

19-3585-cv

**IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT**

JANE DOE,

Plaintiff-Counter-Defendant-Appellant

-against-

SOLERA CAPITAL, LLC, MOLLY ASHBY, JOINTLY AND SEVERALLY

Defendants-Counter-Claimants-Appellees

On Appeal from the United States District Court
For the Southern District of New York
Case No. 18 Civ. 1769 (ER)

**BRIEF OF AMICUS CURIAE
LEGAL MOMENTUM –
THE WOMEN’S LEGAL DEFENSE AND EDUCATION FUND
IN SUPPORT OF PLAINTIFF-APPELLANT FOR REVERSAL**

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INTEREST OF AMICUS CURIAE

Legal Momentum - The Women's Legal Defense & Education Fund, is the nation's oldest legal advocacy organization for women. Legal Momentum advances the rights of all women and girls by using the power of the law and creating innovative public policy. For example, Legal Momentum was the leading advocate for the landmark Violence Against Women Act and its subsequent reauthorizations, which seek to redress the historical inadequacy of the justice system's response to domestic and sexual violence. Legal Momentum's advocacy was also instrumental in the passage of amendments to the New York City Human Rights Law which expanded that law's protections to victims of domestic violence, sexual assault, and stalking. Legal Momentum represents domestic violence victims who are subjected to discrimination related to the violence, including in the employment context. Legal Momentum has a particular interest in ensuring that the judicial system adequately protects the rights of victims of sexual and domestic violence and their children. Since 1980, Legal Momentum's National Judicial Education Program ("NJEP") has educated judges, attorneys, and justice system professionals about the ways in which gender bias can undermine fairness in criminal, civil, family, and juvenile law. In particular, NJEP provides education on the realities of sexual and domestic violence. NJEP and NJEP Director Lynn Hecht Schafran have published numerous publications and curricula on these

subjects, including a web course on the intersection of domestic violence and sexual assault, available free at www.njep-ipsacourse.org.

Amicus respectfully submits this brief pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure.

PRELIMINARY STATEMENT¹

This case presents the question of whether domestic violence victims who must hide their identities and whereabouts to stay safe from abuse will be forced to choose between maintaining their safety and vindicating their federally-protected right of access to the courts. *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185 (2d Cir. 2008) instructs that when considering a plaintiff’s application to proceed anonymously, the district court should consider “whether identification poses a risk of retaliatory physical or mental harm to the . . . party [seeking to proceed anonymously]”² In that case, the plaintiff was a victim of sexual assault.³ The instant case also involves anonymity related to gender-based violence, but in

¹ Party’s counsel did not author this brief, nor did the party or the party’s counsel contribute money intended to fund the preparation or submission of the brief. No person other than the *amicus curiae*, their members, or their counsel contributed money that was intended to fund the preparation or submission of the brief.

² *Id.* at 190 (internal citation and quotation marks omitted).

³ *Id.* at 187.

the context of life-threatening violence against a domestic violence victim. This context makes this question a matter of first impression for this Court.

The District Court refused to allow plaintiff to proceed anonymously in part because — due to her and her victim advocate’s successful efforts to hide her identity from her abuser — her abuser had not made a recent, direct threat to her life. But where the plaintiff is a domestic violence victim, courts cannot simply look to whether an abuser has made a recent, direct, and particularized threat against the victim’s life. Rather, when determining whether the victim’s life is at risk, courts must consider the entire history of abuse across the duration of the parties’ relationship, and threatening behaviors such as stalking during any post-separation period. To do otherwise would be inconsistent with robust, well-supported, social science regarding lethality risk assessment in domestic violence cases.

Courts that fail to account for the true risk of harm domestic violence victims face undermine the strong workplace protections for domestic violence victims established by the New York City Human Rights Law (“NYCHRL”) and the New York State Human Rights Law (“NYSHRL”). The New York City Council amended the NYCHRL specifically to protect domestic violence victims because while “a victim’s capacity to escape an abusive relationship is dependent in large part on economic factors such as finding and keeping a job and gaining

economic security and independence,” the Council noted that studies and reports from service providers showed that victims were routinely fired after disclosing their abuse to employers in order to obtain workplace accommodations.⁴ In some cases, a critical component of a victim’s safety plan is keeping her address and identity secret from her abuser; indeed, New York State — like many other states — has numerous laws and programs that facilitate this secrecy, such as exemption from name change publication requirements and an Address Confidentiality Program. All of these legal protections are worthless to victims, however, if they cannot prosecute their rights in court without fear that filing a lawsuit will allow an abuser to discover their whereabouts. Where, as here, disclosure of her name in connection with the lawsuit poses a threat to the life of the party seeking anonymity, there can be no greater consideration outweighing that risk.

ARGUMENT

I. WHETHER A DOMESTIC VIOLENCE VICTIM FACES RISK OF HARM THROUGH DISCLOSURE OF HER TRUE IDENTITY DOES NOT HINGE ON WHETHER THERE WAS A RECENT, SPECIFIC, PERSONAL THREAT AGAINST HER LIFE.

Domestic violence is often misunderstood as a sudden violent outburst or one-at-a-time incidents of fist-in-the-face physical assault. In reality, however, it is a pattern of ongoing behavior over time that includes isolation, intimidation, verbal

⁴ See 2001 N.Y.C. Local Law No. 1 § 1.

degradation, emotional abuse, psychological abuse, physical assault, sexual abuse, stalking and more, even to the point of kidnapping, torture, and murder. While recent specific threats of violence or murder and escalating violence are strong predictors of lethality, they are not the only strong predictors of lethality, and a victim may be at high risk of death or serious injury from her batterer where these factors are not present.⁵ For example, one of the leading studies of domestic violence fatality risk factors concluded that being separated from an abuser after living together, and having ever left an abusive partner, are factors associated with a higher risk of fatality.⁶

The record below demonstrates that the District Court had before it ample evidence of abuse against Jane Doe perpetrated both relatively close in time to the District Court's consideration of her motion for anonymity and over many preceding years. The District Court took notice that Doe had been subjected to severe, life-threatening abuse, noting she had been "held in captivity and severely injured until she was rescued by an organization that supports victims of domestic violence," which "relocated Doe to two different safe-houses to escape her

⁵ See Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089, 1090 (2003).

⁶ *Id.*

husband.”⁷ The District Court understood that “Doe legally changed her name in an effort to protect herself from her former husband.”⁸ The District Court further observed, that “as recently as July 2018,” Doe’s husband “made death threats against her family members to pressure them to disclose information about” her whereabouts.⁹

Yet despite the long and severe history of abuse, which the District Court was aware did not cease upon Jane Doe’s escape, the District Court concluded there was “no evidence of an actual threat” against her, and expressed concern that Jane Doe had not provided “any details of the supposed threat.”¹⁰ The District Court’s conclusion evinces a fundamental misunderstanding about how to evaluate the risk of harm to a domestic violence victim.

The importance of looking at the full history of abuse in order to understand the gravity of the risk is evidenced by the methods used by Domestic Violence Fatality Review Teams, which have proliferated across the country with the support of state and local governments, to gather information to help better

⁷ *Doe v. Solera Capital LLC*, No. 18 Civ. 1769, 2019 WL 1437520, at *1 (S.D.N.Y. Mar. 31, 2019), *reconsideration denied*, 2019 WL 5485210 (S.D.N.Y. Oct. 25, 2019).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*, at *4.

understand and prevent domestic violence fatalities.¹¹ First emerging in the 1990s, as of 2019, there were approximately 200 teams operating in 45 states.¹² These multidisciplinary teams identify homicides, suicides, and other deaths caused by, related to, or somehow traceable to domestic violence and review them to develop preventive interventions.¹³ These teams look closely at the full history of the cases they review, to learn about, for example, the abuser’s behavior over time, the victim’s efforts to find safety over time, and actions taken by responders ranging from law enforcement to victim service agencies, in order to identify risk and protective factors.¹⁴ The methods used by the New York State Domestic Violence Fatality Review Initiative, which was created in 2012,¹⁵ recognize the importance of examining the full history of abuse. The team creates a timeline of events leading up to the fatality that includes “not only a day or two leading up to the death, but . . . [goes] back as far as the information available allows.”¹⁶

¹¹ Neil Websdale et al., *The Domestic Violence Fatality Review Clearinghouse: An Introduction to a New National Data System with a Focus on Firearms*, 6 *Injury Epidemiology* 1, 2 (2019).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 3-4.

¹⁵ New York State, Office for the Prevention of Domestic Violence, *New York State Domestic Violence Fatality Review Initiative*, <https://opdv.ny.gov/professionals/fatalrev/index.html> (last visited Jan. 30, 2020).

¹⁶ New York State, Office for the Prevention of Domestic Violence, *New York State Domestic Violence Fatality Review Initiative: What is Domestic Violence*

Moreover, professionals in the domestic violence field who serve victims know that helping victims attain and maintain safety requires knowledge of the abuser's behavior over time. To meaningfully assist victims in safety planning, much research has gone into effectively assessing risk for future harm and lethality. Dr. Jacquelyn Campbell — a PhD, RN and Professor at Johns Hopkins School of Nursing — is a leading researcher in the area of domestic violence and, in particular, the leading researcher in assessing the risk for lethality. She has authored more than 230 peer-reviewed publications and numerous books on the topic.¹⁷ She has submitted expert testimony in courts of law and testified before Congress.¹⁸ Her work is widely accepted and cited by those within and outside her discipline.

Fatality Review?, <https://opdv.ny.gov/professionals/fatalrev/whatisdvfr.html> (last visited Jan. 30, 2020).

¹⁷ Johns Hopkins School of Nursing Faculty Directory, *Jacquelyn Campbell*, available at https://nursing.jhu.edu/faculty_research/faculty/faculty-directory/jacquelyn-campbell (last visited Jan. 30, 2020).

¹⁸ *See Sheehan v. Powers*, No. 14 Civ. 2898, 2017 U.S. Dist. LEXIS 173480 (E.D.N.Y. October 17, 2017); *United States v. Salman*, 241 F. Supp. 3d 1288, 1292, 1294 (M.D. Fla. March 10, 2007); *Huch v. Marrs*, 858 So. 2d 1202, 1203 (Fla. Dist. Ct. App. 2003); *VAWA Next Steps: Protecting Women from Gun Violence: Hearing Before the S. Comm. on the Judiciary*, 113th Cong. (2014) (statement of Jacquelyn Campbell, Phd, RN, FAAN), available at <https://www.judiciary.senate.gov/imo/media/doc/07-30-14CampbellTestimony.pdf>.

Dr. Campbell developed the validated, and nationally utilized, *Danger Assessment*.¹⁹ The *Danger Assessment* was first published in 1986 and has since been updated as the result of Dr. Campbell's, and others', voluminous, ongoing research into lethality risk factors. Dr. Campbell's *Danger Assessment* is used nationally by law enforcement agencies, health care professionals, domestic violence advocates, family justice centers, domestic violence shelters, and court-system advocates.²⁰ It has been adapted for use with particular victim groups (e.g., immigrant victims and victims within female same-sex relationships)²¹ and for use in particular settings (e.g., by first responders).²² Recent work by other researchers has confirmed Dr. Campbell's findings related to the *Danger Assessment*.²³ Victims complete the *Assessment* in consultation with an individual trained in its use who helps the victim understand its scoring and what the score says about the danger she faces.

¹⁹ See Jacquelyn C. Campbell, *Danger Assessment*, www.dangerassessment.org (last visited Jan. 30, 2020).

²⁰ *Id.*

²¹ See Jill Theresa Messing et al., *Culturally Competent Intimate Partner Risk Assessment: Adapting the Danger Assessment for Immigrant Women*, 37 Soc. Work Research 3 (2013); Nancy Glass et al., *Risk for Reassault in Abusive Female Same-Sex Relationships*, 98 Am. J. Pub. Health 6 (2008).

²² Jill Theresa Messing et al., *The Lethality Screen: The Predictive Validity of an Intimate Partner Violence Risk Assessment for Use by First Responders*, 32 J. Interpersonal Violence 2 (2017).

²³ See, e.g., Andreia Matias et al., *Intimate Partner Homicide: A Meta-Analysis of Risk Factors*, 50 Aggression & Violent Behavior 205 (2020).

The *Danger Assessment* used today is a two-part instrument. Because victims are often subjected to such long-term and pervasive abuse that it creates a “new normal,” and it becomes difficult for victims to recall individual events and grasp how much danger they are in, the *Assessment* begins by utilizing a 12-month calendar. This assists victims in refreshing their recollection as to the various abusive behaviors to which they have been subjected and to categorize the behaviors using the following scale: (1) slapping, pushing; no injuries and/or lasting pain; (2) punching, kicking; bruises, cuts, and/or continuing pain; (3) “beating up,” severe contusions, burns, broken bones; (4) threat to use weapon, head injury, internal injury, permanent injury; (5) use of weapon, wounds from weapon.²⁴

Part Two is a 20-question inventory in which victims respond “Yes” or “No” to the following questions:

(“He” refers to your husband, partner, ex-husband, ex-partner, or whoever is currently physically hurting you.)

___ 1. Has the physical violence increased in severity or frequency over the past year?

___ 2. Does he own a gun?

___ 3. Have you left him after living together during the past year?

3a. (If have never lived with him, check here ___)

___ 4. Is he unemployed?

___ 5. Has he ever used a weapon against you or threatened you with a lethal weapon? (If yes, was the weapon a gun? ___)

²⁴ Jacquelyn C. Campbell, *Danger Assessment*, available at www.dangerassessment.org (last visited January 30, 2020).

- ___ 6. Does he threaten to kill you?
- ___ 7. Has he avoided being arrested for domestic violence?
- ___ 8. Do you have a child that is not his?
- ___ 9. Has he ever forced you to have sex when you did not wish to do so?
- ___ 10. Does he ever try to choke you?
- ___ 11. Does he use illegal drugs? By drugs, I mean “uppers” or amphetamines, “meth”, speed, angel dust, cocaine, “crack”, street drugs or mixtures.
- ___ 12. Is he an alcoholic or problem drinker?
- ___ 13. Does he control most or all of your daily activities? For instance: does he tell you who you can be friends with, when you can see your family, how much money you can use, or when you can take the car? (If he tries, but you do not let him, check here: ___)
- ___ 14. Is he violently and constantly jealous of you? (For instance, does he say “If I can’t have you, no one can.”)
- ___ 15. Have you ever been beaten by him while you were pregnant? (If you have never been pregnant by him, check here: ___)
- ___ 16. Has he ever threatened or tried to commit suicide?
- ___ 17. Does he threaten to harm your children?
- ___ 18. Do you believe he is capable of killing you?
- ___ 19. Does he follow or spy on you, leave threatening notes or messages, destroy your property, or call you when you don’t want him to?
- ___ 20. Have you ever threatened or tried to commit suicide?
- ___ Total “Yes” Answers. ²⁵

The specific offender behaviors included in the *Danger Assessment* reflect the findings of extensive research that revealed these specific behaviors to be predictive of lethality.²⁶ From a large-scale, peer reviewed, study utilizing the

²⁵ *Id.*

²⁶ See Campbell et al., *supra* note 5; Jacqueline C. Campbell et al., *The Danger Assessment: Validation of a Lethality Risk Assessment Instrument for Intimate Partner Homicide*, 24 J. Interpersonal Violence 653 (2009).

Danger Assessment across 11 cities in the United States, particular behaviors emerged as presenting a heightened risk of lethality.²⁷ Many of these behaviors are reported in Jane Doe’s history with her abuser and are incorporated in the record below.²⁸ This research provides data from which we cannot turn away, like the reality that women whose partners threatened them with murder were *15 times* more likely than other women to be killed.²⁹ When a gun is present in the home, an abused woman is *six times* more likely than other abused women to be killed, and women threatened or assaulted with a gun are *20 times* more likely than other women to be murdered.³⁰ Women subjected to forced sex are *twice as likely* to be killed as those subjected to physical abuse alone.³¹

Victims’ affirmative responses on the assessment are tallied, with some offender behaviors or life circumstances being weighted due to their demonstrated enhanced risk for lethality, to reach an overall risk score. Dr. Campbell’s

²⁷ *Id.*

²⁸ See Affirmation of Jeanne Mirer, *Doe v. Solera Capital LLC*, No. 18 Civ. 1769 (S.D.N.Y.), ECF No. 28; Affidavit of Jane Doe, *Doe v. Solera Capital LLC*, No. 18 Civ. 1769 (S.D.N.Y.), ECF No 41-1; Plaintiff’s Affidavit in Support of Her Motion to Proceed Anonymously, *Doe v. Solera Capital LLC*, No. 18 Civ. 1769 (S.D.N.Y.) ECF No. 41-2; Supplemental Affidavit of Dr. Allison Ross, No. 18 Civ. 1769 (S.D.N.Y.), ECF No. 62-1.

²⁹ Campbell et al., *supra* note 5; Jacquelyn C. Campbell, et al., *Assessing Risk Factors for Intimate Partner Homicide*, Nat’l Inst. Justice J., Nov. 2003, at 14.

³⁰ *Id.*

³¹ Jacquelyn C. Campbell et al., *Research on Intimate Partner Violence and Femicide, Attempted Femicide, and Pregnancy-Associated Femicide*, 2 Fam. & Intimate Partner Violence Q. 115 (2009).

extensive research into use of the *Danger Assessment* has revealed that women who score eight or higher on the *Danger Assessment* are at very grave risk, finding that the average score for women who were murdered was just under eight.³² In Dr. Campbell’s multi-city study, only two percent of cases of women who scored 18 or higher, that being “extreme danger,” were not killed.³³

In the instant case, the affidavits submitted with Appellant’s Motion to Remain Anonymous and Motion for Reconsideration contain allegations indicating that many of the behaviors particularly predicative of lethality were present.³⁴

Amicus is also aware that annexed to Appellant’s motion to stay the District Court’s order to proceed under her legal name until disposition of the instant appeal, filed in November 2019, was a *Danger Assessment* of Appellant’s risk completed by Dr. Campbell. This assessment revealed that Jane Doe was in “extreme danger,” with a score of 20.

Research by David Adams, Commissioner on the Massachusetts’s Governor’s Council on Sexual and Domestic Violence, and Co-Founder and Co-

³² *Id.*

³³ Campbell, et al., *supra* note 5; Campbell et al. *supra* note 26; Campbell et al., *supra* note 29.

³⁴ See Affirmation of Jeanne Mirer, *Doe v. Solera Capital LLC*, No. 18 Civ. 1769 (S.D.N.Y.), ECF No. 28; Affidavit of Jane Doe, *Doe v. Solera Capital LLC*, No. 18 Civ. 1769 (S.D.N.Y.), ECF No 41-1; Plaintiff’s Affidavit in Support of Her Motion to Proceed Anonymously, *Doe v. Solera Capital LLC*, No. 18 Civ. 1769 (S.D.N.Y.), ECF No. 41-2; Supplemental Affidavit of Dr. Allison Ross, No. 18 Civ. 1769 (S.D.N.Y.), ECF No. 62-1.

Director of Emerge, the first counseling program for batterers in the country,³⁵ affirms Dr. Campbell’s findings that past threats to kill, even if the threats are made months, or years prior, are one of the best predictors of homicide or attempted homicide. In a study in which he conducted in-depth interviews with thirty-one men incarcerated for murdering or attempting to murder their intimate partners, he found that a history of increasing levels of brutal physical violence and repeated threats to kill were the factors shared among the largest number of these men. His interviews bear out, from the abusers themselves, the research on domestic homicides which has shown that past threats to kill the victim are one of the best predictors of homicide or attempted homicide.³⁶

Adams also found that when violent abusers are thwarted in their attempts to control their partners and keep them in the relationship, they often conclude that killing them is the “next best thing,” especially after a period of separation or estrangement.³⁷ When asked what might have deterred them from murder one of the men said, “If [my partner] does something to me and gets away with it, the only thing that will work is them being away where I can’t find them.”³⁸ This

³⁵ See Faculty, Emerge <https://www.emergedv.com/faculty.html> (last visited Jan. 30, 2020).

³⁶ David Adams, *Why Do They Kill? Men Who Murder Their Intimate Partners* 194 (2007).

³⁷ *Id.* at 254.

³⁸ *Id.* at 81.

research further supports the proposition that assessing the risk to a domestic violence victim's life cannot rest on the timeliness of particular threatening behavior, but rather must consider the full scope of abuse and predictive behavior, as abusers rarely abandon their abusive behaviors with the passage of time.

Applying this research-backed framework in the instant case, Jane Doe's fears of death at the hands of her abuser should he learn her new identity are neither speculative nor attenuated. Given the severity of the abuse over time and her abuser's persistence in attempting to locate and harm her, disclosure of Jane Doe's true name may very well be all that stands between her safety and her demise.

II. DENYING DOE'S APPLICATION TO PROCEED ANONYMOUSLY UNDERMINES STRONG PUBLIC POLICY IN FAVOR OF PROTECTING DOMESTIC VIOLENCE VICTIMS' ABILITY TO PARTICIPATE IN THE WORKFORCE WHILE PROTECTING THEIR SAFETY.

State and city legislatures across the country, including in New York State and New York City, have recognized the importance of ensuring that domestic violence victims are protected from workplace discrimination on the basis of their status as victims.³⁹ These laws recognize that the financial stability that comes from steady employment is crucial to enabling domestic violence victims to

³⁹ See Legal Momentum, The Women's Legal Defense and Education Fund, State Law Guide: Employment Rights for Victims of Domestic Violence (2015) <https://www.scribd.com/doc/140852437/Employment-Rights-for-Victims-of-Domestic-or-Sexual-Violence> (collecting and summarizing state and local laws protecting the workplace rights of domestic violence victims).

establish and maintain independence from their abusers. These laws also recognize that when domestic violence victims are given the time, resources, and support necessary to stay safe, society as a whole benefits. These laws, however, are of no use to their intended beneficiaries if domestic violence victims cannot vindicate their statutory rights in court without fear that doing so will put them in danger from their abusers. When secrecy is essential to domestic violence victims' safety, they must be able to proceed anonymously.

The New York City Human Rights Law (“NYCHRL”) and the New York State Human Rights Law (“NYSHRL”) are among the enacted laws that recognize a strong public policy in ensuring that domestic violence victims can take steps to protect their safety while maintaining steady employment.⁴⁰ In 2001, the New York City Council amended the NYCHLR to prohibit employment discrimination against victims of domestic violence.⁴¹ As explained in the law’s statement of legislative findings and intent, the City Council passed the law in recognition of the fact that “a victim’s capacity to escape an abusive relationship is dependent in large part on economic factors such as finding and keeping a job and gaining economic security and independence.”⁴² The City Council recognized that domestic violence victims face serious barriers to obtaining and maintaining

⁴⁰ See N.Y.C. Admin. Code § 8.107.1; N.Y. Exec. Law §§ 296(1), (22).

⁴¹ 2001 N.Y.C. Local Law No. 1; N.Y.C. Admin. Code § 8.107.1.

⁴² 2001 N.Y.C. Local Law No. 1 § 1.

employment because of the abuse to which they are subjected. As the statement of legislative intent explains “studies have determined that between twenty-four and fifty-two percent of battered women surveyed had lost their jobs at least in part due to domestic violence, which included harassment by the batterers both on and off the job.”⁴³

The law’s legislative history reflects that the City Council relied on the testimony in support of the bill presented at a public hearing by amicus.⁴⁴ The testimony demonstrated that domestic violence victims across the country face employment discrimination based on their status as domestic violence victims.⁴⁵ Further, while there are numerous low- or no-cost steps that employers can take to keep their employees who are victims safe, such as allowing the victim to change her phone extension or routing calls to her through an operator, registering a copy of her protective order with the security desk, or changing her shift, victims often feared asking their employers for these accommodations because of the risk of

⁴³ *Id.*

⁴⁴ *See* 2001 N.Y.C. Local Law No. 1 § 1; N.Y.C. Admin. Code § 8.107.1; *Comm. on Gen. Welfare and Comm. on Women’s Issues J. Hearing on Proposed Int. No. 400-A*, (Dec. 11, 2000) (testimony of Julie Goldscheid, Acting Legal Director, NOW Legal Defense and Education Fund) (“2001 Goldscheid Testimony”). In 2004, NOW Legal Defense and Education Fund changed its name to Legal Momentum. Ms. Goldscheid is now Professor of Law at the City University of New York (CUNY) School of Law.

⁴⁵ *See* 2001 Goldscheid Testimony.

being fired.⁴⁶ The testimony established that these fears were unfortunately well-founded, as amicus observed through its work assisting victims facing these problems throughout the country.⁴⁷ The City Council’s statement of legislative intent discussed these concerns at length, observing that, “victims of domestic violence have been terminated or demoted after requesting simple protective measures such as time off or flexible hours to confer with an attorney or a domestic violence counselor, obtain an order of protection or obtain medical or other services for themselves or family members.”⁴⁸ In its statement of legislative intent, the City Council further reasoned that the amendment to the NYCHRL would “enable [victims] to speak with their employers without fear of reprisal, about a domestic violence incident or about possible steps that will enhance their ability to perform their job without causing undue hardship to the employer.”⁴⁹ In 2003, the City Council acted on amicus’ advice during the hearing on the 2001 amendments,⁵⁰ and further amended the NYCHRL to add protections for victims of sexual assault and stalking, and to require that employers provide all these victims

⁴⁶ *Id.* at 3-4.

⁴⁷ *Id.*

⁴⁸ 2000 N.Y.C. Local Law No. 1 § 1.

⁴⁹ *Id.*

⁵⁰ *See* 2001 Goldscheid Testimony, at 3.

with reasonable accommodations.⁵¹ In 2009 and 2019, the New York State Human Rights Law was amended to bring its protections in line with the NYCHRL.⁵²

The workplace rights protected by the NYCHRL and the NYSHRL are rendered moot, however, if victims are not able to vindicate them because they fear that prosecuting these rights will jeopardize their safety. For example, in some cases, a domestic violence victim's safety plan may require relocation to another city or state.⁵³ Disclosing such a victim's name in connection with her employment could allow her abuser to learn her new whereabouts and track her down. If a victim in this situation is unable to proceed anonymously in a lawsuit against her employer, she will have no redress if, for example, her employer illegally denies her request for time off work to register her protective order in her new state. Or, in cases such as Jane Doe's, where an abuser knows the victim's old name and knows the victim's connection to her employer, a quick Google search for the employer will bring up the victim's new name. In cases, such as this case, where the victim is seeking to vindicate her rights as a domestic violence victim,

⁵¹ 2003 N.Y.C. Local Law No. 75, N.Y.C. Admin. Code § 8.107.1.

⁵² N.Y. Exec. Law §§ 296(1), (22)

⁵³ Relocating to protect a victim's safety is not a simple process, and domestic violence victims often work closely with advocates to ensure that relocation is a safe and effective way to escape abuse. *See, e.g., Understanding the Complexities of Relocation for Survivors of Domestic Violence*, Nat'l Network to End Domestic Violence, (May 16, 2015), https://nnedv.org/latest_update/understanding-the-complexities-of-relocation-for-survivors-of-domestic-violence/.

the abuser may have a particularly easy time connecting the dots, because he may recognize the abuse he subjected her to in detailed publicly-available documents.

Our justice system is not meant to function in such a way that victims must choose between their physical safety and accessing justice. Other policies reflect this understanding that domestic violence victims should not have to forego their safety in order to participate in civic life. For example, New York State law exempts domestic violence victims and others from the requirement to publish their name changes, where, considering the totality of the circumstances, publication endangers the person's safety.⁵⁴ New York State, in line with at least thirty-five other states,⁵⁵ also administers an address confidentiality program, which allows victims of domestic violence⁵⁶ to receive their mail at a substitute address, and to have the Secretary of State accept service of process on their behalf.⁵⁷ Many state laws also protect against disclosure of drivers' licenses and

⁵⁴ See N.Y. Civ. Rts. Law § 64-a.

⁵⁵ *Stalking Resource Ctr.*, Nat'l Ctr. for Victims of Crime, <https://victimsofcrime.org/our-programs/past-programs/stalking-resource-center/help-for-victims/address-confidentiality-programs> (last visited January 31, 2020).

⁵⁶ The law was recently amended to expand the program to victims of stalking, sexual assault, and human trafficking. S. 5444, 2019-2020 Leg. Sess. (N.Y. 2019); N.Y. Exec. Law § 108.

⁵⁷ N.Y. Exec. Law § 108.

voting records.⁵⁸ Court records are as easily accessible as these other generally public records which domestic violence victims need to be able to keep confidential. Allowing a domestic violence victim-litigant to proceed anonymously furthers the goals of the carefully crafted city and state laws that protect domestic violence victims' identity, ensures that courtroom doors are not closed to domestic violence victims, and helps to realize the legislative intent behind laws such as the NYCHRL and NYSHRL.

CONCLUSION

The extensive, well-accepted body of social science research into domestic violence lethality and risk assessment concludes that the only accurate assessment of the risk to a domestic violence victim's life is consideration of the full history of abuse and the firmly established offender behaviors predictive of lethality. Further, the law recognizes a wide scope of protections for domestic violence victims that reflects an evidence-based understanding of the real risk to their lives. While the individual risk to many domestic violence victims should meet the fact-specific standard for proceeding anonymously, if the risk of death to Jane Doe presented in the instant matter does not rise to this standard and the policy behind the ability to proceed anonymously, then no victim will ever be able to meet it. The result will mean that, for domestic violence victims, the thoughtfully enacted

⁵⁸ See Nat'l Ctr. for Victims of Crime, *supra* note 55.

laws meant to protect them from harm and discrimination are in effect moot and the justice system is inaccessible to them.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 5(c) because it contains 5,064 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(f).

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