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Reassessing the 14th Amendment: Supreme Court Decisions on Gender-Motivated Violence

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Abstract:

This research paper explores the intersection of the 14th Amendment to the United States Constitution and gender-motivated violence, with a focus on the judicial interpretations by the Supreme Court. Beginning in 1994, the implementation of The Violence Against Women Act (VAWA) fostered federal response to domestic violence, aligning its principles of civil protection with the 14th Amendment's goal of safeguarding civil rights. However, in the early 2000s, the Supreme Court rulings in *United States v. Morrison* and *Town of Castle Rock, Colorado v. Gonzales* significantly curtailed federal provisions concerning equal protection and due process. This paper aims to examine the role of the 14th Amendment in gender-based violence, specifically focusing on the diminished federal capacity and increased state autonomy following the *Morrison* and *Gonzales* decisions. It argues that the Court's refusal to acknowledge the broad scope of the 14th Amendment in these cases has facilitated state-level decisions that potentially undermine the rights of victims.

This paper also briefly touches upon the Supreme Court's approach to the 2nd Amendment, noting its more effective implementation of firearm restrictions in domestic violence cases. This discussion serves to contrast the Court's varying effectiveness across different constitutional realms, and to highlight the particular need for a more comprehensive legal framework that utilizes the 14th Amendment to protect victims of gender-motivated violence. The recent VAWA Reauthorization Act of 2022 is recognized as a step forward, yet it is often considered insufficient in addressing the judicial gaps exposed by the *Morrison* and *Gonzales* decisions.

Introduction

The Violence Against Women Act (VAWA) passed by Congress in 1994 significantly shaped the legal landscape in addressing domestic violence and sexual assault in the United States. VAWA recognizes domestic violence as a national crime, issues federal legislation to regulate state-level justice systems, and affords protections to the victims of gender-motivated violence.[1] The enforcement of VAWA aligns with the spirit of the 14th Amendment by seeking to ensure civil rights and liberty of the victims, which were formerly confined to only state actions. However, the judicial branch seems less cooperative in promoting victim justice under this federal legislation. The Supreme Court has struck down two significant cases of gender-motivated violence, *United States v. Morrison* (2000) and *Town of Castle Rock, Colorado v. Gonzales*(2005), on the basis of the 14th Amendment. These decisions have curtailed the scope of federal provisions concerning equal protection and due process in the context of gender-based and domestic violence.

Gender-based violence cases often invoke two specific legal discussions under the Constitution: the 2nd Amendment and the 14th Amendment. While recognizing the Court's progress in enforcing gun controls to domestic violence offenders, this research paper will center on how legal discussion under the 14th Amendment is substantially obscured. In regard to the Court's opinion of *Morrison* and *Gonzales*, I argue that by denying the foundation of the 14th Amendment argument in gender-motivated violence cases, the Court fails to enforce enough federal provisions against these crimes. This lack of action allows state-level decisions to potentially restrict victims' rights. After presenting the limitations in each case, I will discuss potential 14th Amendment claims to support the following arguments: 1) Civil rights under gender-motivated violence provisions should not be denied based on a public/private classification, and 2) As domestic violence comprises a significant portion of gender-motivated crime, the property rights that are linked to the restraining orders for domestic violence victims should be constitutionally enforced and protected.

Congressional Enforcement and Gender-Motivated Violence: *United States v. Morrison*

Gender-motivated violence encompasses a range of crimes that cause physical and psychological harm to the victims.[2] While the judicial discourse surrounding these crimes often intersects with the 14th Amendment, there has been growing concern over the effectiveness of this amendment in guaranteeing the civil rights of the victims.

VAWA, a capstone federal legislation on gender assault and domestic violence, represented a significant federal response to the crisis of violence against women, and it provided comprehensive measures for victim protection and perpetrator prosecution.[3] Enacted in 1994, it marked a paradigm shift in how the United States addressed these issues by combining legal actions with supportive services. VAWA introduced new federal crimes, funded victim support programs like shelters and hotlines, and facilitated training for law enforcement and judicial officials to enhance their handling of such cases.[4] Periodic reauthorizations of VAWA expanded its scope as they addressed the evolving needs of diverse victim groups and communities.

Grounded on the reauthorized VAWA in 1996, *Morrison* was initiated by a female university student who alleged rape by fellow students.[5] In its opinion, the Court questioned the constitutionality of a part of VAWA that "provides a federal civil remedy for the victims of gender-motivated violence." [6] The Court denied this federal statute under both the Commerce Clause and §5 of the 14th Amendment.

The latter's rejection was based on concerns that extending Congress's power under §5 would undermine the 14th Amendment's intent to maintain the "carefully crafted balance of power between the States and the National Government." [7] Citing the Civil Rights Cases of 1883, the Court argued that Congress lacked the authority under the 14th Amendment to regulate private acts of discrimination. [8] The Court concluded that discrimination against gender-motivated crime victims was not a nationwide problem, and identified the civil remedy as pure private conduct that no federal regulation should infringe upon.

Both former judicial opinion and authorized data have shown that adopting a private/public classification to deny the legitimacy of the 14th Amendment can be detrimental to protecting the rights of victims. As Justice Harlan argued in the dissent of the Civil Rights Cases, the 14th Amendment should be interpreted to empower Congress to legislate beyond private/public distinction. [9] Harlan's reasoning underscores that the Amendment's protection should extend to all forms of discrimination that infringe upon the fundamental rights of citizens, which justifies federal intervention in cases of gender-motivated violence that are inadequately addressed at the state level. This perspective is particularly relevant in cases like *Morrison*, even if the deprivation of civil rights is based on gender, rather than race. Gender-based violence should be recognized as a form of societal discrimination, rather than being diminished to a mere private dispute or civil damage issue. The Court's narrow focus in *Morrison* restricts future judicial actions against discriminative gender-motivated violence. The Department of Justice reports that in 1995, for every 1,000 female residents aged 12 or older, five experienced sexual violence. Among these victims, only "28 percent of rape or sexual assault victimizations against females were reported to the police." [10] This data proves the insufficiency of local investigations on gender-motivated violence. Even worse, for those 28 percent of cases that are reported, state legislation could fail to provide adequate civil remedies. [11] After *Morrison*, the possibility of seeking reparations for damage through federal legislation has been foreclosed.

Under this misleading scope of private/public distinction formed by *Morrison*, the civil rights of gender-motivated violence victims are not adequately protected. As state officials continually fail to enforce enough provisions against these crimes, some argue that they carry "pervasive stereotypes about women and the family." [12] This revictimization can be tied to the long-standing patriarchal norms that have deprived the fundamental rights of women. Specifically from a legal perspective, although the Reconstruction Amendments, ratified between 1865 and 1870, endorsed equal citizenship to all, women's right to vote was not granted until the 19th Amendment was ratified in 1920. All gender-based distinctions deserve more attention that scrutinizes rooted issues of social and political inequalities; this justifies the civil damage remedy as a societal obligation that needs to be enforced by federal legislation.

Although one could argue that the civil remedy in *Morrison* is not adequately supported by §5 due to the ambiguity around congressional legislation, the importance of analyzing *Morrison* under the 14th Amendment remains evident through the Equal Protection Clause. As the equal protection argument encompasses an affirmative power, it requires the state "to explain why it could not employ less restrictive means" if discriminative acts are perceived. [13] This principle is exemplified by the Court's decision in *Loving v. Virginia*, a landmark case in 1967 that challenged racial discrimination in marriage laws. In *Loving*, the Court applied the equal protection clause to dismantle laws that infringed upon fundamental rights and ruled that Virginia's law prohibiting interracial marriage was unconstitutional.

Since *Loving*, the Court has prohibited states from arbitrarily using racial classifications in matters of marriage.[14] Similarly, in *Morrison*, the Court should have acknowledged the unequal treatment of women that results from the state's failure to fully consider the societal impacts of gender-motivated violence.

The goal of equal protection aligns with VAWA's: to promote the equality of women by penalizing acts of violence. The federal civil remedy meets the equal protection rationale, which offers a legal avenue for victims of gender-motivated violence to seek compensatory and punitive damages.[15] By providing this remedy, VAWA confronts state actions that infringe upon victims' rights, showcasing the need to uphold civil rights beyond the public/private distinction, and ultimately guaranteeing equal protection for all victims.[16]

Procedural Due Process and Domestic Violence: *Town of Castle Rock, Colorado v. Gonzales*

Domestic violence, a crucial component of gender-motivated violence, represents the particular realm of intimate relationships and family dynamics.[17] From *Morrison* to *Gonzales*, both cases invoked a distinction of state-level and federal power and denied certain rights of gender-motivated violence victims under the 14th Amendment. While *Morrison* argued that federal law is not entitled to intervene in damage remedies of gender-motivated violence under §5, the Court of *Gonzales* based its claim upon the procedural due process rights of domestic violence victims.

In *Gonzales*, the Court questioned whether the property interest of Jessica Gonzales, the victim, whose children were murdered by her husband, was constitutionally protected by a state-enforced restraining order.[18] The case emerged when Gonzales' children were murdered by her estranged husband, despite her having a restraining order against him. Gonzales argued that the police's neglect in enforcing the restraining order, despite her multiple calls for police intervention, constituted a breach of her procedural due process rights.[19] In a 7-2 decision, the Court ruled against the victim and stated that procedural due process did not proclaim this interest. This ruling was significant as it dealt with the complex interactions between state responsibility, federal constitutional rights, and the deeply personal context of domestic violence.

The majority opinion contains significant shortcomings in protecting domestic violence victims. The Court first categorized the property interest involved in a restraining order as a 'benefit' – implying it is a tangible entitlement rather than an abstract need or desire, which the victim might struggle to substantiate.[20] Following this claim, the Court argued that even if the order is mandatory, the police are not obliged to enforce the order. From a historical modality, the Court stated that "a well-established tradition of police discretion has long coexisted with apparently mandatory arrest statutes." [21] Up to this point, the Court had granted full flexibility to state-level provision enforcement of the restraining order.

In terms of the state and police administration, the discretionary enforcement of restraining orders fundamentally undermines the purpose to safeguard victims. This kind of police discretion does not comply with the very reason why victims seek state protection. The Court adversely narrows the scope of justice and potentially excludes essential needs for supporting domestic violence victims, such as the provision of basic safety for the women and children experiencing the violence and their future socio-economic reparation. These needs may not be adequately addressed if they are not recognized as part of the mandatory state's responsibilities. As a result, the inadequate state intervention eliminates "procedural due process claims

in situations where states have any law or policy regarding domestic violence.”[22]

The decision to eliminate procedural due process claims in situations where states have any law or policy regarding domestic violence stems from a complex judicial interpretation of the 14th Amendment.[23] The Court’s rationale was centered around the idea that the enforcement of a restraining order does not constitute a property right guaranteed by procedural due process. This interpretation is controversial because it fails to consider the substantive rights at stake in domestic violence scenarios, restricting the implementation of the restraining order to a mere formality rather than a critical tool for protection.

Besides the state’s lack of restraining order enforcement, the justice system also fails to understand victimhood comprehensively, thereby establishing fewer judicial protections against domestic violence. Following *Morrison*, most domestic violence cases fall under state jurisdiction. This focus often tends to shield officials from liability and obscure the state’s responsibility to provide effective judicial and social remedies. Precluding the discussion of domestic violence under due process claim “is not a constitutional requirement,” but a limited decision solely made by the justice system.[24] This approach, a deliberate judicial choice, not only constrains the scope of due process claims for domestic violence but also fails to adequately recognize and address the complexities of victimhood, leading to significant judicial blockages that discard the fundamental rights of the victim.

An alternative claim to *Gonzales* can be built from a substantive due process perspective. Rather than entitling property interest to solely procedural justice, one could approach *Gonzales* by considering the enforcement of restraining orders as one of the unenumerated civil rights. Domestic violence is a type of interpersonal violence “bound to the institutions of marriage and family.”[25] Long since *Griswold v. Connecticut* (1965), the Court has brought up the substantive due process claim that rights to marriage and family relationships are fundamental to society and to individuals, and should be guaranteed by the Constitution.[26] Therefore, in *Gonzales*, the property interests of receiving state protections under the restraining order can be interpreted under this unenumerated rights framework. This approach would consider the enforcement of the order as essential to safeguarding the fundamental rights of the victim, thereby sharing *Griswold*’s substantive due process claim.

Gun Control and Domestic Violence

On the other hand, the Court has recognized the severity of firearm possession in domestic violence cases and continued to strengthen its enforcement. 18 USC §922(g)(9), enacted in 1996, defines a specific category of unlawful persons as “who has been convicted in any court of a misdemeanor crime of domestic violence,” while leaving the meaning of “misdemeanor crime of domestic violence” ambiguous.[27] The Court has made remarkable progress in defining the extent to which attackers should be prohibited from bearing guns. In 2009, the Court under *United States v. Hayes* held that a domestic relationship is not a defining component of the predicate offense, thereby widening the range of convictions that could trigger the firearms ban under this statute. Following *Hayes*, *United States v. Castleman* (2014) and *Voisine v. United States* (2016) each clarified “misdemeanor crime” as including indirect physical force and unattempted assault.[28] So far, §922(g)(9) has been polished to encompass a broader spectrum of domestic violence offenses, which reflects the Court’s commitment to better protect victims from firearm-related threats.

In terms of the ongoing *United States v. Rahimi* (2023), the Court's ruling in 2024 appears promising in redefining how restraining orders are applied to perpetrators of domestic violence. This follows the 2022 decision in *New York State Rifle & Pistol Association Inc. v. Bruen*, which struck down a New York state law requiring individuals to demonstrate a special need for self-protection to obtain a license to carry a concealed firearm in public. The *Rahimi* case could be viewed as a response to *Bruen*, specifically addressing concerns about the enforceability of restraining orders for domestic violence offenders.

In the oral argument of *Rahimi*, the Solicitor General argued from both the principle of responsibility and originalist perspective that domestic violence attackers might carry "unusual danger beyond the ordinary citizen."^[29] This argument presents the critical rationale for state-level firearm possession laws, illustrating how domestic violence crimes should never be excused under any tolerance. Overall, the evolving judicial discussion on the 2nd Amendment in the context of domestic violence represents significant progress in addressing this complex issue.

Conclusion

This paper aims to point out the inefficiency initiated by state institutions that ultimately led to a nationwide failure to protect the victims of gender-motivated violence. In *Morrison* and *Gonzales*, the Court ignored the essential discussions of the 14th Amendment by lending too much arbitrary power to the state, thereby foreclosing further justice for the victims under equal protection and due process claims.

While the oral argument of *Rahimi* shows a promising sign that the Court will reject domestic violence attackers to bear firearms,^[30] it has been almost ten years since the Court has not invoked primary discussions on the provision against gender-motivated violence under the 14th Amendment. Even though the potential harms to victims and societal outputs brought by gender-motivated crimes have been acknowledged to a certain point, mere provision on gun control is not enough. As the state authorities lack the checks and balances to effectively protect the rights of the victims, it is essential for Congress to establish federal provisions against every cause of violence.

The VAWA Reauthorization Act of 2022 was signed by the Biden Administration, marking a significant step in the ongoing effort to combat gender-motivated violence and to enhance protections for victims. Its proposal includes "increasing culturally-specific resources and support for survivors and communities,"^[31] which may address the diverse needs of victims from varied backgrounds. However, as cases like *Morrison* and *Gonzales* demonstrate, there is an urgent need for the legal system to evolve beyond its current limitations, especially in its interpretation of the 14th Amendment in the context of gender-based violence. The Supreme Court's hesitance to engage robustly with these issues underlines the inadequate commitment of federal legislation to fill gaps left by state jurisdictions.

- [1] The National Domestic Violence Hotline, "Violence Against Women Act (VAWA)," www.thehotline.org/resources/violence-against-women-act-vawa/.
- [2] UNHCR, "Gender-Based Violence," www.unhcr.org/us/what-we-do/protect-human-rights/protection/gender-based-violence.
- [3] The National Domestic Violence Hotline, "Violence Against Women Act (VAWA)," www.thehotline.org/resources/violence-against-women-act-vawa/.
- [4] Ibid.
- [5] Although the victim reported being assaulted by two students, only Morrison was found guilty. See the Opinion of the Court in *United States v. Morrison*, 529 U.S. 598 (2000).
- [6] *United States v. Morrison*, 529 U.S. 598 (2000).
- [7] Ibid.
- [8] Ibid.
- [9] *Civil Rights Cases*, 109 U.S. 3 (1883).
- [10] Bureau of Justice Statistics, "Female Victims of Sexual Violence, 1994-2010," U.S. Department of Justice, bjs.ojp.gov/press-release/female-victims-sexual-violence-1994-2010.
- [11] Ibid.
- [12] Christina R. Drum, *Power, Legitimation, and Drawing Distinctions: Rendering of 'public' and 'private' in United States Domestic Violence Policymaking* (University of Nevada, Las Vegas, 2004), <https://ezproxy.haverford.edu/login?url=https://www.proquest.com/dissertations-theses/power-legitimation-drawing-distinctions-rendering/docview/305073195/se-2>.
- [13] Reva B. Siegel, Serena Mayeri, and Melissa Murray, "Equal Protection in *Dobbs* and Beyond: How States Protect Life Inside and Outside of the Abortion Context," *Columbia Journal of Gender and the Law* 43, no. 1 (2022): 67-97, <https://ezproxy.haverford.edu/login?url=https://www.proquest.com/scholarly-journals/equal-protection-dobbs-beyond-how-states-protect/docview/2777765566/se-2>.
- [14] *Loving v. Virginia*, 388 U.S. 1 (1967).
- [15] Michael R. Dimino, "Yes, Virginia (Tech), our Government is One of Limited Powers: *United States v. Morrison*, 120 S. Ct. 1740 (2000)," *Harvard Journal of Law and Public Policy* 24, no. 3 (2001): 895-920, accessed [date], <https://ezproxy.haverford.edu/login?url=https://www.proquest.com/scholarly-journals/yes-virginia-tech-our-government-is-one-limited/docview/235204226/se-2>.
- [16] Ibid.
- [17] U.S. Department of Justice, "Domestic Violence," www.justice.gov/ovw/domestic-violence.
- [18] *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005).
- [19] Ibid.
- [20] Ibid.
- [21] Ibid.
- [22] Laura Singleton, *Rethinking Private Violence: How Constitutions Structure State Responses to Domestic Violence* (The University of Wisconsin - Madison, 2013), <https://ezproxy.haverford.edu/login?url=https://www.proquest.com/dissertations-theses/rethinking-private-violence-how-constitutions/docview/1348977231/se-2>.
- [23] Ibid.
- [24] Ibid.
- [25] Drum, *Power, Legitimation, and Drawing Distinctions*.

NOTES

[26] *Griswold v. Connecticut*, 381 U.S. 479 (1965).

[27] Legal Information Institute, "18 U.S. Code § 922 - Unlawful Acts," Cornell Law School, www.law.cornell.edu/uscode/text/18/922.

[28] *Ibid.*

[29] Oral Arguments Transcript for *United States v. Rahimi*, Supreme Court of the United States, 2023, www.supremecourt.gov/oral_arguments/argument_transcripts/2023/22-915_986b.pdf.

[30] *Ibid.*

[31] The White House. "Fact Sheet: Biden-Harris Administration Celebrates the Twenty-Ninth Anniversary of the Violence Against Women Act." September 13, 2023.

www.whitehouse.gov/briefing-room/statements-releases/2023/09/13/fact-sheet-biden-harris-administration-celebrates-the-twenty-ninth-anniversary-of-the-violence-against-women-act/.

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