No. 15-1189

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

Elisa Sanchez, **Petitioner/Appellant,** **v.** **Juan Jose Ramirez Torres,** **Respondent/Appellee.**	**On Appeal from the Circuit Court Domestic Relations Division** **Cook County, Illinois** **No. 14 OP 76869 consolidated with No. 14 D 80533** **Hon. Lionel Jean-Baptiste**

BRIEF IN SUPPORT OF PETITIONER/APPELLANT OF *AMICI CURIAE*, LOYOLA UNIVERSITY CIVITAS CHILD LAW CENTER, CHICAGO VOLUNTEER LEGAL SERVICES, CHICAGO METROPOLITAN BATTERED WOMEN'S NETWORK, SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW, CHICAGO APPLESEED FUND FOR JUSTICE, LIFE SPAN CENTER FOR LEGAL SERVICES AND ADVOCACY, THE JOHN MARSHALL LAW SCHOOL DOMESTIC VIOLENCE CLINICAL ADVOCACY PROGRAM AND THE DOMESTIC VIOLENCE LEGAL EMPOWERMENT AND APPEALS PROJECT

DOMESTIC VIOLENCE LEGAL EMPOWERMENT AND APPEALS PROJECT (DV LEAP)

PROF. JOAN S. MEIER
2000 G Street NW
The George Washington Univ. Law School
Washington, DC 20052
(202) 994-2278

MORGAN, LEWIS & BOCKIUS LLP

SCOTT T. SCHUTTE (ARDC# 6230227)
Counsel of Record
77 West Wacker Drive
Chicago, IL 60601
(312) 324-1000
-and-
RANDALL M. LEVINE*
STEPHANIE SCHUSTER*
CLARA KOLLM*
2020 K Street NW
Washington, DC 20006
(202) 373-6000

[Additional *Amici* on Inside Cover]

*Randall M. Levine is admitted in NY and DC. Not admitted in Illinois.
*Stephanie Schuster is admitted in DC. Not admitted in Illinois.
*Clara Kollm is admitted in MD. Not admitted in Illinois.

LOYOLA UNIVERSITY CIVITAS CHILDLAW CENTER

PROF. ANITA WEINBERG
25 E. Pearson Street, Suite 1107
Chicago, IL 60611
(312) 91506481

Director, Civitas Childlaw Center
Loyola University

SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW

KATE WALZ
50 E. Washington, Suite 500
Chicago, IL 60605
(312) 263-3830

Counsel for Sargent Shriver National Center on Poverty Law

THE JOHN MARSHALL LAW SCHOOL DOMESTIC VIOLENCE CLINICAL ADVOCACY PROGRAM

PROF. DEBRA P. STARK
315 S. Plymouth Court
Chicago, IL 60604
(312) 427-2737

Director, Domestic Violence Clinical Advocacy Program
The John Marshall Law School

CHICAGO METROPOLITAN BATTERED WOMEN'S NETWORK

KATHLEEN A. DOHERTY
1 E. Upper Wacker Drive, #1630
Chicago, IL 60601
(312) 527-0730

Executive Director, Metropolitan Battered Women's Network

CHICAGO APPLESEED FUND FOR JUSTICE

ELIZABETH MONKUS
750 N. Lake Shore Drive, Fourth Floor
Chicago, IL 60611
(312) 988-6565

Counsel for Chicago Appleseed Fund for Justice

CHICAGO VOLUNTEER LEGAL SERVICES

MATTHEW HULSTEIN
33 N. Dearborn St., Ste. 400
Chicago, IL 60602
(312) 332-8217

Counsel for Chicago Volunteer Legal Services

LIFE SPAN CENTER FOR LEGAL SERVICES & ADVOCACY

DENISE W. MARKHAM
70 E Lake St #700
Chicago, IL 60601
(312) 408-1210

Executive Director, Life Span Center for Legal Services & Advocacy

POINTS AND AUTHORITIES

Page(s)

POINTS AND AUTHORITIES

Page(s)

POINTS AND AUTHORITIES

Page(s)

POINTS AND AUTHORITIES

Page(s)

POINTS AND AUTHORITIES

Page(s)

INTERESTS OF THE *AMICI CURIAE*

Amicus curiae **Loyola University Civitas ChildLaw Center ("Childlaw Center")** is a program within the Loyola University Chicago School of Law, whose mission is to prepare law students and lawyers to be ethical and effective advocates for children and promote justice for children through interdisciplinary teaching, scholarship and service. The ChildLaw Center also provides representation to child clients in child custody, child protection, and other types of cases involving children. A significant number of the Clinic's cases involve allegations of family violence and domestic violence orders of protection. The ChildLaw Center maintains a particular interest in the rules and procedures regulating the legal and governmental institutions responsible for addressing the needs and interests of court involved youth. It is committed to the idea that the public entities serving at-risk children and families should always seek to minimize harm to children and promote their safety.

Amicus curiae **Chicago Appleseed Fund for Justice** is a research, education and advocacy organization that works to achieve systemic reform and improve access to justice by addressing policies and practices that relate to courts and government effectiveness issues. Chicago Appleseed has been working to improve domestic violence screening in the child support process and increase access to social services by families with cases in the domestic relations division.

Amicus curiae **The Chicago Metropolitan Battered Women's Network ("the Network")** is a collaborative membership organization dedicated to improving the lives of those impacted by domestic violence through education, public policy and advocacy, and the connection of community members to direct service providers. The Network is the leading systemic advocacy voice, in addition to being the forum for information

exchange, within the Cook County domestic violence services community. The Network is committed to keeping the courts and the legal profession informed on the field of domestic violence service provision, along with legal and social implications surrounding domestic violence, both locally and nationally. The Network leads the Legal Issues Committee and a Court Watch Program at the Cook County Domestic Violence Court House through which legal concerns are also identified and addressed.

Amicus curiae **The John Marshall Law School's Domestic Violence Clinical Advocacy Program ("JMLS DV Clinic")** organizes educational and training programs, creates legal resources, engages in empirical and multi-state research, proposes legal reforms, and provides various forms of legal assistance to survivors of domestic violence. Under its "Safety Through Knowledge Legal Assistance Project" students work with adjunct faculty and volunteer attorneys to provide legal information, assistance, and representation to survivors of domestic violence under eight areas of civil law: (i) orders of protection, (ii) family law, (iii) housing protections, (iv) employment protections, (v) crime victim compensation, (vi) immigration relief, (vii) debt relief/credit repair, and (viii) tax liability relief.

Amicus curiae **Chicago Volunteer Legal Services ("CVLS")** has provided free legal services to low income Chicagoans through the use of volunteer attorneys for more than fifty years. Through CVLS, last year nearly 2,000 attorneys helped more than 12,000 clients. Approximately half of CVLS's annual caseloads involve family law, including divorce, custody, visitation, child support, minor guardianship and adoptions. CVLS also is appointed by the courts to serve as Guardian *ad Litem* for children and disabled adults in contested guardianship cases and as Child Representative in contested

custody cases. Many CVLS clients are women, children, elderly and disabled people in domestic abuse relationships and have needed Orders of Protection and other court remedies.

Amicus curiae **Life Span Center For Legal Services and Advocacy ("Life Span")** is a non-profit founded in 1978, which provides counseling, advocacy, and legal services to more than 3500 victims of domestic violence and their children each year. Life Span Center for Legal Services and Advocacy, located in Chicago, provides representation to domestic violence victims in order of protection cases, divorces, contested custody and visitation matters, and immigration cases. In addition to its direct service work, Life Span provides training to judges, prosecutors, mental health professionals, advocates and attorneys throughout Illinois and across the country on complicated family law/domestic violence litigation strategies and techniques. Life Span engages in systemic advocacy aimed at improving meaningful access to legal remedies and legal relief for victims of domestic violence.

Amicus curiae **Sargent Shriver National Center on Poverty Law ("Shriver Center")** is a national non-profit legal and policy advocacy organization based in Chicago. The Shriver Center's housing unit operates the Safe Homes Initiative, which provides legal representation and policy advocacy to advance and protect the housing rights of survivors of violence. The Shriver Center housing unit drafted sections of the 2013 Reauthorization of the Violence Against Women Act ("VAWA") and provides frequent input to the U.S. Department of Housing and Urban Development on its implementation of VAWA. The Shriver Center housing unit also provides trainings to housing providers, lawyers, and domestic violence advocates on the laws that can protect

survivors of violence in their housing, and regularly consults with advocates around the country about the housing rights of survivors of violence. The Shriver Center's Women's Law and Policy Project also provides a broad array of legal and policy support to survivors of violence in all other aspects of their lives, including employment, education, public benefits, and access to the courts.

Amicus curiae **Domestic Violence Legal Empowerment and Appeals Project ("DV LEAP")** was founded in 2003 to advance legal protections for domestic violence survivors through education and advocacy. DV LEAP strives to ensure that courts understand the realities of domestic violence when deciding cases that will impact domestic violence litigants and victims. DV LEAP frequently works with domestic violence survivors and has filed numerous *amicus* briefs in courts across the country, including the Supreme Court of the United States. As such, DV LEAP can provide important insights into domestic violence and the orders of protection designed to stop it.

INTRODUCTION

Domestic violence is "a serious crime against the individual and society." 750 ILL. COMP. STAT. 60/102(1). Recognizing this, the Illinois legislature has adopted strong protections for domestic violence victims in the Illinois Domestic Violence Act. *Id.* One of the Act's most important and effective features is the order of protection. Emergency, temporary, and plenary orders of protection provide victims with a unique means to obtain comprehensive, and readily enforceable protection from their abusers. *Id.* This remedy has special importance in Illinois. Though all 50 states have adopted some form of statute authorizing orders of protection, Illinois and just twelve other states have adopted statutes with *mandatory* orders of protection, which take discretion away from

the trial court and *require* the automatic issuance of an order of protection upon a factual showing of abuse.

Obtaining a plenary order of protection under this mandatory provision is simple: "[i]f the court finds that petitioner has been abused by a family or household member ... as defined in this Act, an order of protection ... *shall issue*." *Id.* at 60/214(a) (emphasis added). Yet that did not occur here. Despite finding the requisite evidence of abuse, the circuit court ignored the statute's mandate and denied Petitioner's petition for a plenary order of protection. Instead, in an exercise of non-existent discretion, the circuit court entered a mere "restraining order."

The circuit court's action flouts Illinois' Domestic Violence Act, and if uncorrected will undermine the broadly protective policy intended by the legislature. As the remainder of this brief explains, a restraining order simply is no substitute for an order of protection. This case presents the Court with an important opportunity not only to give justice to the Petitioner, but also to prevent similar mistakes in the trial courts in future cases. This Court should reverse, and in doing so, this Court should state unambiguously that as a matter of law and policy, the Illinois Domestic Violence Act *mandates* the issuance of an order of protection upon the requisite showing of abuse by the victim.

FACTUAL BACKGROUND[1]

Elisa Sanchez and Juan Jose Ramirez Torres were romantically involved for many years. R2 at 12–13.[2] They lived together and have four children together. *Id.* In May

---

[1] *Amici* hereby adopt Petitioner's statement of the facts and procedural history as if stated in full, and provide the following brief restatement of the facts solely for the Court's convenience and without prejudice to Petitioner's statement.

[2] References to "R" refer to the Record, with R1 referring to Volume 1, R2 referring to Volume 2, and R3 referring to Volume 3.

2014, Ms. Sanchez told Mr. Ramirez that it was time to part ways. *Id.* An unreformed alcoholic, Mr. Ramirez resisted, and embarked on an escalated campaign of psychological and physical abuse in an effort to stop Ms. Sanchez from leaving. *Id.* Mr. Ramirez reminded Ms. Sanchez that he financially supports her and their four children. *Id.* at 14, 31, 40, 86. He told her that he owned the car and the house, and threatened that if she left, she would be destitute. *Id.* at 14, 31. He told her she was "crazy," "stupid," and "dumb," for wanting to leave him. *Id.* at 18,24-25, 29; *see also* R1 at 61. And finally, he heightened his physical violence. R2. at 14, 17. Usually drunk, Mr. Ramirez would get angry about Ms. Sanchez's desire to end the relationship, and would strike the walls and throw objects at the family television. *Id.* at 17, 26. On multiple occasions, Mr. Ramirez pushed Ms. Sanchez into chairs and walls, dragged her out of bed and to the floor, and shoved her head into a door. *Id.* at 14, 17, 19, 24-26, 32; *see also* R1 at 6–7.

Ms. Sanchez called the police during two particularly violent encounters (both while the children were in the home). R2 at 19, 32. Of the two, the most recent was on November 5, 2014, when a drunken Mr. Ramirez pushed Ms. Sanchez against a wall and shoved her head against a door. *Id.* at 32. To escape the violence Ms. Sanchez ran into her daughter's room and called the police. *Id.* When the police arrived, Ms. Sanchez pleaded with them for help in removing Mr. Ramirez from her home. *Id.* at 31–32. The police stated (incorrectly) that they could not arrest Mr. Ramirez[3], and advised her to seek an order of protection so that *next time*, they could arrest him. *Id.* at 32. All the police offered to do on November 5, 2014 was take a report of the incident. *Id.*

---

[3] The Police may always arrest an individual when there is probable cause that a crime has been committed; here, Mr. Ramirez had assaulted Ms. Sanchez, so an arrest would have been appropriate.

Days later, on November 7, 2014, Ms. Sanchez successfully filed for an emergency order of protection, specifically invoking the Illinois Domestic Violence Act. R1 at 2–5. She then asked the court to make her temporary order permanent and plenary for at least two years. R2 at 7, 40–43. To protect herself and prevent further abuse, Ms. Sanchez affirmatively sought protection by eliminating contact between her and Respondent. R1 at 11. The circuit court held two hearings (one on February 10, 2015, and the other on March 26, 2015), during which the court heard testimony from Ms. Sanchez, her sister (who was present during the abuse), and Mr. Ramirez. *Id.* at 2, 9, 66, 72, 81. After the first hearing, the court denied Ms. Sanchez's motion for a directed finding, but stated: "I think that there is a *prima facie* case that is made, that there was some reason to be concerned by some of the examples that [Ms. Sanchez] had pointed out." *Id.* at 81.

At the second hearing, however, the court denied Ms. Sanchez's request for a plenary order of protection. *Id.* at 116. Instead, the court "order[ed] a restraining order to be put in place to help manage the relationship between mom [Ms. Sanchez] and dad [Mr. Ramirez]." *Id.* at 116–17. The court went further, opining that "when the relationship breaks down and creates a bunch of frustration, society expects the two of you [Ms. Sanchez and Mr. Ramirez] to manage this." *Id.* at 117. And despite the evidence of Mr. Ramirez's repeated abuse of Ms. Sanchez, the circuit court stated that it was "hopeful that in the future there could be a friendship" between them. *Id.* at 119-20.

In a written order the same day, the circuit court explicitly found Ms. Sanchez's allegations of abuse to be *credible*. R1 at 48 (emphasis added). In addition, the circuit court held that a court order was "*necessary ... to prevent further abuse*." R1 at 48 (emphasis added). In spite of the credible allegations of abuse and threat of future harm,

the circuit court issued a mere restraining order and not the requested order of protection. Ms. Sanchez timely appealed, again requesting a plenary order of protection. *Id.* at 67.

Although the restraining order proscribed Mr. Ramirez from physically abusing, harassing, and stalking Ms. Sanchez, he has not been deterred and, as the record reflects, has continued to abuse Ms. Sanchez. Since noticing this appeal, Mr. Ramirez followed Ms. Sanchez from her church to a grocery store, in violation of the restraining order. *Id.* at 60. In the store's parking lot, Mr. Ramirez confronted Ms. Sanchez, who was with the four children. *Id.* at 60–61. Ms. Sanchez managed to escape the parking lot before the confrontation turned violent, and went to the police seeking to enforce the restraining order. *Id.* The police told Ms. Sanchez that there was nothing they could do to remedy Mr. Ramirez's violations of the order. Ms. Sanchez then, with the help of her attorney, moved the court to hold Mr. Ramirez in contempt. *Id.* at 60, 65. It has been more than a month, and that motion is still pending. Meanwhile, nothing has been done to remedy Mr. Ramirez's violations.

ARGUMENT

I. THE CIRCUIT COURT LACKED DISCRETION TO DENY PETITIONER A PLENARY ORDER OF PROTECTION AND ENTER A RESTRAINING ORDER INSTEAD.

The dispositive question here is whether, upon finding that Ms. Sanchez was abused, the circuit court was required to issue a plenary order of protection. The legislature has already answered this question in the affirmative. The language of Illinois' Domestic Violence Act is unambiguous: "[i]f the court finds that petitioner has been abused by a family or household member ... an order of protection prohibiting the abuse ... ***shall*** issue." 750 ILL. COMP. STAT. 60/214(a) (emphasis added).

The court's inquiry always begins with the plain language of the statute; when

that language is unambiguous, that is also where the inquiry ends, *People ex. Rel. Madigan v. Kinzer*, 902 N.E.2d 667, 671 (Ill. 2009). "When used in a statute, the word 'shall' is generally interpreted to mean that something is mandatory." *Citizens Org. Project v. Dep't of Natural Res.*, 727 N.E.2d 195, 198 (Ill. 2000). Courts do not lightly give "shall" a permissive construction, especially where, as in the context of an order of protection, "it is used with reference to any right or benefit to anyone, and the right or benefit depends on giving a mandatory meaning to the word." *Cole v. Dep't of Pub. Health*, 767 N.E.2d 909, 911 (Ill. App. Ct. 2002).

Here, there is nothing to indicate the legislature had a different intent. Indeed, giving "shall" its ordinary, mandatory, meaning is the only way to effectuate the expressed intent of the legislature to provide "immediate and effective assistance and protection," to victims of domestic violence 750 ILL. COMP. STAT. 60/102(3); to "adequately acknowledge the criminal nature of domestic violence," *id.*; to "avoid further abuse by promptly entering and diligently enforcing court orders which prohibit abuse," *id.* at 60/102(4); to "[c]larify the responsibilities and support the efforts of law enforcement officers to provide immediate, effective assistance and protection for victims of domestic violence." *id.* at 60/102(5); and to "[r]ecognize that the legal system has ineffectively dealt with family violence in the past, allowing abusers to escape effective prosecution or financial liability, and has not adequately acknowledged the criminal nature of domestic violence; that, although many laws have changed, in practice there is still widespread failure to appropriately protect and assist victims," *id.* at 60/102(3).

As this Court has persuasively observed, albeit in an unpublished and non-precedential opinion, giving "shall" its ordinary meaning here leads inexorably to the

conclusion that "if the trial court finds that [the petitioner] has established ... that she was abused ... , then an order of protection must issue." *Rock v. Rock*, No. 3-14-0114, 2015 WL 1143179, at *6 (Ill. App. Ct. Mar. 12, 2015) (unpublished)[4]. Thus, the court's inquiry in order of protection cases is limited to "whether the petitioner has been abused," not whether an order of protection is an appropriate remedy. *Best v. Best*, 860 N.E.2d 240, 244 (Ill. 2006) (saying that "whether the petitioner has been abused is the central issue in order-of-protection proceedings").

Here, the circuit court found that Ms. Sanchez met her burden of proving that she was abused by Respondent. The circuit court explicitly found as such. R1 at 48. The Illinois Domestic Violence Act therefore required the circuit court to remedy that abuse with an order of protection, but the court instead offered the lesser remedy of a restraining order. This exceeded the circuit court's authority. *See Rock*, 2015 WL

---

[4] Supreme Court Rule 23 bars "any party" from citing unpublished opinions as authority in certain circumstances. SUPREME CT. R. 23(e). *Amici* understand that they are not "parties" to this appeal. *See e.g.*, *In re J.W.*, 787 N.E.2d 747, 760 (Ill. 2003) ("An *amicus curiae* is not a party to an action but rather is a 'friend' of the court."); *Zurich Ins. Co. v. Raymark Indus., Inc.*, 514 N.E.2d 150, 166 (Ill. 1987) ("This court has stated that by definition, an *amicus curiae* is not a party to the action.") (internal quotations and alterations omitted). As non-parties, *Amici*'s role is to "assist the court" by bringing persuasive information to this Court's attention that may assist it in resolving the case. SUPREME CT. R. 345; *see also Zurich*, 514 N.E.2d at 1166 ("the sole function of an *amicus* is to advise or make suggestions to the court."). Unpublished opinions, while non-precedential, may be persuasive by providing "the reasoning and logic that an Illinois appellate court used" to address similar questions in the past. *Osman v. Ford Motor Co.*, 359 Ill. App. 3d 367, 374 (Ill. App. Ct. 2005); *Nulle v. Krewer*, 872 N.E.2d 567, 571 (Ill. App. Ct. 2007) ("Although this opinion is unpublished, we are free to deem it persuasive."). Accordingly, *Amici* do not mean to suggest that the unpublished *Rock v. Rock*, No. 3-14-0114, 2015 WL 1143179, at *6 (Ill. App. Ct. Mar. 12, 2015) is binding precedent, but solely to assist this Court in resolving this case by reference to another appellate court's sound construction of the plain meaning of the Illinois Domestic Violence Act.

1143179, at *6 ("[T]he trial court has no discretion to deny an order of protection after a finding of abuse."). That outcome denies Petitioner her statutory right to an order of protection and all the attendant benefits, and leaves her vulnerable to further abuse.

Moreover, as explained below, the trial court's action threatens to undermine the strong protections for all victims of domestic violence that the Illinois legislature took pains to create. Considering the history and policy underlying the Illinois Domestic Violence Act's mandatory issuance provision, and the clear benefits that orders of protection provide to the lives of victims of domestic violence, this Court should make clear that Illinois law mandates the issuance of an order of protection upon the requisite showing, and that lower courts have no discretion to substitute lesser relief.

II. RESTRAINING ORDERS ARE NO SUBSTITUTE FOR THE SECURITY ORDERS OF PROTECTION PROVIDE TO VICTIMS.

The circuit court's issuance of a restraining order contravenes Illinois law. Unlike restraining orders, orders of protection are specifically designed to combat domestic violence. Remarkably effective, orders of protection provide an immediate, criminal remedy against further abuse and an accessible *pro se* process that victims can navigate easily and affordably. And orders of protection do more than keep survivors of domestic violence physically safe—they also provide a host of priceless psychological benefits, emphasizing victim empowerment and autonomy. Accordingly, only an order of protection satisfies the legislature's intent to provide the nation's strongest and most readily enforceable protections against domestic violence. Restraining orders, by contrast, are practically unenforceable and largely ineffectual against domestic violence and are but cold comfort to victims and their families.

A. Orders of Protection Are Specifically Designed To Combat The Unique Danger and Complexity Of Domestic Violence.

Orders of protection specifically evolved to protect victims from domestic violence. Prior to the existence of orders of protection, an injunction against abuse was only available to married persons through a divorce order. *See* Jane K. Stoever, *Enjoining Abuse: The Case for Indefinite Protection Orders*, 67 VAND. L. REV. 1015, 1040-41 (2014). Such injunctions were extremely unusual, in part because filing for divorce often triggers escalated violence by the abuser.[5] Seeking the State's protection from their abusers, married victims were thus forced to endanger themselves further by seeking a divorce, and then the only remedy they could obtain was a restraining order. As described in more detail below, restraining orders proved inadequate. Unmarried victims, meanwhile, had no recourse from intimate-partner violence. *Id.* at 1035.

Against this backdrop, all fifty states have since enacted statutes authorizing orders of protection in order to address the unique complexity of domestic violence. *See* Barbara J. Hart, *State Codes on Domestic Violence: Analysis, Commentary & Recommendations*, 43 JUV. & FAM. CT. J 4, 23 (1992); Stoever, 67 VAND. L. REV. at 1042 (citing Tamara L. Kuennen, *"No-Drop" Civil Protection Orders: Exploring the Bounds of Judicial Intervention in the Lives of Domestic Violence Victims*, 16 UCLA WOMEN'S L.J. 39, 48 (2007)). Illinois, through the Illinois Domestic Violence Act, is at the forefront in providing meaningful protection for victims, and among the vanguard of states with mandatory order of protection statutes that provide "remedies beyond simply

---

[5] Abusers often escalate their violence when they learn their victim intends to leave the relationship. *See generally*, David M. Zlotnick, *Empowering the Battered Woman: The Use of Criminal Contempt Sanctions to Enforce Civil Protection Orders*, 56 OHIO ST. L.J. 1153, 1186 (1995).

prohibiting abuse or ordering the respondent to stay away." Debra Pogrund Stark, *What's Law Got to Do With It? Confronting Judicial Nullification of Domestic Violence Remedies*, 10 NW. J. L. & SOC. POL'Y 130, 140 (2015).

Twelve other states have joined Illinois in making orders of protection mandatory to protect domestic violence victims, including Arizona, Colorado, Michigan, New Hampshire, New Jersey, New Mexico, North Carolina, Tennessee, Texas, Vermont, West Virginia, and Wyoming.[6] These states have it right, and the structural and textual differences between their order of protection statutes and those of all other states leave no question that they intended to distinguish mandatory remedies from merely permissive ones. *E.g., compare* D.C. Code § 16-1004(b)(1) ("[I]f, after hearing, the judicial officer finds that there is good cause to believe the respondent has committed or threatened to commit a criminal offense against the petitioner ... the judicial officer *may issue* a protection order. . . .") *with* 750 ILL. COMP. STAT. 60/101(3) ("If the court finds that petitioner has been abused by a family or household member ... an order of protection prohibiting the abuse, neglect, or exploitation *shall issue*. . . .") (emphases added).

Mandatory order of protection statutes provide better protection to victims and their families, prevent more violence, and improve the lives of survivors. It is not enough to prevent abuse—these laws are also aimed at reducing the *fear* of abuse. Reducing fear of abuse is essential for emotional healing, which, in turn, is essential for victims to move on with their lives. Mandatory order of protection statutes, like Illinois' Domestic

---

[6] ARIZ. REV. STAT. ANN. §13-3602; COLO. REV. STAT. ANN. §§ 13-14-106, 13-14-100.2; MICH. COMP. LAWS § 600.2950; N.C. GEN. STAT. § 50B-3; N.H. REV. STAT. §173-B:5; N.J. STAT. ANN. §§ 2C:25-18, 2C:25-29; N.M. STAT. §§ 40-13-1.1, 40-13-5; TENN. CODE ANN. § 36-3-605; TEX. FAM. CODE ANN. § 81.001; VT. STAT. ANN. tit. 15, § 1103; W. VA. CODE §§ 48-27-101, 48-27-501; WYO. STAT. ANN. §35-21-105.

Violence Act, accomplish this important purpose. *See* Karla Fischer & Mary Rose, *When "Enough is Enough": Battered Women's Decision Making Around Court Orders of Protection*, 41 CRIME & DELINQ. 414, 419 (1995) (95% of survivors are confident that police will quickly respond if their abusers attempt to violate their orders of protection). Legislation authorizing orders of protection, including the Illinois Domestic Violence Act, also often includes provisions designed to make the process easier for *pro se* victims to navigate. The Illinois Domestic Violence Act requires the courts to create and use simplified forms for orders of protection. 750 ILL. COMP. STAT. ANN. 60/202(D). "These forms are designed to streamline the process for obtaining an order so that a battered woman theoretically does not have to hire an attorney." Kin Kinports & Karla Fischer, *Orders of Protection in Domestic Violence Cases: An Empirical Assessment of the Impact of the Reform Statutes*, 2 TEX. J. WOMEN & L. 163, 170 (1993). In addition, some statutes in other states instruct court clerks to provide assistance to women who need help completing the forms, or provide domestic violence advocates to all victims seeking the orders. *Id.* To further enable victims to freely access the courts' protections, Illinois allows *pro bono* advocates to assist victims with any component of the process without having to be admitted to practice. 750 ILL. COMP. STAT. ANN. 60/205.

In furtherance of Illinois' general policy of strong protection, the Illinois Domestic Violence Act authorizes courts to select from up to nineteen different remedies when entering a plenary order of protection. *See id.*; 750 ILL. COMP. STAT. 60/214(b). But none of these remedies are any help to domestic violence victims if the lower courts, as here, decline to issue an order of protection.

B. Orders Of Protection Are Enforceable By Immediate Arrest, Providing Crucial Security And Preventing Future Violence.

Similar to the Illinois Domestic Violence Act's mandatory order of protection provision, to engender real change in the State's historic reluctance to treat domestic violence as a crime, Illinois and a number of other states have also enacted mandatory arrest laws and more stringent domestic violence prosecution policies. *See* Emily J. Sack, *Battered Women & the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WISC. L. REV. 1657, 1668–69 (2004). These laws reduce or remove discretion from law enforcement, with the goal of increasing abuser arrests and signaling the states' firm repudiation of domestic violence. *See* 750 ILL. COMP. STAT. 60/102(1) (recognizing "domestic violence as a serious crime against the individual and society"); *id.* at 60/102(3) (recognizing that "the legal system has ineffectively dealt with family violence in the past, allowing abusers to escape effective prosecution").

Every state in the country, in fact, has made it a crime to violate an order of protection. *See* Judith A. Smith, *Battered Non-Wives & Unequal Protection-Order Coverage: A Call for Reform*, 23 YALE L. & POL'Y REV. 93, 101–02 (2005). The Illinois Domestic Violence Act authorizes police officers to immediately arrest those who violate an order of protection (whether or not violence has occurred) and *mandates* a 24-hour arrest for a second violation. 750 ILL. COMP. STAT. 60/301(a). First time violations of orders of protection are classified as Misdemeanor A offenses. 720 ILL. COMP. STAT. ANN. 5/12-3.4. And to further deter abusers, Illinois also has increased the criminal penalty for repeat violations. *Id.* (making repeat violations of orders of protection a Class

Four felony).[7] Additionally, the legislature created a monitoring program as a way to make enforcement more viable.[8] 750 ILL. COMP. STAT. 60/301(b). The importance of these features to the physical health and wellbeing of abuse victims cannot be overstated. Sometimes domestic violence situations involve crimes such as assault or battery, and under those extreme and often traumatic circumstances, law enforcement has an obligation to immediately step in to arrest the abuser.[9] However, without an order of protection in place, police have limited ability—and often still a limited willingness—to defuse a domestic violence incident *before* violence ensues, and to arrest a known abuser *before* a crime has been committed.

Mandatory arrest provisions, like Illinois', provide a necessary "cool-off" period for abusers, while also giving victims an opportunity to connect and safety plan with family and available social institutions. Hart, *et al.*, 43 JUV. & FAM. CT. J, at 209 (identifying mandatory or presumptive arrests as "the first link in a vital chain of institutional interventions that save the lives of battered women and children, restore the community, and invite batterers to accountability."). This is a unique and irreplaceable remedy, as orders of protection are the only civil court orders from which violations

---

[7] Also, Illinois courts may enforce orders of protection through both criminal prosecution and contempt proceedings, unless the action which is second in time is barred by collateral estoppel or the constitutional prohibition against double jeopardy. 750 ILL. COMP. STAT. ANN. 60/223.

[8] The law enforcement officer may verify the existence of an order of protection by telephone or radio communication with his or her law enforcement agency or by referring to the copy of the order provided by the petitioner or respondent.

[9] "Any law enforcement officer may make an arrest without warrant if the officer has probable cause to believe that the person has committed or is committing any crime, including but not limited to violation of an order of protection, under Section 12-3.4 or 12-30 of the Criminal Code of 1961 or the Criminal Code of 2012, even if the crime was not committed in the presence of the officer." 750 ILL. COMP. STAT. 60/301(a).

alone, without the officer observing a crime being committed, can trigger immediate arrest. *See* Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?* 29 CARDOZO L. REV. 1487, 1536-37 (2008).[10] Because the police are called to address domestic violence more than any alternative service provided, their assistance transforms orders of protection from a simple piece of paper into an effective shield against further violence. Kathryn E. Litchman, *Punishing the Protectors: The Ill. Domestic Violence Act Remedy for Victims of Domestic Violence Against Police Misconduct*, 38 LOY. U. CHI. L. J. 765, 779 (2007).

Providing immediate legal recourse for victims also ensures that abusers are held accountable. Holt, *et al.*, *Do Protection Orders Affect the Likelihood of Future Partner Violence & Injury?*, 24 AM. J. PREVENTIVE MED. 16, 18 (2003) (attributing increased efficacy of orders of protection to the shift from civil to criminal sanctions for violations, as well as enhanced police response following mandatory arrest laws). Most domestic violence survivors (59%, according to one study) avail themselves of immediate remedies when necessary, calling on the police to enforce the terms of their orders of protection. *See* James Ptacek, BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES 161 (1999). Former abusers themselves have stated that their fears of arrest and other criminal consequences were what ensured their compliance with stay-away orders and even motivated them to change their behavior. *Goldfarb*, 29 CARDOZO L. REV. at 1536. Indeed, in one study, researchers found that 65% of victims reported *no*

---

[10] *See also* Elizabeth Topliffe, Note, *Why Civil Protection Orders are Effective Remedies for Domestic Violence but Mutual Protective Orders Are Not*, 67 IND. L. J. 1039, 1050 (1992).

violations of orders of protection that had been in place for at least six months. Susan L. Keilitz, *et al.*, *Civ. Protection Orders: The Benefits & Limitations for Victims of Domestic Violence*, NAT'L CTR. R FOR STATE COURTS, 19 (1997). In another, the vast majority of violations were non-violent (or reduced in violence). T.K. Logan & Robert Walker, *Civ. Protective Orders Effective in Stopping or Reducing Partner Violence, Challenges Remain in Rural Areas with Access & Enforcement*, CARSEY INST. POL'Y BRIEF NO. 18, at 2 (2011). Most states have capitalized on these benefits and enhanced the quality of police response through protection-order databases, which allow on-duty law enforcement to quickly verify the existence and terms of a protection order *before* confronting a violent offender. Peter Finn & Sarah Colson, *Civil Protection Orders: Legislation, Current Court Practice, and Enforcement*, NAT'L INST. OF JUSTICE, 2 (1990). This better equips police officers to handle volatile situations, *id.*, and has helped law enforcement overcome a history of reluctance and under-enforcement, *Litchman*, 38 LOY. Y. CHI. L. J. at 782.[11] When officers know in advance that certain behavior is prohibited by an order of protection, they are far more likely to actually arrest for violations than officers who do not know the terms of the order. Finn & Colson, NAT'L INST. OF JUSTICE, 2.

Thanks to the clear enforcement process, survivors who secure orders of protection are also far less likely to suffer future physical assaults, threats of bodily harm, stalking, and harassment. Logan & Walker, CARSEY INST. POL'Y BRIEF NO. at 2.

---

[11] Police officers have historically been reluctant to arrest protection-order violators, citing fear for their own safety, outmoded attitudes that domestic violence is a private matter and not law-enforcement's responsibility, and feelings of futility when victims seem ambivalent about arrest. *Litchman*, 38 LOY. Y. CHI. L. J. at 782.

Victims report a reduction in their abusers' jealous and controlling behavior following issuance of an order of protection. *Id.* Often the order of protection alone is enough to deter (or at least minimize) further abuse. *See id.* at 1 (noting that 86% of domestic violence survivors considered their protection orders effective at deterring violence). The longer an order of protection is in place, the more violence and abuse decline. *See* Holt *et al.*, 24 AM. J. PREVENTATIVE MED. at 20 (observing 70% decrease in physical abuse among 448 victims protected by orders of protection for at least 12 months).

C. The Remedies Available In Orders Of Protection Provide Additional Benefits To Victims.

In addition to curbing abuse, orders of protection also convey important psychological benefits to survivors of domestic violence. Shifting the balance of power within the abusive relationship, orders of protection communicate (to the victim and the abuser) the public's abhorrence of domestic abuse. The process, and the results, therefore empower survivors and promote confidence and independence. *See* Goldfarb, at 1535, 1537. In a survey of survivors who received orders of protection, for instance, 98% felt greater control of their lives; 89% believed they had more control in their relations; 90% had a more positive sense of self; and 85% felt as though their lives had improved overall. Fischer & Rose, 41 CRIME & DELINQ. at 419. Another study likewise revealed that victims are more able to sleep and generally feel less stress after an order of protection is in place. Logan & Walker, at 3. The vast majority (86% in rural areas and 87% in urban areas) of victims reported that after six months of having an active protection order, they felt less vulnerable to future violence, harassment, interference with their children, and other harms to their family and friends. *Id.* For 86% of these survivors, the orders of protection were, in their opinions, effective. *Id.* Another study

showed 82% of survivors surveyed felt that, in seeking an order of protection they had made the right decision. Ptacek, at 164. In short, orders of protection under the Illinois Domestic Violence Act are a unique—and uniquely effective—remedy for domestic violence.

D. Restraining Orders Are Virtually Unenforceable And Are Inadequate Substitutes.

Restraining orders such as the one the circuit court issued here have consistently proven inadequate to protect against domestic violence. Indeed, the Illinois Court of Appeals has already found that "[t]he differences in enforcement and consequences between a plenary Order of Protection and a civil no contact [restraining] order are so great that the latter is simply not a reasonable substitute for the former." *Andrews v. Andrews*, No. 3-11-0307, 2012 WL 7006326, at *3 (Ill. App. Ct. Mar. 1, 2012) (unpublished)[12].

Violation of a restraining order is merely a civil wrong, like violating any other civil court order. Unlike orders of protection, therefore, victims cannot rely on the police to immediately enforce restraining orders. If the contemptuous conduct is violence, intimidation, or harassment (and it usually is), the victim must endure the illegal behavior until he or she has the resources to invoke the issuing court's contempt power. But the civil contempt process is notoriously confusing (both to courts and litigants), and extremely difficult to navigate *pro se*. Victims often cannot help themselves, and must enlist a lawyer. This takes time, money, and leaves victims feeling helpless.

In sum, to enforce the terms of a restraining order, a victim typically must first

---

[12] *Supra* note 4 (as before, *Amici* cite *Andrews* not as precedential authority, but rather to assist this Court by noting that one appellate court has already acknowledged the stark differences between restraining orders and orders of protection).

find a lawyer, then apply to the court, and then wait for the court to act. This daunting and expensive process significantly delays victim's access to relief. This is unacceptable. For domestic violence victims, immediate, meaningful protection can be a matter of life and death. *See generally Castle Rock v. Gonzales*, 545 U.S. 748, 751-54 (2005) (police declined to enforce a civil restraining order leading to murder of three children by abuser); *Donaldson v. Seattle*, 65 Wash. App. 661, 666 (1992) (victim of domestic violence murdered by her abuser who violated court's "no-contact" order).

Even when there is enforcement of a restraining order, it is generally lukewarm, "typically amount[ing] to a verbal slap on the hand." Stoever, 67 VAND. L. REV. at 1041 (internal quotations omitted). The general unenforceability of restraining orders leads to a domino effect that deprives victims of needed protection. As previously discussed (and the facts of this case viscerally demonstrate) without immediate arrest authority, police responsiveness to violations of restraining orders is unpredictable, at best. Since police cannot arrest an abuser for violating a restraining order alone, even if police do respond to reports of a violation an arrest is less likely to occur. Studies demonstrate that without an underlying arrest courts in turn are less likely to exercise their contempt powers, and no meaningful costs are imposed for violating the restraining orders terms. Finn & Colson, NAT'L INST. OF JUSTICE, at 4.

As a result, abusers are not adequately deterred by restraining orders. This undermines victims' sense of wellbeing, as they are left continuing to feel uncertain, insecure, and unprotected in their own homes. That is precisely the situation in which the circuit court's restraining order has placed the Petitioner, and which this Court has a chance to put right.

CONCLUSION

For all the foregoing reasons, and those stated in Petitioner's brief, the circuit court's order should be reversed. This Court should follow the clear statutory language of the Illinois Domestic Violence Act, the holdings of this Court and the Illinois Supreme Court in the cases of *Rock v. Rock*, No. 3-14-0114, 2015 WL 1143179 (Ill. App. Ct. Mar. 12, 2015) and *Best v. Best*, 860 N.E.2d 240 (Ill. 2006), and rule that judges are required to grant an order of protection when, as here, "abuse" as defined in the Illinois Domestic Violence Act has been established by a preponderance of the evidence.

~ ~ ~

Dated: July 31, 2015

Respectfully submitted,

DOMESTIC VIOLENCE LEGAL EMPOWERMENT AND APPEALS PROJECT

PROF. JOAN S. MEIER
2000 G Street NW
The George Washington Univ. Law School
Washington, DC 20052
(202) 994-2278

Director, Domestic Violence Legal Empowerment and Appeals Project (DV LEAP)

MORGAN, LEWIS & BOCKIUS LLP

Scott T. Schutte /MB

SCOTT T. SCHUTTE
Counsel of Record
77 West Wacker Drive
Chicago, IL 60601
(312) 324-1000

RANDALL M. LEVINE*
STEPHANIE SCHUSTER*
CLARA KOLLM*
MORGAN LEWIS & BOCKIUS LLP
2020 K Street NW
Washington, DC 20006
(202) 373-6000

Counsel for Domestic Violence Legal Empowerment and Appeals Project (DV LEAP)

LOYOLA UNIVERSITY CIVITAS CHILDLAW CENTER

PROF. ANITA WEINBERG
25 E. Pearson Street, Suite 1107
Chicago, IL 60611
(312) 91506481

Director, Civitas Childlaw Center Loyola University

CHICAGO METROPOLITAN BATTERED WOMEN'S NETWORK

KATHLEEN A. DOHERTY
1 E. Upper Wacker Drive, #1630
Chicago, IL 60601
(312) 527-0730

Executive Director, Metropolitan Battered Women's Network

SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW

KATE WALZ
50 E. Washington, Suite 500
Chicago, IL 60605
(312) 263-3830

Counsel for Sargent Shriver National Center on Poverty Law

CHICAGO APPLESEED FUND FOR JUSTICE

ELIZABETH MONKUS
750 N. Lake Shore Drive, Fourth Floor
Chicago, IL 60611
(312) 988-6565

Counsel for Chicago Appleseed Fund for Justice

THE JOHN MARSHALL LAW SCHOOL DOMESTIC VIOLENCE CLINICAL ADVOCACY PROGRAM

PROF. DEBRA P. STARK
315 S. Plymouth Court
Chicago, IL 60604
(312) 427-2737

Director, Domestic Violence Clinical Advocacy Program
The John Marshall Law School

CHICAGO VOLUNTEER LEGAL SERVICES

MATTHEW HULSTEIN
33 N. Dearborn St., Ste. 400
Chicago, IL 60602
(312) 332-8217

Counsel for Chicago Volunteer Legal Services

LIFE SPAN CENTER FOR LEGAL SERVICES & ADVOCACY

DENISE W. MARKHAM
70 E Lake St #700
Chicago, IL 60601
(312) 408-1210

Executive Director, Life Span Center for Legal Services & Advocacy

RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this amicus brief in support of the Petitioner/Appellant conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service and those matters to be appended to the brief under Rule 342(a), is 23 pages.

Dated: July 31, 2015

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Scott T. Schutte /mb

SCOTT T. SCHUTTE (ARDC# 6230227)
Counsel of Record
77 West Wacker Drive
Chicago, IL 60601
(312) 324-1000
-and-
RANDALL M. LEVINE*
STEPHANIE SCHUSTER*
CLARA KOLLM*
2020 K Street NW
Washington, DC 20006
(202) 373-6000

Counsel for Domestic Violence Legal Empowerment and Appeals Project (DV LEAP)

*Not admitted in Illinois.

CERTIFICATE OF SERVICE

I hereby certify that, on July 31, 2015, I caused to be served via first class mail three copies of the foregoing BRIEF OF *AMICI CURIAE* IN SUPPORT OF PETITIONER/APPELLANT and three copies of the RULE 341(c) CERTIFICATE OF COMPLIANCE upon all individuals listed below:

Jennifer J. Payne
LAF
120 S. LaSalle Street, #900
Chicago, IL 60603
(312) 229-6304

Counsel for Petitioner

Juan Jose Ramirez Torres
Joe Truck Repair
3314 S Lawndale
Chicago, IL 60623

Respondent

Dated: July 31, 2015

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Scott T. Schutte /MB

SCOTT T. SCHUTTE (ARDC# 6230227)
Counsel of Record
77 West Wacker Drive
Chicago, IL 60601
(312) 324-1000
-and-
RANDALL M. LEVINE*
STEPHANIE SCHUSTER*
CLARA KOLLM*
MORGAN LEWIS & BOCKIUS LLP
2020 K Street NW
Washington, DC 20006
(202) 373-6000

*Not admitted in Illinois.