NOT JUST “ANOTHER BRICK IN THE WALL”—THE DANGERS OF CATEGORICALLY BANNING CONTRACT AND TORT DISPUTES STEMMING FROM A MINISTER’S EMPLOYMENT RELATIONSHIP

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* J.D. Candidate at Seton Hall University School of Law, Class of 2024. I wish to dedicate this Comment to the following: to Professor Angela Carmella, whose wealth of knowledge on this subject was instrumental in the development of my Comment; to Matthew Levin & Hannah Nagy, whose friendship and camaraderie have made being a law student not only bearable, but actually enjoyable; and to my everything and the love of my life, Erica Ketterer, whose patience, encouragement, and smile have brought me more happiness than any accomplishment could ever provide.
I. INTRODUCTION

Since 1789, when the United States Constitution entered its fledgling years and the First Amendment was drafted, the Founders intended to create “a wall of separation between Church & State.”¹ These words by Thomas Jefferson have been consistently “taken to be an authoritative interpretation of the First Amendment’s establishment clause.”² While this “wall of separation” significantly limits adjudication against religious organizations, there are several instances in which federal courts have tried cases against churches without constitutional interference.³ In these instances, courts do not offend the First Amendment by challenging a church’s conduct because the behavior is particularly egregious and without religious justification.⁴ In 2012, the Supreme Court added another brick to Jefferson’s “wall of separation” by recognizing the “ministerial exception” in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC.*⁵ In *Hosanna-Tabor,* the Court held that this exception prohibits a minister from challenging any adverse employment decision made by her religious employer, even if that decision would nevertheless violate employment discrimination statutes such as the Americans with Disabilities Act (“ADA”) and Title VII.⁶ This doctrine relies on the reasoning that “whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest [church authority]… the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.”⁷

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² *Id.*
³ See infra Part II.A. The United States’ Non-Interventionist History of Insulating Ecclesiastical Disputes from Judicial Review (discussing federal courts’ reluctance to adjudicate claims implicating internal disputes among religious organizations); *see generally* Russell G. Donaldson, Annotation, *Running of Limitations Against Action for Civil Damages for Sexual Abuse of Child,* 9 A.L.R.5th 321 (compiling cases of sexual abuse, including those against churches).
⁴ See, e.g., Bollard v. Cal. Province of the Soc’y of Jesus, 196 F.3d 940, 947 (9th Cir. 1999) (permitting a minister’s sexual harassment claim against his religious employer because the conduct was offensive and lacked religious justification).
⁵ See *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC,* 565 U.S. 171, 188 (2012).
⁶ See *id.* at 188–89 (“The case before us is an employment discrimination suit brought on behalf of a minister, challenging her church’s decision to fire her. Today we hold only that the ministerial exception bars such a suit.”).
While Jefferson’s words and the ministerial exception’s rationale allow the faithful alone to decide the tenets of their religion without government meddling, the ministerial exception’s awesome power of rebuking a minister’s claim as a matter of law cannot be understood as “just another brick in the wall” of separation.\(^8\) This is especially so as Chief Justice Roberts, delivering the majority opinion in *Hosanna-Tabor*, limited the Court’s decision only to prohibit a minister’s challenge against an adverse employment action and abstained to rule how courts should address general contract and tort claims brought by a minister against their employer.\(^9\) Naturally, a circuit split has been created based on the Court’s abstention with two competing views: (1) the Ninth Circuit’s approach permitting a minister’s claim as long as it does not challenge a protected religious employment decision or offend a legitimate religious justification,\(^10\) and (2) the Seventh Circuit’s view that categorically bars all claims brought by a minister if that claim stems from her employment relationship.\(^11\)

This Comment advocates for the Ninth Circuit’s approach because it staves off claims “necessary to comply with the First Amendment” while still providing ministers an avenue of relief in contract and tort when they are wronged by their employers.\(^12\) Accepting this view over the Seventh Circuit’s approach is critical to ensure that ministers’ rights are still intact under the “wall of separation between Church & State.”\(^13\) Part II of this Comment will discuss the United States’ history of non-intervention in ecclesiastical disputes and the ministerial exception’s formal recognition in the Supreme Court. Part III will introduce a hypothetical situation of a female minister that will be used to highlight the dangers of accepting a bright-line rule against claims involving a minister’s employment relationship. Finally, Part IV will introduce the current circuit split picking up where Chief Justice Roberts left off and will use Part III’s hypothetical to advocate for the Ninth Circuit’s more lenient approach.

II. THE MINISTERIAL EXCEPTION’S FOUNDATION AND RECOGNITION IN FEDERAL

\(^8\) See Jefferson Letter, supra note 1; see also Pink Floyd, Another Brick in the Wall, on the Wall (Columbia Records 1979).

\(^9\) Hosanna-Tabor, 565 U.S. at 196.


\(^11\) Demkovich v. St. Andrew the Apostle Par., 3 F.4th 968, 979–80 (7th Cir. 2021) (en banc).

\(^12\) Bollard, 196 F.3d at 947.

\(^13\) Jefferson Letter, supra note 1.
A. The United States’ Non-Interventionist History of Insulating Ecclesiastical Disputes from Judicial Review

The Founders ratified the First Amendment’s Establishment Clause and Free Exercise Clause to “foreclose the possibility of a national church” and to “ensure[] that the new Federal Government—unlike the English Crown—would have no role in filling ecclesiastical offices.”

This understanding prohibited the legislative, executive, and judiciary branches from having any say in the ministerial appointment process and instead left such decision-making entirely in the hands of religious groups.

Initial interpretations of the First Amendment precluded more than judicial involvement in ecclesiastical appointments, however, and extended further into all matters that called into question any judgment made by a religious authoritative body.

The Court’s limited involvement in cases that implicate ecclesiastical decisions is on display in *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*. In *Kedroff*, the Supreme Court was tasked with deciding a dispute over which faction of the Russian Orthodox Church laid proper claim to the Russian Orthodox cathedral in New York City. While the lower courts relied on a New York statute recognizing the legitimacy of one faction over the other, the Supreme Court invalidated the statute and held the controversy nonjusticiable as it forced the Court to pit the legitimacy of one religious group against another. Despite being a claim over property rights—a claim secular in nature—the Court held that its decision in the matter would implicate the First Amendment as it called into question matters strictly ecclesiastical: the “power [for religious groups] to decide for...”

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14 Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 565 U.S. 171, 184 (2012).
15 *Id.; see also* letter from James Madison, Secretary of State, United States, to John Carroll, Bishop, Archdiocese of Baltimore (Nov. 20, 1806) [on file with National Archives] [hereinafter “Madison Letter”] (stating that the “scrupulous policy of the Constitution in guarding against a political interference with religious affairs” prevents the government from rendering an opinion on the “selection of ecclesiastical individuals”).
16 See *Watson v. Jones*, 80 U.S. 679, 727 (1871) (holding that “whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final and as binding on them . . .”).
17 *See Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94 (1952).
18 *Id.* at 95–96.
19 *Id.* at 99 n. 4, 114–15.
themselves, free from state interference, matters of church government as well as those of faith and doctrine.”

Additionally, Congress assumed the Founders’ apprehension toward meddling in religious affairs by passing statutory provisions that exempt religious organizations so as not to challenge ecclesiastical decisions. Title VII of the Civil Rights Act of 1964 makes it unlawful for any employer “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”

Notably, however, Congress included a provision that “[Title VII] shall not apply to . . . a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society . . . of its activities.” The Supreme Court upheld this provision as constitutional and necessary under the First Amendment, holding that “it is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions.”

While the explicit language of Title VII makes it permissible for religious institutions to have discriminatory preferences towards members of their own religion in hiring and firing, the Third Circuit expanded the scope of this exemption in Little v. Wuerl. In Wuerl, the court addressed “the more difficult question of whether Title VII applies to a Catholic school that discriminates against a non-Catholic because her conduct does not conform to Catholic mores.” Of particular issue in Wuerl was interpreting what it means for religious organizations to have the sole discretion of hiring “individuals of a particular religion” and whether the extent of that individual’s reach into “religious activities” has bearing on this discretion. The Third Circuit first held that while Title VII’s “individuals of a particular religion” language certainly applies to formal affiliation, it also pertains to an individual’s course of conduct and whether that conduct conforms with the religious

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20 Id. at 116.
23 Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 335 (1987).
25 Id.
26 Id. at 950–51.
organization’s faith. The court applied this interpretation to conclude that an individual’s proximity to “religious activities” made no difference in Title VII’s religious exemption, and that “Congress intended the explicit exemptions in Title VII to enable religious organizations to create and maintain communities composed solely of individuals faithful to their doctrinal practices, whether or not that individual plays a direct role in the organization’s ‘religious activities.’”

This meant that the plaintiff in Wuerl, despite not playing a major role in the Catholic Church’s “religious activities,” was permissibly discriminated against based purely on conduct not conforming with Catholicism.

Cases like Kedroff highlight how the Court’s non-interventionist strategy built on the Founder’s First Amendment framework to prohibit courts from deciding the legitimacy of one religious practice over another. Moreover, Wuerl, given the Title VII exemption in dispute, showcases the broadening of these foundational principles where federal courts begin to take a backseat in claims involving religious hiring practices. Looming in the decades surrounding Wuerl, however, circuit courts were establishing a new constitutional principle based on the same foundational principles of the First Amendment: the ministerial exception.

B. The Ministerial Exception’s Foundation and Recognition in Federal Courts

Decades before the Supreme Court would formally recognize the ministerial exception in 2012, the lower federal courts began to hold “a narrow exception for ministers and others serving in clergy-like positions” when handling workplace discrimination actions. Although not yet coining the phrase “ministerial exception,” McClure v. Salvation Army was the first federal appellate case that provided religious organizations with an exemption from certain employment lawsuits.

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27 Id.
28 Id. at 951.
29 Id.
31 Wuerl, 929 F.2d at 950–51.
32 See generally Patrick Hornbeck, A Nun, a Synagogue Janitor, and a Social Work Professor Walk Up to the Bar: The Expanding Ministerial Exception, 70 BUFF. L. REV. 695, 703–05 (2022) (discussing early ministerial exception cases in the circuit courts).
33 See Hornbeck, supra note 32, at 703.
34 McClure v. Salvation Army, 460 F.2d 553 (5th Cir. 1972).
brought by their ministers. In *McClure*, a terminated female minister sought reinstatement upon alleging that her termination was the result of workplace discrimination prohibited by Title VII. The Fifth Circuit held that it was unconstitutional for the court to hear a minister’s Title VII claim against her religious employer because it “would result in an encroachment by the State into an area of religious freedom which it is forbidden to enter by the principles of the free exercise clause of the First Amendment.” Using *Kedroff* as support, the court took a firm non-interventionist stance against minister-employer disputes, warning that an alternative approach would turn an issue that is “today a trickling stream” into “a raging torrent” of unconstitutional overreach.

While the Courts of Appeals “have had extensive experience” with the ministerial exception prior to 2012, the Supreme Court had not delivered a formal decision defining—or even confirming the existence of—such an exception until *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*. In *Hosanna-Tabor*, Cheryl Perich worked as a “called teacher” at Hosanna-Tabor Evangelical Lutheran Church & School and was considered a “commissioned minister” by her title. Perich was diagnosed with narcolepsy while at Redeemer and her symptoms would often impact her work performance. While on medical leave to treat her condition, Perich was informed by her superiors that her position had been filled and that “the school no longer had a position for her.” When Perich refused to resign, Hosanna-Tabor officially terminated her for “insubordination and disruptive behavior.” Upon her termination, Perich filed a charge with the Equal Employment Opportunity Commission (“EEOC”) against her employer.

36 *McClure*, 460 F.2d at 555.
37 *Id.* at 560.
38 *Id.* (quoting Sch. Dist. Of Abington Twp. v. Schempp, 374 U.S. 203, 225 (1963)).
39 *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012); see, e.g., Bollard v. Cal. Province of the Soc'y of Jesus, 196 F.3d 940, 944 (9th Cir. 1999) (recognizing that “[t]he Free Exercise and Establishment Clauses of the First Amendment compel [the ministerial exception] . . . when the disputed employment practices involve a church’s freedom to choose its ministers and practice its beliefs.”); *Rweyemamu v. Cote*, 520 F.3d 198, 207 (2d Cir. 2008) (holding that “the ministerial exception is constitutionally required by various doctrinal underpinnings of the First Amendment,” thereby “affirm[ing] the vitality of [the] doctrine in the Second Circuit”).
40 *Hosanna-Tabor*, 565 U.S. at 188.
41 *Id.* at 178.
42 *Id.*
43 *Id.* at 178–79.
44 *Id.* at 179.
contending that, despite a note from her physician stating that she would be able to return to work, Hosanna-Tabor wrongfully terminated her employment in violation of the ADA.\textsuperscript{46} In her charge, Perich initially sought reinstatement, but later changed her chosen remedy to front pay, backpay, compensatory damages, punitive damages, and attorney’s fees.\textsuperscript{47} Despite not seeking reinstatement—a remedy that “would have plainly violated the Church’s freedom under the Religion Clauses to select its own ministers”—the Court nevertheless deemed Perich’s chosen remedies as unconstitutional.\textsuperscript{48} The Court held that any relief sought by a minister from an adverse employment action would “operate as a penalty on the Church for terminating an unwanted minister, and would be no less prohibited by the First Amendment than an order overturning the termination.”\textsuperscript{49} While \textit{Hosanna-Tabor} confirmed that the ministerial exception prohibits the judiciary from interfering in a religious organization’s ministerial employment decision-making, it notably “express[ed] no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers.”\textsuperscript{50} As discussed in greater detail later in this Comment, this abstention by the Court has fueled a circuit split over how a minister’s contract or tort claims against his or her employer should be handled.\textsuperscript{51}

Although it was the seminal Supreme Court case on the ministerial exception, \textit{Hosanna-Tabor} “did not announce ‘a rigid formula’ for determining whether an employee falls within this exception.”\textsuperscript{52} This was addressed eight years later in \textit{Our Lady of Guadalupe School v.}
Morrissey-Berru, where the Court was tasked with deciding which particular employment positions fall within Hosanna-Tabor’s ministerial exception.\(^\text{53}\) Writing for the majority, Justice Alito began this analysis by finding that while an employee with the official title “minister” certainly leans towards that individual falling within the exception, it is not a dispositive factor.\(^\text{54}\) Instead, Justice Alito explains that “[w]hat matters … is what an employee does,” giving great deference to “[a] religious institution’s explanation of the role of such employees.”\(^\text{55}\) In a direct application of his concurrence in Hosanna-Tabor, Justice Alito holds that courts “should apply [the ministerial exception] to any ‘employee’ who leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith.”\(^\text{56}\) Justice Alito used this interpretation to hold that the plaintiffs in Our Lady of Guadalupe, two women working as Catholic school teachers, were classified as “ministers” because “they were the members of the school staff who were entrusted most directly with the responsibility of educating their students in the faith.”\(^\text{57}\) Consequently, because the women helped carry out the “core mission” of the Catholic church by “pray[ing] with their students, attend[ing] Mass with their students, and prepar[ing] the children for their participation in other religious activities[,]” they were unable to challenge their respective terminations and had their cases dismissed.\(^\text{58}\)

While outside the scope of this Comment, it is worth noting that Our Lady of Guadalupe—the most recent Supreme Court case concerning the ministerial exception\(^\text{59}\)—has garnered much criticism for significantly broadening the definition of “minister” and expanding the types of employees prohibited from challenging a religious organization’s employment decision.\(^\text{60}\) More relevant to this Comment, however, is the

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\(^\text{53}\) Id. at 2063.
\(^\text{54}\) Id.
\(^\text{55}\) Id. at 2064–66 (emphasis added).
\(^\text{56}\) Id. at 2063 (quoting Hosanna-Tabor, 565 U.S. at 199).
\(^\text{57}\) Id. at 2066.
\(^\text{58}\) Our Lady of Guadalupe Sch. v. Morrissey-Berru, 140 S. Ct. 2049, 2066 (2020).
Court’s abstention from deciding how to treat contract and tort claims between ministers and their employers in *Hosanna-Tabor*.

Chief Justice Roberts, writing for *Hosanna-Tabor*’s majority, dispelled the need for reaching this issue by stating “[t]here will be time enough to address the applicability of the exception to other circumstances if and when they arise.”

Yet, as the following hypothetical and corresponding discussion will indicate, there is a need to address this particular issue and the time to do so is now.

III. RACHEL’S CHOICE: A HYPOTHETICAL CASE STUDY

A. The Hypothetical

Rachel is a hypothetical female schoolteacher who works at Redeemer Catholic Church & School (“Redeemer”). Despite being a non-Catholic, Rachel has worked for Redeemer for several years and has always felt respected by her employer. Rachel is also expecting a baby and frequently visits her doctor for updates on her pregnancy. During one such visit, Rachel’s doctor informed her that there was a high likelihood of severe complications with her pregnancy and advised her that carrying the pregnancy to term could potentially result in serious physical harm. This prognosis led Rachel’s physician to recommend terminating the pregnancy, which greatly distressed Rachel because not only was her health at risk, but her job was also in jeopardy; Redeemer, a Catholic institution, had a strong stance against abortion and would surely fire her if she elected to terminate her pregnancy. After leaving her doctor’s office, she organized a meeting with her employer to go over her options and explain her dilemma.

At the meeting, Rachel’s employer assured her that while she would have to be let go if she decided to abort her pregnancy at this stage, she would be “taken care of” by her employer if she experienced medical complications upon carrying the pregnancy to term. Having no issue with her employer in the past and having been fairly treated throughout her time at Redeemer, Rachel decided to carry her

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*Constitutional Law—Supreme Court Expands Ministerial Exception to Lay Teachers at Catholic Elementary Schools—Our Lady of Guadalupe School v. Morrissey-Berru, 54 Suffolk U. L. Rev. 423, 437 (2021) (concluding that Our Lady of Guadalupe’s “overbroad application of the ministerial exception may not only deprive many teachers of discrimination protections, but also deny many students the benefits of a diverse teaching staff”).


62 *Id.*
pregnancy to term relying on her employer’s understanding and promise that she will be “taken care of.”

Eventually, Rachel’s physician’s warning came to fruition when her water broke prematurely and she was rushed to the emergency room. At the hospital, Rachel was told that she contracted an infection in her uterus and was beginning to miscarry. As her doctor predicted, Rachel’s delivery was met with severe complications that tragically culminated in stillbirth. These complications also caused Rachel to contract sepsis during delivery, leading to a weeks-long hospital stay to treat the infection.

Although Rachel survived her bout with sepsis, the infection’s after-effects weakened her cognitive capabilities to the point where it interfered with her performance at Redeemer upon her return. Without meeting with Rachel to address any accommodations she may need to adapt to working with her new disability, her superiors notified her that she was summarily dismissed from Redeemer’s employ. This news shocked Rachel, especially in light of Redeemer’s promise. She was subsequently left jobless, permanently disabled, and burdened with significant medical bills from her hospital visit.

For the purposes of this Comment, Rachel and Redeemer satisfy the two preliminary inquiries that begin every ministerial exception analysis—that is, (1) whether “the employer [is] a religious organization entitled to assert the ‘ministerial exception’ defense” and (2) whether the employee is a “minister”—because this Comment assumes that Rachel meets Our Lady of Guadalupe’s definition of “minister” and that Redeemer is a “religious institution” protected by the ministerial exception.

B. The Reality Behind Rachel’s Situation

Despite being hypothetical, Rachel’s situation is not unfounded. Rather, it is based on real-world events involving religious

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63 Tucker v. Faith Bible Chapel Int’l, 36 F.4th 1021, 1027 n.2 (10th Cir. 2022).
65 See Shaliehsabou v. Hebrew Home of Greater Wash., Inc., 363 F.3d 299, 310 (4th Cir. 2004) (“[A] ‘religious institution’ for purposes of the ministerial exception whenever that entity’s mission is marked by clear or obvious religious characteristics.”).
organizations’ opinions on abortion, pregnancy complications, and the long-term effects of sepsis.

Redeemer’s stance against abortion is based on the Catholic church’s long-held belief that “human life begins at conception.” Since the first century[,] the Church has affirmed the moral evil of every procured abortion[ and] this teaching has not changed and remains unchangeable. Furthermore, because Catholic doctrine prohibits abortion even in the case to save the mother’s life, Redeemer’s likelihood of firing Rachel is not diminished despite the life-threatening consequences of her coming to term.

Rachel’s reproductive health crisis is also grounded in reality as “certain medical conditions may require the termination of a pregnancy to avoid fatal complications for the mother.” One of the most common medical emergencies that may require an abortion is similar to Rachel’s situation where a mother’s water breaks prematurely and causes an infection. In these cases, an abortion may be necessary “because there is an extremely high risk that the infection inside of the uterus spreads very quickly through [the mother’s] bloodstream and she becomes septic.”

Lastly, the symptoms Rachel experiences post-hospitalization are often referred to as “post-sepsis syndrome” (“PSS”) and, like it did for Rachel, can impair a sepsis survivor’s cognitive, physical, and emotional well-being. Although the mortality rate for sepsis patients has
improved and more individuals have been surviving sepsis,\textsuperscript{76} the infection still remains “the leading cause of death of hospital patients . . . and half of the survivors do not completely recover[.]]”\textsuperscript{77} Of those survivors that do not fully recover, “a sixth experience severe, persistent physical disabilities or cognitive impairment.”\textsuperscript{78} Sepsis survivors suffering from PSS often “have difficulty remembering things, concentrating, and making decisions.”\textsuperscript{79} PSS sufferers also have “difficulties in performing straightforward daily activities, managing money . . . read[ing], spell[ing] . . . [and] sleep[ing].”\textsuperscript{80} Rachel falls into this category of sepsis survivors as her condition, despite recovering to the point of being discharged from the hospital, prolonged into PSS, impeding her work performance at Redeemer.

\textbf{C. Rachel’s Potential Avenues of Relief}

Redeemer’s reaction to Rachel’s PSS-induced drop in performance is identical to Hosanna-Tabor’s decision to terminate Perich when her narcolepsy impacted her work quality.\textsuperscript{81} By dismissing Perich’s ADA claim against her employer, the Court in \textit{Hosanna-Tabor} effectively permitted religious organizations to discriminate in violation of the ADA on the grounds that ADA claims impermissibly challenge a church’s decision to fire its ministers at will.\textsuperscript{82} Accordingly, even though Redeemer’s decision to terminate Rachel without offering disability accommodations would have violated the ADA if done by a secular employer,\textsuperscript{83} she would likely have no recourse if she filed a charge with the EEOC challenging her termination on these grounds. In fact, Rachel cannot challenge Redeemer’s decision to terminate her employment under any theory of liability because “[b]oth [the Establishment Clause


\textsuperscript{78} See \textit{id.} at 196.

\textsuperscript{79} See 42 U.S.C.S. § 12132 (LexisNexis 2022).
and the Free Exercise Clause bar the government from interfering with the decision of a religious group to fire one of its ministers."\textsuperscript{84} Accordingly, Rachel’s only avenue of relief would be through contract or tort liability seeking compensatory damages, as long as she does not challenge Redeemer’s decision to terminate her employment.\textsuperscript{85}

First, Rachel can potentially recover under the contract law theory of promissory estoppel. The Restatement (Second) of Contracts § 90 provides the following guidance on promissory estoppel actions:

A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.\textsuperscript{86}

Federal courts using this definition have interpreted promissory estoppel claims as having four requirements: "[(1)] the defendant made a promise; [(2)] the defendant expected or should have reasonably expected the promise to induce substantial and definite action by the promisee; [(3)] the promise did induce such action; [(4)] the promise must be enforced to avoid injustice."\textsuperscript{87}

Based on these four factors, Rachel can likely plead a prima facie case because: (1) her employer promised that she would be “taken care of” if she carried her pregnancy to term; (2) her employer should have reasonably expected that this promise would induce Rachel’s decision to carry her pregnancy to term; (3) Rachel did carry her pregnancy to term in reliance on her employer’s promise; and (4) injustice can only be avoided by enforcing Redeemer’s promise because her employer reneged on their promise, terminated her without reasonably accommodating her new disability, and left her burdened with medical bills and no source of income. While reinstatement to her former position, of course, cannot be sought, compensatory damages for her medical bills are a potential remedy.\textsuperscript{88}

\textsuperscript{84} Hosanna-Tabor, 565 U.S. at 181.

\textsuperscript{85} See id. at 188 (“Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs.”).

\textsuperscript{86} Restatement (Second) of Contracts § 90 (Am. L. Inst. 1981).


\textsuperscript{88} For the sake of this Comment, the success of Rachel’s promissory estoppel claim is irrelevant. What matters here is whether she can plead a prima facie case and, most
Additionally, Rachel can potentially recover under the tort law theory of negligent performance of undertaking to render services. The Restatement (Second) of Torts § 323 states the following parameters for this tort:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other’s person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if the harm is suffered because of the other’s reliance upon the undertaking.89

Comment A of the Restatement specifies that liability can attach when “the harm to the other or his things results from . . . [the defendant’s] failure to exercise reasonable care to complete [the undertaking] or to protect the other when he discontinues it.”90 While the defendant can abandon the undertaking at any time, Comment C of the Restatement prohibits doing so if it “put[s] the other in a worse position than he was in before the [defendant] attempted to help him.”91 If such a case arises, the defendant “will then be required to exercise reasonable care to terminate his services in such a manner that there is no unreasonable risk of harm to the other, or to continue them until they can be so terminated.”92

In Rachel’s case, she can likely also plead a prima facie case for this tort, arguing that Redeemer’s promise was a gratuitous undertaking to render services for her well-being once she carried her pregnancy to term. Redeemer then failed to exercise reasonable care in this undertaking by refusing to accommodate her disability and summarily firing her once her work quality declined. Furthermore, the harm Rachel suffered from this failure—that is, burdensome medical bills and the inability to pay them—was incurred from her reliance on Redeemer’s undertaking to render services. Lastly, while Redeemer had the right to cease rendering its services to Rachel at any time, it was prohibited from doing so if it put Rachel in a worse position than she was in prior to the undertaking; which is exactly what happened. Therefore, Redeemer would have to continue its promised undertaking that Rachel would be “taken care of” until the unreasonable harm placed

89 Restatement (Second) of Torts § 323 (Am. L. Inst. 1965).
90 Id.
91 Id.
92 Id.
IV. THE CURRENT CIRCUIT SPLIT PICKING UP WHERE HOSANNA-TABOR LEFT OFF AND ADVOCATING FOR THE NINTH CIRCUIT’S APPROACH TO HANDLING MINISTER-EMPLOYER CONTRACT AND TORT DISPUTES

Rachel’s theories of recovery are inconsequential, however, if the ministerial exception precludes her claim before it reaches the courtroom. While the foundational purpose behind the ministerial exception—that matters “‘entirely ecclesiastical’ [be] left to the Church’s own judgment”94—is sound and necessary, it cannot be that a claim like Rachel’s is without remedy. Prohibiting recovery for a minister who detrimentally relied on her employer’s reasonable promise would grant religious organizations carte blanche to haphazardly make and break covenants without liability. For this reason, it is necessary for courts applying the ministerial exception to do so cautiously and only in situations where strictly ecclesiastical decisions are challenged, rather than situations that merely involve an ecclesiastical relationship. As Part IV will analyze, the Ninth Circuit’s approach to “whether the exception bars . . . actions by employees alleging breach of contract or tortious conduct by their religious employers” best accomplishes this goal and is the preferable option in the current circuit split picking up where Chief Justice Roberts left off in Hosanna-Tabor.95

A. The Circuit Split Concerning Whether to Permit Claims Stemming From a Minister’s Employment Relationship

Although the Courts of Appeals generally agree that the ministerial exception can apply to non-clergy members96 and that actions challenging a religious organization’s ecclesiastical employment decisions are strictly forbidden,97 they disagree as to whether actions

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93 As previously stated in Note 88, the probability that Rachel’s tort claim succeeds is irrelevant as this Comment focuses on whether she can plead a prima facie case for a remedy without being preempted by the ministerial exception.

94 Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 565 U.S. 171, 184 (2012).

95 Id. at 196.

96 See id. at 204 (stating that the Court’s decision “should not be read to upset [the] consensus” among the circuits that the ministerial exception is not limited to clergy members).

97 See, e.g., Elvig v. Calvin Presbyterian Church, 375 F.3d 951, 953 (9th Cir. 2004) (“To the extent [a minister’s] sexual harassment and retaliation claims implicate the Church’s ministerial employment decisions, those claims are foreclosed.”); Alicea-Hernandez v. Cath. Bishop of Chi., 320 F.3d 698, 703 (7th Cir. 2003) (quoting EEOC v. Roman Cath. Diocese, 213 F.3d 795, 802 (4th Cir. 2000) (“The [ministerial] exception
stemming from a minister’s employment relationship can be heard even if those actions do not challenge protected employment decisions.98 This circuit split comes to a head in Demkovich v. St. Andrew the Apostle Parish,99 where the Seventh Circuit’s en banc decision delivers a majority opinion forbidding most ministerial suits and a scathing dissent warning against the harm and impracticality of establishing such a bright-line rule.

1. The Ninth Circuit’s Approach: Bollard and Elvig

In the Ninth Circuit, courts may allow a minister’s claim stemming from his or her relationship with their religious employer as long as the claim does not challenge a protected ecclesiastical employment decision and there is no religious justification for the employer’s offending conduct.100

In Bollard v. California Province of the Society of Jesus, John Bollard alleged that he left his position as a Jesuit minister just before ordination because of sexual harassment that he endured leading up to taking his vows.101 Soon after, Bollard filed a complaint with the EEOC for sexual harassment and received a right-to-sue letter allowing him to bring Title VII claims against his former employer.102 In its holding, the Ninth Circuit explained that while the ministerial exception insulates religious organizations from judicial interference when choosing their ministers, this protection did not apply to Bollard’s Title VII claim because there was no religious justification for his employer’s actions.103 In fact, the court emphasized that the Jesuits “condem[ed] [Bollard’s harassment] as inconsistent with their values and beliefs” and reasoned that allowing Bollard’s claim to continue did not “thrust the secular courts into the

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98 Compare Bollard v. Cal. Province of the Soc’y of Jesus, 196 F.3d 940, 947 (9th Cir. 1999) (holding that a minister’s claim against his employer pertaining to his employment relationship can be heard if the employer cannot provide a religious justification for the alleged offense), with Alicea-Hernandez v. Cath. Bishop of Chi., 320 F.3d 698, 702–03 (7th Cir. 2003) (holding that it is “not [the court’s] role to determine whether the Church had a secular or religious reason for the alleged mistreatment of [its ministers]” and all minister claims stemming from an employment relationship are prohibited).


100 See Bollard, 196 F.3d at 946–47.
101 Id. at 944.
102 Id.
103 Id. at 947–48.
constitutionally untenable position of passing judgment on questions of religious faith and doctrine.”\textsuperscript{104} Notably, \textit{Bollard} refutes a bright-line rule that the ministerial exception’s “heightened constitutional protection” automatically applies when a minister sues his employer based on his employment relationship.\textsuperscript{105}

Five years later, the Ninth Circuit affirmed \textit{Bollard} in \textit{Elvig v. Calvin Presbyterian Church}.\textsuperscript{106} In \textit{Elvig}, Patricia Elvig was sexually harassed while serving as an Associate Pastor at Calvin Presbyterian Church and suffered retaliation upon reporting the harassment to her superiors.\textsuperscript{107} Subsequently, Elvig filed a charge with the EEOC and received a right-to-sue letter, but was terminated and blacklisted within the Presbyterian community upon presenting her employer with a lawsuit.\textsuperscript{108} This prompted Elvig to retain a second right-to-sue letter for a second claim of harassment and retaliation, this time stemming from her termination.\textsuperscript{109} After deciding that Elvig was a minister and potentially subject to the ministerial exception, the Ninth Circuit applied \textit{Bollard} and permitted Elvig’s sexual harassment and retaliation claims from the first right-to-sue letter that occurred before her termination because they did not implicate her employer’s protected minister-selection decisions.\textsuperscript{110} The court did not treat the second right-to-sue letter similarly, however, and chose to “simply defer without further inquiry” the claims resulting from the church’s decision to terminate and blacklist Elvig because such employment decisions were “clearly within the scope of the ministerial exception.”\textsuperscript{111} Regarding why \textit{Bollard} was rightly decided, the court offered the following reasoning:

Indeed, if we were to ignore \textit{Bollard} and adopt a rule that the First Amendment bars Elvig from even stating a Title VII claim—out of speculation that the affirmative defense \textit{might} somehow involve some doctrinal component—we would be affording blanket First Amendment protection to churches that unreasonably fail to address clear instances of sexual harassment… even when no protected ministerial choice or church doctrine is in fact involved.\textsuperscript{112}

\textsuperscript{104} \textit{Id.}
\textsuperscript{105} \textit{Id.}
\textsuperscript{106} Elvig v. Calvin Presbyterian Church, 375 F.3d 951, 969 (9th Cir. 2004).
\textsuperscript{107} \textit{Id.} at 953–54.
\textsuperscript{108} \textit{Id.} at 954.
\textsuperscript{109} \textit{Id.}
\textsuperscript{110} \textit{Id.} at 969.
\textsuperscript{111} \textit{Id.} at 958 (quoting \textit{Bollard}, 196 F.3d at 947).
\textsuperscript{112} Elvig v. Calvin Presbyterian Church, 375 F.3d 951, 964 (9th Cir. 2004).
In sum, Elvig and Bollard represent the Ninth Circuit’s opinion that courts should not prohibit a minister’s claim purely because it relates to his or her employment relationship.\footnote{Id.; Bollard v. Cal. Province of the Soc’y of Jesus, 196 F.3d 940, 947 (9th Cir. 1999).} Instead, the Ninth Circuit permits judicial inquiry into minister-employer tort cases as long as courts do not question a religious organization’s hiring decision and are not met with a legitimate religious justification for the employer’s offense.\footnote{See Bollard, 196 F.3d at 946–47; Elvig, 375 F.3d at 956, 959.}

2. The Seventh Circuit Approach: Alicea-Hernandez and Demkovich

In complete contrast to the Ninth Circuit, the Seventh Circuit expressly disagreed with Bollard and Elvig to hold that a minister cannot bring any action against their religious employer—even if there is no religious justification for the alleged offense—because such an action requires too much state interference in the inner workings of the church.\footnote{See Demkovich v. St. Andrew the Apostle Par., 3 F.4th 968, 985 (7th Cir. 2021) (en banc) (distinguishing itself from the Ninth Circuit’s approach: “[t]he First Amendment ministerial exception protects a religious organization’s employment relationship with its ministers, from hiring to firing and the supervising in between”).}

In Alicea-Hernandez v. Catholic Bishop of Chicago,\footnote{Alicea-Hernandez v. Cath. Bishop of Chi., 320 F.3d 698, 700 (7th Cir. 2003).} Gloria Alicea-Hernandez worked for the Archdiocese of Chicago and claimed that she was the victim of gender and national-origin discrimination throughout her employment. Like the plaintiffs in Bollard and Elvig, Alicea-Hernandez filed several charges with the EEOC and retained a right-to-sue letter to execute against her employer.\footnote{Id. at 701; Bollard v. Cal. Province of the Soc’y of Jesus, 196 F.3d 940, 944 (9th Cir. 1999); Elvig v. Calvin Presbyterian Church, 375 F.3d 951, 954 (9th Cir. 2004).} Unlike the plaintiffs in Bollard and Elvig, however, the Seventh Circuit did not hear Alicea-Hernandez’s claims because “[t]he ‘ministerial exception’ applies without regard to the type of claims being brought” and will render any case improper if it is brought by a minister asserting a claim based on her employment relationship.\footnote{Alicea-Hernandez, 320 F.3d at 703.} Contrary to the Ninth Circuit’s leniency towards cases without a religious justification, the Seventh Circuit ruled that it is “not [the court’s] role to determine whether the Church had a secular or religious reason for the alleged mistreatment of [its ministers].”\footnote{Id.} Ruling otherwise, the court continued, “would enmesh the court in endless inquiries as to whether each discriminatory act was
based in Church doctrine or simply secular animus.”  

While the Seventh Circuit’s pivotal holding in Alicea-Hernandez remained undividedly strong precedent for nearly two decades, the court was split over its holding’s applicability for the first time in Demkovich v. St. Andrew the Apostle Parish.

In Demkovich, Sandor Demkovich claimed that he allegedly received derogatory comments regarding his sexual orientation—Demkovich was a gay man—and diabetes while working at St. Andrew the Apostle Parish (“the Parish”). After the Parish eventually fired him, Demkovich sued his former employer, initially claiming that his termination was a result of employment discrimination “based on his sex, sexual orientation, marital status, and disability.” This first suit, however, was quickly dismissed without prejudice pursuant to the ministerial exception’s bar on claims that challenge a church’s ministerial decision-making. Upon dismissal, Demkovich retooled his complaint into a hostile work environment claim that argued against the same conduct as the first suit but regarding injuries sustained during his employment rather than his termination. The district court “dismiss[ed] Demkovich’s hostile work environment claims based on sex, sexual orientation, and marital status while allowing his disability-based hostile work environment claims to proceed.”

Before the district court could continue with these leftover claims, the Parish motioned to certify the following question to the Seventh Circuit: “does the ministerial exception ban all claims of a hostile work environment brought by a . . . minister, even if the claim does not challenge a tangible employment action?”

The Seventh Circuit, sitting en banc and delivering a 7–3 decision, held that even though Demkovich’s claims did not target a protected ecclesiastical employment decision, they still could not proceed because “[a] religious organization’s supervision of its ministers is as much of a

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120 Id.
121 See Tomic v. Cath. Diocese of Peoria, 442 F.3d 1036, 1040 (7th Cir. 2006) (citing Alicea-Hernandez as supporting case law for a unanimous bench); Grussgott v. Milwaukee Jewish Day Sch., Inc., 882 F.3d 655, 660 (7th Cir. 2018) (per curiam) (same).
122 See Demkovich v. St. Andrew the Apostle Par., 3 F.4th 968, 980 (7th Cir. 2021) (en banc).
123 Id. at 973.
124 Id.
125 Id.
126 Id.
127 Id.
128 Demkovich v. St. Andrew the Apostle Par., 3 F.4th 968, 974 (7th Cir. 2021) (en banc).
‘component’ of its autonomy as ‘is the selection of the individuals who play certain key roles.’” 129 Quoting *Hosanna-Tabor*, the majority explained that courts analyzing a ministerial work environment violate the Free Exercise Clause—" which protects a religious group’s right to shape its own faith and mission"—because “[a] religious organization shapes its faith and mission through its work environment just as much as ‘through its appointments.’” 130 By this notion, the majority reasoned that “[i]t would be incongruous if the independence of religious organizations mattered only at the beginning (hiring) and the end (firing) of the ministerial relationship, and not in between (work environment).” 131 The majority then discredited the Ninth Circuit’s leniency towards offenses lacking religious justification and bolstered *Alicea-Hernandez’s* ruling by holding that “[j]ust as a religious organization need not proffer a religious justification for termination claims, a religious organization need not do so for hostile work environment claims.” 132

In a scathing dissent joined by two other judges, Judge Hamilton chastised the majority for “decid[ing] a hard question but mak[ing] it look easy.” 133 Hamilton’s dissent provides six reasons why the majority’s opinion “creates for religious institutions a constitutional shelter from generally applicable laws, at the expense of the rights of employees.” 134 First, Hamilton criticizes the majority for treating the issue on appeal as already decided by the Supreme Court despite it falling “squarely into the area that *Hosanna-Tabor* expressly declined to reach” where the Court declined to opine “whether the [ministerial] exception bars other types of suits, including actions by employees alleging . . . tortious conduct by their religious employers.” 135 Second, Hamilton addressed the circuit split regarding this issue by citing *Bollard* and *Elvig* as evidence “that the question before [the court] is not as easy as the majority presents it.” 136 Third, Hamilton argues that the majority draws “an oddly arbitrary line” at preventing a minister’s hostile work environment claim when “[c]hurches and their leaders are

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129 *Id.* at 979 (quoting *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020)).
130 *Id.* at 980 (quoting *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 188 (2012)).
131 *Id.* at 979.
132 *Id.* at 980 (emphasis added).
133 *Id.* at 985 (Hamilton, J., dissenting).
135 *Id.* at 986 (Hamilton, J., dissenting).
136 *Id.* at 987–88 (Hamilton, J., dissenting).
already accountable in civil courts for many similar sorts of claims[] like sexual assault cases. In this regard, Hamilton notes that while “there is some risk of burdening religious liberty and entangling civil and religious affairs” in these permitted suits, “the First Amendment does not categorically defeat any of them.” Rather, “if a special difficulty arises under the First Amendment, courts will deal with it.”

Fourth, Hamilton cites Bollard to assert that because the ministerial exception only applies when it “is necessary to comply with the First Amendment” and because hostile work environment claims are “essentially tortious in nature [and] … by definition based on actions that are not necessary” for ecclesiastical decision-making, it is not necessary for religious employers to be exempt from such claims.

Fifth, Hamilton believes that courts should balance legal remedies with religious liberty and “apply secular hostile-environment law to actions taken toward all employees, including ministers, absent a showing … of … excessive entanglement between civil and religious realms.” Lastly, Hamilton warns of the policy implications caused by the majority’s holding. Specifically, Hamilton contends that the majority’s holding effectively places despicable conduct, such as egregious sexual and racial harassment, beyond the judiciary’s reach and allows offenders to cause pain and suffering without consequence.

In sum, Hamilton’s dissent opines that the Seventh Circuit should abandon its bright-line rule against suits involving a ministerial employment relationship and instead “should weigh competing interests case-by-case to protect both religious liberty and laws” protecting employees.

B. Courts Should Adopt the Ninth Circuit’s View That Applies the Ministerial Exception Only When It is Necessary to Respect a Religious Organization’s Ecclesiastical Decision-Making and to Avoid Conflicting with Religious Justifications for an Alleged

137 Id. at 989 (Hamilton, J., dissenting).
138 Id.
139 Id.
140 Demkovich v. St. Andrew the Apostle Par., 3 F.4th 968, 989–90 (7th Cir. 2021) (en banc) (Hamilton, J., dissenting).
141 Id. at 994 (Hamilton, J., dissenting) (emphasis added).
142 Id.
143 Id. at 995 (Hamilton, J., dissenting).
144 Id. at 985 (Hamilton, J., dissenting).
Wrongdoing

In his concurrence in *Hosanna-Tabor*, Justice Alito emphasized the importance of “religious autonomy” as the basis for its decision. As a result, he reasoned that “religious authorities must be free to determine who is qualified to serve in positions of substantial religious importance” and that the judiciary is unequipped to make that decision for any reason whatsoever. With this in mind, the Seventh Circuit’s hands-off approach may, on its face, appear preferable to the Ninth Circuit’s view since a categorical ban on minister-employer claims would inevitably lead to fewer constitutional questions and less judicial inquiry into protected ecclesiastical decisions. While this may be true, the Seventh Circuit’s approach is an overbroad solution to a much narrower problem. Instead, by adhering to the proper methodology utilized in *Bollard*—echoed in Judge Hamilton’s post-*Hosana-Tabor* dissent in *Demkovich*—the ministerial exception’s potency should only be reserved for situations “necessary to comply with the First Amendment[]” where ecclesiastical decision-making is jeopardized and a religious justification exists to indemnify an employer from its alleged wrongdoing. This viewpoint respects the principle of church–state separation intended by the Founders and upheld by the Supreme Court, while simultaneously providing minister-plaintiffs with the potential of relief when they plead a prima facie case of wrongdoing against their employer.

The Ninth Circuit’s take on the ministerial exception is in agreement with the claims that the Founders and the Supreme Court intended to insulate from government interference. According to the Ninth Circuit, there are two situations when it is “necessary” to apply the ministerial exception: (1) when a claim challenges a religious organization’s discretion in its ministerial employment decisions, and (2) when adjudicating a minister’s claim would run afoul of a religious justification for the alleged offense that would force courts to “pass[]

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146 *Id.*
147 *See discussion of cases cited supra note 51 (comparing the Seventh and Ninth Circuit’s respective approaches to handling a minister’s claim against their religious employer when that claim implicates the minister’s relationship with their employer).*
149 *See discussion supra A. The United States’ Non-Interventionist History of Insulating Ecclesiastical Disputes from Judicial Review.*
In line with the first scenario, James Madison opined that the “scrupulous policy of the Constitution in guarding against a political interference with religious affairs” prevents the government from rendering an opinion on the “selection of ecclesiastical individuals.” As for the second scenario, the Supreme Court held over one-and-a-half centuries ago that “whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories ... the legal tribunals must accept such decisions as final and binding on them.” These two historical examples demonstrate that the Ninth Circuit’s interpretation of the ministerial exception respects the groundwork laid before it by the Founders and the Supreme Court without unnecessarily widening the exception’s already ample coverage.

Unlike how the Ninth Circuit’s approach, by definition, accomplishes what is necessary to not offend the First Amendment, the Seventh Circuit’s approach exceeds the necessary bounds of the ministerial exception to encapsulate the entire minister–employer relationship. Although the Seventh Circuit in Demkovich states that the “protected interest of a religious organization” upheld in Hosanna-Tabor included “hiring, firing, and supervision in between[,]” such interpretation is misguided because “the Court held only that the ministerial exception bars [a] ... ‘suit brought on behalf of a minister, challenging her church’s decision to fire her.’” Beyond its unwarranted expansion of Supreme Court precedent, the Seventh Circuit’s “Church–Minister Relationship view posits [that] tort, contract, and other permissible claims would be ... constitutionally problematic” and unable to proceed on the mere fact that they stem from a minister’s relationship with her employer. These repercussions would be especially problematic when applied to a minister like Rachel.

150 Bollard, 196 F.3d at 947.
151 Madison Letter, supra note 15.
154 Demkovich v. St. Andrew the Apostle Par., 3 F.4th 968, 976–77 (7th Cir. 2021) (en banc).
156 Id. at 31.
In Rachel’s case, her prima facie promissory estoppel claim would pass the Ninth Circuit’s test because it holds her employer liable for its broken promise to which she detrimentally relied, rather than challenge Redeemer’s decision to terminate her employment. Further, her promissory estoppel claim would survive scrutiny under the Ninth Circuit’s methodology because Rachel’s claim does not conflict with a religious justification brought forth by Redeemer. Any court–church entanglement would be moot as Rachel would be challenging the broken promise and not Redeemer’s stance against getting an abortion, the latter of which is clearly a protected religious justification. If, however, courts were to adopt the Seventh Circuit’s “Church–Minister Relationship” view, Rachel’s entire promissory estoppel claim would be dismissed, regardless of its merits or lack of religious entanglement, because it is a product of her relationship with Redeemer. Rachel’s prima facie negligent performance of undertaking to render services claim would meet a similar ill-fated end as her contract claim. Like her contract claim, Rachel would be arguing against Redeemer’s inaction after initially promising that she would be “taken care of,” rather than her ultimate termination. Moreover, because tort claims are “by definition based on actions that are not necessary” for a minister–employer relationship, Redeemer would be unable to provide a religious justification for its inaction. Yet, just as with her contract claim, Rachel’s entire tort claim would be dismissed under the Seventh Circuit’s approach as it stems from her employment relationship.

As Rachel’s case illustrates, courts adopting the Seventh Circuit’s interpretation allow religious organizations to breach contracts and commit torts without recompense, leaving wronged ministers like Rachel without a remedy. Despite not implicating the two protected scenarios revered by the Founders and upheld in Hosanna-Tabor, situations like Rachel’s would be thrown out by courts abiding by the Seventh Circuit’s view purely because such claims arise out of a minister–employer relationship. This “oddly arbitrary line” drawn by the Seventh Circuit creates an unnecessary solution to a much narrower problem already solved by the Ninth Circuit; except where the

\[157\] See supra C. Rachel’s Potential Avenues of Relief.
\[158\] See supra Part IV.A.1 (explaining the Ninth Circuit’s approach).
\[159\] See Casper, supra note 155, at 29–30.
\[160\] See supra C. Rachel’s Potential Avenues of Relief.
\[161\] Demkovich v. St. Andrew the Apostle Par., 3 F.4th 968, 990 (7th Cir. 2021) (Hamilton, J., dissenting).
\[162\] Id. at 989 (Hamilton, J., dissenting).
Ninth Circuit respects the rights of both minister and employer, the Seventh Circuit chooses to take the path of least resistance.

V. CONCLUSION

Rachel’s situation epitomizes the unforeseen consequence of the Seventh Circuit’s approach: it leaves ministers wronged by contract violations and tort offenses committed by their employers without a remedy. Yet, Rachel’s case is only the beginning. Combined with Our Lady of Guadalupe’s broad definition of “minister,” analyzing the ministerial exception through the Seventh Circuit’s view would forbid countless other ministerial employees from seeking recovery on claims that would be heard without issue from non-ministerial employees working for the same employer. While certain constitutional doctrines like the Fourth Amendment’s protection against “unreasonable searches and seizures” are “replete with categorical rules” appropriately tied to their enforcement, the ministerial exception rooted in the First Amendment’s Free Exercise and Establishment Clause should not be treated similarly. Instead, courts addressing ministerial employment claims should adopt the Ninth Circuit’s case-by-case approach that provides injured minister-plaintiffs a remedy as long as they do not challenge a protected ecclesiastical employment decision or a legitimate religious justification for wrongdoing. Only through this approach will the ministerial exception be rightly treated as not “just another brick in the wall” of separation established by the Founders.

163 See Osborne, supra note 60, at 630.
164 See Demkovich, 3 F.4th at 988 (Hamilton, J., dissenting) (explaining the Seventh Circuit’s understanding that many claims, including employment discrimination, would be permissible for non-ministerial employees working for a religious organization while impermissible for ministerial employees of the same employer).
166 See Bollard v. Cal. Province of the Soc’y of Jesus, 196 F.3d 940, 947 (9th Cir. 1999).
167 See Jefferson Letter, supra note 1; see also PINK FLOYD, Another Brick in the Wall, on THE WALL (Columbia Records 1979).