreement that was “agreed to before the dispute [arose]” unenforceable.¹⁵⁹ Therefore, the issue of legislation barring the use of non-disclosure agreements is admittedly complicated and contested. Nevertheless, the complexity of the topic does not deny the truth that more can always be done. Regardless of the trajectory of legislation concerning these issues, courts must not neglect their duty to ensure that unjust non-disclosure and non-disparagement clauses are not upheld.

As for the National Labor Relations Board’s ruling that employers may not offer severance agreements requiring employees to broadly waive their labor law rights, this decision presented a major win for survivors of abuse in the secular workplace. However, as mentioned above, the Board declined to assert jurisdiction over employees within a religious organization who are involved in carrying out the religious purpose of the organization.¹⁶⁰ Therefore, this policy carveout for employees within these white evangelical institutions leaves church staff and other employees of religious organizations vulnerable to the ongoing use of non-disclosure and non-disparagement agreements in cases of abuse.

Consequently, further legislative and administrative protections are needed for employees within these religious spaces. While the United States government generally desires to avoid intervening in the particulars of the religious sphere, as evidenced through legal doctrines such as the ministerial exception,¹⁶¹ a hands-off approach should not be embodied in instances of

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Kim Roberts, *One Year Since the Speak Out Act, NDAs Still in Use by Ministries*, MINISTRY WATCH (Nov. 28, 2023), <https://ministrywatch.com/one-year-since-the-speak-out-act-ndas-still-in-use-by-ministries> [<https://perma.cc/Y8F5-U5RK>].

¹⁵⁹ *Id.*

¹⁶⁰ *About NLRB: Jurisdictional Standards*, *supra* note 129.

¹⁶¹ The ministerial exception was crafted to “provide a narrow carve-out to workplace anti-discrimination laws” for the hiring and firing of employees of religious organizations. Sunu P. Chandy & Laura Narefsky, *Exception Swallowing the Rule? The Expanding Ministerial Exception Puts Workers at Religious Employers at Risk of Losing Civil Rights Protections*, AM. BAR ASS’N (Jul. 5, 2022),

abuse. Therefore, the NLRB should revise their ruling to include religious institutions in order to grant victims of abuse greater legal and administrative protection.

C. *Attorneys Should Not Assist in The Creation of Non-Disclosure Agreements in Instances of Church Abuse*

While there currently are no standards for attorneys regarding the creation of non-disclosure agreements in instances of sexual abuse, attorney conduct in sexual misconduct settlement negotiations and enforcement proceedings historically has contained potential or actual professional misconduct on behalf of the attorneys themselves.¹⁶² While lawyers are advocates for their clients, they cannot counsel or aid a client to break the law.¹⁶³ Professional conduct rules, albeit sometimes vague, hold lawyers to a high standard of fairness to ensure integrity of the legal profession and process.¹⁶⁴

The presence of alternative dispute resolution offers a different means of facilitating the settlement of sexual assault claims through mediation or arbitration.¹⁶⁵ Currently, ADR neutrals are not mandatory reporters, despite their role as an overseer of conflicts between parties in which one has been abused by the other.¹⁶⁶ Thus, while an ADR neutral can use their role to help “parties understand the costs and benefits of confidentiality, process fairness, and [help them consider] the impact on others,” the role is highly discretionary.¹⁶⁷

Therefore, standards should be created that would give attorneys and ADR neutrals greater guidance, or even mandates, on how to conduct themselves when asked to create or monitor such agreements. An example of this could be requiring all attorneys to have some level of trauma-informed care training as part of the mandatory Multistate Professional Responsibility exam (MPRE) or Bar exam, so that attorneys are better equipped to navigate agreements formed between the abuser and the victim. Additionally, such rules and standards could be either legislated by Congress or added to the Model Rules of Professional Conduct. In doing so, the role of legal professionals will better be constructed to protect victims of sexual abuse and harassment.

https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/in-tersection-of-lgbtq-rights-and-religious-freedom/exception-swallowing-the-rule [<https://perma.cc/B3YQ-MTUQ>].

¹⁶² See Weston, *supra* note 87, at 542.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ See *id.*

D. Non-Disclosure Agreements Adversely Impact Women, Survivors and Church Congregants Generally

First and foremost, because men overwhelmingly dominate leadership roles in evangelical institutions, white evangelical spaces are often not spaces where women's voices are fully included and respected. While not always, when sexual misconduct and other forms of abuse occur in the church, it is often perpetrated by male leaders against female employees and congregants. When such abuse occurs, victims are either asked or forced to sign non-disclosure agreements in exchange for money, and the truth of the abuse is hidden. Thus, women are primarily affected by the ongoing use and abuse of non-disclosure agreements within white evangelical institutions.

At the same time, this conversation must include all survivors' voices, and survivors in the church do not only identify as women. While the #MeToo and #ChurchToo movements tend to center women's voices, ultimately, the movement is about ending abuse for all. Thus, while the topic of this Note focuses on the adverse impact of non-disclosure agreements on women, due to the history of patriarchy and its effects within the church, it is important to note that people of all gender expressions and identities should not be sidelined in the conversation.

Finally, when one part of the church suffers, the whole church suffers. Thus, the adverse impacts of non-disclosure agreements instigated by church leadership against victims of sexual harassment and abuse are not only detrimental to victims, but to the whole of the church population. Generally speaking, non-disclosure agreements create a culture of distrust and foster a lack of transparency. They do not promote reconciliation, restoration, and healing, but rather an unsafe environment where the church institution is protected at the expense of the congregants.

Additionally, the use of non-disclosure agreements does not encourage victims to come forward and expose abuse within the institution. The reality of this concealment is that other congregants are not protected from becoming future victims if abuse is forbidden to be shared publicly. Further, the use of non-disclosure agreements allows abusive pastors and other leaders to resign quietly and seek employment in another church institution without disclosing their history of abuse, perpetuating the cycle all over again in a new location, and ultimately increasing the amount of victims. In sum, no one wins when unjust non-disclosure agreements are allowed to stand within white evangelical contexts. Justice can thus be pursued from many fronts, and there is no better place to start than with attorneys and the courts.

IV. CONCLUSION

As prominent evangelical David French has remarked: “[n]ondisclosure agreements—especially in Christian ministries—are poisonous and enable additional abuse. . . . The goal of any organization facing claims of abuse should be discerning truth, not discrediting accusers. All accusers should be treated immediately—publicly and privately—with dignity and respect.”¹⁶⁸ Unfortunately, non-disclosure and non-disparagement agreements have been used and abused by many religious leaders in power within white evangelical institutions, and the results of their use have been devastating.

At their fundamental level, non-disclosure and non-disparagement agreements keep instances of abuse within the church between the institution and the victim. However, without the ability to speak publicly about the harm caused, survivors of abuse are unable to find full healing. Further, they are unable to protect others from becoming abused as well. Therefore, church abuse is not something that should be kept in the dark. As Scot McKnight remarks in his book, *A Church Called Tov: Forming a Goodness Culture that Resists Abuses of Power and Promotes Healing*: “if darkness needs the light in order to root out evil, sometimes the most biblical thing we can do is to expose evil to the light of truth by going public.”¹⁶⁹ Further, as Diane Langberg, author of *Redeeming Power: Understanding Authority and Abuse in the Church*, powerfully writes:

No system that carries oppression, silencing, dehumanizing, violence, abuse, and corruption within is healthy, no matter how godly the goals of that system may be. Tolerance of such things, out of fear, disbelief, or self-deception, will not protect the system from the disease that will kill it if left untreated.¹⁷⁰

Therefore, for true justice and righteousness to be realized, church leaders must be held accountable, no matter what the repercussions are for the institution when the harm comes to light.

Beyond moral objections, the use of non-disclosure agreements in instances of sexual abuse within church contexts also creates a substantial problem for the legal system. When these legally enforceable contracts are allowed to stand, the legal system implicates itself in the abuse as a bystander, for the very system designed to be an executor of justice instead becomes a perpetrator of injustice. Therefore, attorneys and judges must be wise and

¹⁶⁸ Diane Langberg, *Non Disclosure Agreements (NDAs) and the Body of Christ*, DIANE LANGBERG, PHD (Feb. 15, 2021), <https://www.dianelangberg.com/2021/02/non-disclosure-agreements-ndas-and-the-body-of-christ> [<https://perma.cc/6V68-HAU3>].

¹⁶⁹ SCOT MCKNIGHT: *A CHURCH CALLED TOV: FORMING A GOODNESS CULTURE THAT RESISTS ABUSES OF POWER AND PROMOTES HEALING* 144 (2020).

¹⁷⁰ DIANE LANGBERG, *REDEEMING POWER: UNDERSTANDING AUTHORITY AND ABUSE IN THE CHURCH* 82 (2020).

diligent in their respective roles when navigating non-disclosure and non-disparagement agreements. By doing so, they will not only uphold their professional responsibilities but will also fulfill their roles as righteous advocates and just adjudicators.

In sum, courts, lawyers, and the broader legal system must hold churches accountable for their abuse by both preventing the creation of non-disclosure agreements and refusing to uphold such confidentiality contracts in instances of church abuse. As a result, the legal system will discourage white evangelical institutions from silencing victims and perpetuating gender inequity within their communities, where these institutions have failed to instigate safeguards themselves. Ultimately, these changes will hopefully usher in a new era of liberation, growth, and empowerment for women within white evangelicalism once and for all.