No. 120958

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. MATTHEW GRAY, Defendant-Appellee.	)))))))))))	Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-13-4012 There on appeal from the Circuit Court of Cook County, Criminal Division No. 11 CR 19547 The Honorable Nicholas Ford, Judge Presiding.

BRIEF OF *AMICI CURIAE* LAF, THE CHICAGO METROPOLITAN BATTERED WOMEN'S NETWORK, BETWEEN FRIENDS, CHICAGO APPLESEED FUND FOR JUSTICE, CHICAGO COUNCIL OF LAWYERS, CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION, THE DOMESTIC VIOLENCE LEGAL CLINIC, ILLINOIS COALITION AGAINST DOMESTIC VIOLENCE, THE JOHN MARSHALL LAW SCHOOL'S DOMESTIC VIOLENCE CLINICAL ADVOCACY PROGRAM, AND THE LEGAL AID SOCIETY OF METROPOLITAN FAMILY SERVICES IN SUPPORT OF PLAINTIFF-APPELLANT

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STATEMENT OF INTERESTS OF THE *AMICUS CURIAE*

Amicus curiae **LAF** (formerly the Legal Assistance Foundation) is a not-for-profit corporation that, for 50 years, has provided high quality civil legal services to Cook County residents living in poverty, serving about 35,000 people each year in a range of areas of law. LAF has been committed to domestic violence advocacy for survivors since the 1970's, long before the enactment of the Domestic Violence Act. In addition to community education and advice, LAF represents survivors of domestic violence directly in divorce, parentage, custody, immigration, housing, and public benefits cases. Many of these cases take years to litigate, requiring attorneys to address legal issues raised over the course of an abusive relationship. While an order of protection is often a first step, it can but does not always end the abuse, nor does a judgment for dissolution of marriage, a safety transfer to a new public housing unit, an adjustment of immigration status, or financial independence from the abuser. Due to its extensive experience representing victims of domestic abuse, LAF has a strong interest in protecting the civil remedies available to them, including orders of protection against current and former intimate partners. Such orders are the cornerstone of ensuring a survivor's physical and mental safety.

Amicus curiae **The Chicago Metropolitan Battered Women's 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 examines legal and social implications of policy impacting domestic

violence, both locally and nationally. The Network is uniquely positioned to stay abreast of, and respond to, survivor needs and trends affecting domestic violence service delivery and also helps shape public policy. The Network represents and unites the domestic violence services community when its advocacy voice needs to be heard, and educates the public about the dynamics of domestic violence.

The Network has a strong interest in the courts providing an order of protection when requested and supported by evidence. These orders help ensure survivors' safety, physical and mental well-being, and financial security. The Network is concerned about the significant reduction in access to the relief of an order of protection should the Court uphold the Appellate Court decision striking down as unconstitutional the "prior dating relationship" language in a domestic battery case. Victims of domestic violence need protection that lasts over extended periods of time. Abuse often escalates over time and abuser conduct may become more dangerous after the parties separate. Therefore, there should not be a time limit imposed on accessing relief from a prior partner's present abusive conduct.

Amicus curiae **Between Friends** is a nonprofit dedicated to breaking the cycle of domestic violence and building a community free of abuse. For 30 years, Between Friends has been serving adults and youth through crisis intervention services and prevention and education programs in the Chicagoland area. Since its founding, the organization has evolved to reflect the needs of individuals, families, and entire communities in Chicago. Today, Between Friends strives to provide a safe, violence-free, supportive, healing environment for people in crisis and empower them to make their own healthy choices. For survivors of domestic violence and their children,

Between Friends offers trauma-informed crisis intervention and support services that include a 24-hour crisis line as well as counseling and court advocacy. A clinical team of Masters-level counselors provides multi-lingual evidenced-based individual, family, and group counseling, art and movement-based therapy, financial literacy education, and childcare. Our Court Advocates serve victims of domestic violence in the Chicago and Rolling Meadows courthouses, explaining victims' legal rights, accompanying them to court, and assisting them in navigating the complexities of obtaining orders of protection.

To address domestic violence as a community issue, Between Friends offers comprehensive violence prevention and education programs for youth and adults. In order to break the inter-generation cycle of violence, we offer comprehensive teen dating violence prevention activities through our REACH program to middle and high school-aged youth. Through the Healthcare Education Program, we provide training and technical assistance to nurses, doctors, healthcare staff and school-based health centers on best practices for screening patients for domestic abuse and sensitively responding to their needs. Agency staff also conducts domestic violence presentations and trainings with area health and human service providers, law enforcement and criminal justice officials, educators, clergy, and other interested members of the community. Between Friends is interested in the issue presented here due to the potential adverse impact upon civil orders of protection that would result from upholding the Appellate Court decision that struck down as unconstitutional the "prior dating relationship" language in a domestic battery case.

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 through promotion of evidence-based policies and practices in courts and government. Chicago Appleseed has been working to improve domestic violence screening in the child support process and increase access to social services by families in the domestic relations division of the Cook County courts.

Amicus curiae **Chicago Council of Lawyers** is the only public interest bar association in Cook County and is dedicated to improving the quality of justice in the legal system by advocating for fair and efficient administration of justice. The Chicago Council of Lawyers works as a collaboration partner with the Chicago Appleseed Fund for Justice to improve the process for unrepresented litigants in the domestic relations and domestic violence divisions of the Cook County courts. The Chicago Council of Lawyers is concerned over the potential adverse impact upon civil orders of protection that would result from upholding the Appellate Court decision that struck down as unconstitutional the "prior dating relationship" language in a domestic battery case.

Amicus curiae **Chicago Alliance Against Sexual Exploitation** (CAASE) is a not-for-profit that opposes sexual abuse and exploitation by directly addressing the culture, institutions and individuals that perpetrate, profit from, or support such harms. CAASE engages in prevention and community engagement work and policy reform. Additionally, through its legal department, CAASE provides direct legal services to survivors of sexual violation and exploitation, many of whom seek and deserve protection under the Illinois Domestic Violence Act. On behalf of its individual clients and in support of its overall mission, CAASE is interested in seeing that state

laws and precedents related to sexually discriminatory violence—such as domestic violence—are appropriately interpreted and applied so as to further, and not undermine, efforts to hold perpetrators of sexual violation appropriately accountable for their actions.

Amicus curiae **The Domestic Violence Legal Clinic** (DVLC) is dedicated to keeping families safe by using the legal system to combat domestic violence. DVLC originated in 1982 as a program of the Lawyers' Committee for Civil Rights Under the Law. DVLC assists survivors by representing them in Orders of Protection under the Illinois Domestic Violence Act in a same-day clinic setting. DVLC also provides comprehensive family law services, immigration assistance, and client support services to survivors of domestic violence. All of DVLC's clients are domestic violence survivors. DVLC, therefore, has a special interest in matters that would diminish the ability of a survivor to obtain an order of protection, thereby diminishing her ability to feel safe.

Amicus curiae **Illinois Coalition Against Domestic Violence** (ICADV) is a not for profit organization founded in 1978 to collectively advocate for services, policies and practices that help battered women and contribute to the elimination of domestic violence. The Vision of the ICADV is to eliminate such violence against women and their children, including to promote the eradication of domestic violence across the state of Illinois; to ensure the safety of survivors, their access to services, and their freedom of choice; to hold abusers accountable for the violence they perpetrate; and to encourage the development of victim-sensitive laws, policies and procedures across all systems that impact survivors of domestic violence. The Mission of ICADV is to: provide statewide leadership as the voice for survivors of domestic violence and the programs that serve

them; change fundamental societal attitudes and institutions that promote, tolerate, or condone domestic violence; ensure that women and children have knowledge of and access to all services and opportunities (which should include crisis telephone counseling, temporary shelter, peer and professional counseling, assistance in obtaining community resources, help to acquire employment skills, work referral), endeavoring to provide these services locally. ICADV strives to meet its mission in a way that respects women's and children's choices and cultural diversity and utilizes all available levers, including public policy advocacy; program capacity and delivery; community awareness and education; cooperation with associated agencies; and partnerships with communities and key stakeholders. Consistent with the mission and vision of ICADV, ICADV is interested in the issue presented herein due to the potential severe impact to the Illinois Domestic Violence Act and issuance of civil orders of protection that would result from upholding the Appellate Court decision that struck down as unconstitutional the "prior dating relationship" language in a domestic battery case.

Amicus curiae **The John Marshall Law School's Domestic Violence Clinical Advocacy Program**, through its Family Law & Domestic Violence Clinic, represents survivors of domestic violence in exercising their rights under the law. The Program's mission is to help survivors of domestic violence, many of whom have experienced numerous forms of coercive abuse, to become safe and whole again. One key form of safety is obtaining a civil order of protection, and the clinic therefore represent survivors of domestic violence who are seeking to become more safe through obtaining, renewing, and enforcing orders of protection under the Illinois Domestic Violence Act. The Program believes that the Illinois Appellate Court decision in *People v. Matthew Gray*,

which contravenes the articulated purposes of the Illinois Domestic Violence Act and the statutory definition of "dating relationship," will make it more difficult for the clinic's clients, who have formally been in a dating relationship, and who continue to face danger of further abuse, to obtain a civil order of protection. The Program therefore joins in the *amici curiae* brief in support of Plaintiff-Appellant.

Amicus curiae **The Legal Aid Society of Metropolitan Family Services** (LAS) has been providing free legal services to low income residents in the metropolitan Chicago area for 129 years. LAS is a part of Metropolitan Family Services (MFS), a non-profit social service organization. Together, LAS and MFS are able to provide wraparound services, including social services, counseling, financial assistance, legal advice and representation through seven major community centers located in Chicago and the surrounding suburbs. LAS was one of the first legal service programs to provide representation in the area of family law and currently has four attorneys who exclusively provide direct legal representation to low income domestic violence victims in family law and order of protection cases. As an agency that represents victims in order of protection cases, LAS has a special interest in matters that could impact the ability of our clients to obtain the full scope of legal relief to which they are entitled.

STATEMENT OF FACTS

Amici adopt the People of the State of Illinois' Statement of Facts.

INTRODUCTION

The Illinois legislature has expressly recognized that domestic violence is "a serious crime against the individual and society." 750 ILCS 60/102(1). To address what the legislature recognized as the "widespread failure to appropriately protect and assist victims," it adopted strong protections for domestic violence victims in the Illinois

Domestic Violence Act. *Id.* at 60/102(3). 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. *See id.* at 60/201-60/223. Illinois is one of a minority of states that have adopted a mandatory order of protection, which takes discretion away from the circuit court and requires the automatic issuance of an order of protection upon a factual showing of abuse. Obtaining a plenary order of protection is straightforward: "[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).

As acknowledged by the Appellate Court, the definition of a "family or household member" in the criminal code "is, in all pertinent respects, identical to the definition found in the Illinois Domestic Violence Act of 1986." *People v. Gray*, 2016 IL App (1st) 134012 (2016), ¶ 38. Thus, the Appellate Court's narrow view and construction of the scope of what qualifies as a current "dating relationship," in the criminal code, and its holding that the lack of a timeframe on past relationships rendered it unconstitutional as applied to a relationship that ended 15 years before, if left uncorrected, significantly risks undermining the broad protective policy intended by the legislature, for victims of domestic violence seeking protection from abusers under the Illinois Domestic Violence Act. This case presents the Court with an important opportunity to ensure that the intent of the legislature to expand the remedies available to victims of abuse is enforced and not reduced or made unnecessarily burdensome to such victims. This Court should reverse, and in doing so, this Court should unambiguously state that as a matter of law and policy,

there is no requirement that the relationship at the time of the abuse must still be under the effect of the romantic intimacy of the prior relationship for a victim, who formerly dated an abuser, to be considered a "family or household member" under the Illinois domestic battery statute or the Illinois Domestic Violence Act.

ARGUMENT

I. THE LEGISLATURE'S DECISION TO NOT INCLUDE A DEFINITIVE TIME LIMIT ON FORMER DATING RELATIONSHIPS IS RATIONALLY RELATED TO THE LEGITIMATE PUBLIC INTEREST IN PREVENTING DOMESTIC ABUSE

The Appellate Court erred in concluding that "treating Carthron [the victim below] as [defendant's] family or household member is not reasonably related to a public interest," and is therefore unconstitutional as applied to the defendant. *Gray*, 2016 IL App (1st) 134012, ¶ 47. Not only is it rational not to require that a past dating relationship have occurred within any particular period of time, this case is a prime example of the soundness of the legislature's judgment in that regard. It demonstrates how it supports the public interest that persons who have had a prior dating relationship—no matter how long in the past—should be treated as a family or household member under the Illinois domestic violence protection statutes. In defining "family or household member" to include both past and current relationships, the legislature recognized that engaging in a "serious dating relationship" (as Carthron and defendant indisputably did), usually alters the dynamic of their relationship forever, just as the relationship of two persons who are married for only one or two years is changed forever. While that may not always be the case, a classification established by the state does not fail the rational basis test solely because it may be somewhat over-inclusive. *Vance v. Bradley*, 440 U.S. 93, 108 (1979). Perfection is not required.

The Illinois legislature had an opportunity to include a time limit or other conditions on former dating relationships. It chose not to do so. The statutory definition has no time limit. And because the dynamic between two persons who formerly dated is often changed forever, there is a rational basis for this decision, which supports the public interest, including when applied to the specific circumstances of this case.

> We are concerned not with whether the legislature has chosen the best or most effective means of resolving the problems addressed by the statute, but only with whether the statute is reasonably designed to remedy the evils which the legislature has determined to be a threat to the public health, safety, and general welfare.

People v. Wilson, 214 Ill. 2d 394, 402 (2005). That is the case here.

A. The Plain Language of the Domestic Battery Statute Does Not Include a Time Limit or Put Other Conditions On Former Dating Relationships.

The Court's inquiry should begin with the plain language of the statute; when the statutory language is unambiguous, that is also where the inquiry ends. *People ex. Rel. Madigan v. Kinzer*, 239 Ill. 2d 179, 184 (2009). The Illinois domestic battery statute's definition of "family or household members" includes former dating relationships, regardless of time or other conditions:

> "Family or household members" include spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly have a child in common, persons who share or allegedly share a blood relationship through a child, persons who have or ***have had a dating or engagement relationship***, persons with disabilities and their personal assistants, and caregivers as defined in paragraph (3) of subsection (b) of Section 12-21 or in subsection (e) of Section 12-4.4a of the Criminal Code of 1961. For purposes of this paragraph, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a dating relationship.

720 ILCS 5/112A-3(3) (emphasis added).[1]

The plain language of this definition unambiguously includes both current and former relationships, regardless of time, including *former* spouses, persons related by *prior* marriage, persons who *formerly* shared a common dwelling, and persons who have a child in common (with no limitation on the age of the child). *Id.* With regard to dating relationships in particular, the statutory definition of "family or household members" includes "persons who have or *have had* a dating or engagement relationship" without any discussion of time or other conditions. *Id.* (emphasis added). The definition does not state that a dating relationship must have occurred within the past five years (or ten years, or twenty years) for the individuals that were in the relationship to be covered under statute.[2] The definition does not state that there must be ongoing romantic intimacy from the prior relationship. The definition instead only requires that a dating relationship exists currently or existed at any given time in the past. *See Wilson,* 214 Ill. 2d at 402 (stating the "statute is very clear that there is no time limit" and recognizing this also does not make the statute vague). In other words, the General Assembly had the opportunity

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[1] The parties and the court below looked to the wrong statutory provision. Prior to July 1, 2011, 725 ILCS 5/112A-3(3) provided the definition of "family or household members" as that term appeared in the domestic battery statute. *See* 720 ILCS 5/12-3.2(a)(1) (eff. Aug. 11, 2009 to June 30, 2011). But effective July 1, 2011, Public Act 96-1551 amended the Criminal Code to add a new section 720 ILCS 5/12-0.1, which defines "family or household members" for purposes of Article 12. Because the definitions are the same, and for ease of reference, this brief refers to section 112A-3(3), rather than section 12-0.1.

[2] The Appellate Court expressly and correctly recognized that this section was "unequivocal to the extent that all individuals who have engaged in past dating relationships constitute family or household members of their respective former paramours, regardless of when the dating relationship occurred." *Gray*, 2016 IL App (1st) 134012, ¶ 46.

to establish a time limit or other conditions when drafting the statute and it chose not to, as apparent in the statute's language.

B. The Illinois General Assembly Expressly Intended the Domestic Battery Statute to be Construed Broadly.

The General Assembly has stated that the Illinois domestic battery statute is to be "interpreted in accordance with the purposes and rules of construction set forth in Section 102 of the Illinois Domestic Violence Act of 1986." 725 ILCS 5/112A-1. Section 102 of the Illinois Domestic Violence Act specifically provides that the Act must be "liberally construed and applied to promote its underlying purposes." *Id.* The specific underlying purposes include: (1) "[r]ecogniz[ing] domestic violence as a serious crime against the individual and society . . . which promotes a pattern of escalating violence"; (2) "[r]ecogniz[ing] 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"; (3) recognizing that "although many laws have changed, in practice there is still widespread failure to appropriately protect and assist victims"; (4) "[s]upport[ing] the efforts of victims of domestic violence to avoid further abuse by promptly entering and diligently enforcing court orders which prohibit abuse and, when necessary, reduce the abuser's access to the victim"; and (5) "[e]xpand[ing] the civil and criminal remedies for victims of domestic violence; including, when necessary, the remedies which effect physical separation of the parties to prevent further abuse." *Id.*

The liberal interpretation and application of this language is also evidenced in the General Assembly's subsequent expansion of domestic violence protection repeatedly since its original enactment in 1982. The Illinois Domestic Violence Act of 1986

expanded on and replaced the previous Act of 1982, in order to enhance protection to victims:

> Under the 1986 IDVA, victims of domestic violence are afforded greater opportunities for meaningful legal protection than were previously available. The definition of abuse has been expanded to cover many types of defined conduct. Many relationships which were previously not covered are now, because the definition of "family or household member" has been expanded. The types of relief available to victims who petition for Orders of Protection are also expanded. Parker, *Implementation Manual, Illinois Domestic Violence Act of 1986*, ILLINOIS COALITION AGAINST DOMESTIC VIOLENCE (1987).

In other words, the General Assembly intentionally broadened the scope of protection for victims of domestic violence and intentionally expanded the definition of "family or household members" in 1986 and has continued to broaden the scope of the Act over the past thirty years.

Most recently in 2008, for example, the Act was amended to allow a court to grant an extension of an order of protection for good cause shown (the 1986 Act originally provided for a maximum of two years for order of protection). *See* 95th Ill. Gen. Assem., Senate Proceedings, May 27, 2008, at 32, 95th Ill. Gen. Assem., House Proceedings, May 1, 2008, at 32, 750 ILCS 60/220(e). Prior to that in 1990, the General Assembly expanded the definitions of "adults with disabilities" and "family or household members" to include elder adults and high risk adults with disabilities. *See* 1989 Ill. Legis. Serv. P.A. 86-542. In 1993, the General Assembly amended the definition (applicable to both civil and criminal matters) of "family or household members" to cover dating relationships. *See* 1992 Ill. Legis. Serv. P.A. 87-1186 (S.B. 400). It was at this time that the General Assembly decided that Illinois' domestic violence laws should cover individuals who have had a dating relationship in the past. Each time the General Assembly amended Illinois' domestic violence statutes, it expanded the scope of

protection and available remedies. As this Court stated in *Wilson,* "[t]he legislature's obvious concern in enacting the domestic battery statute was in curbing the serious problem of domestic violence." *Id.,* 214 Ill. 2d at 402–03. Accordingly, it is a reasonable conclusion that each legislative amendment to the Illinois Domestic Violence Act was intended to achieve the Act's underlying purposes.

The Appellate Court's restrictive view of the purpose and scope of the Illinois domestic battery statute runs afoul of this liberal and expansive legislative history. This Court should reject that approach and ensure that the intent of the legislature to *expand* the remedies available to victims of abuse is respected.

C. The Legislature's Choice Not to Include a Time Limit or Other Conditions on Former Dating Relationships Was Rational, As Such Limits Would Undermine the Purposes of the Domestic Battery Statute.

Based upon the broad underlying purposes of Illinois' domestic violence statutes, it was rational for the Illinois General Assembly to have concluded that once an intimate relationship between two individuals has been established (i.e., parties to a former dating relationship, former spouses, etc.), a battery offense committed by one individual against the other should be covered by the heightened domestic violence standards, regardless of the amount of time since the initial relationship commenced or ended. The General Assembly thus concluded, appropriately and rationally, that once an intimate relationship has been established, the dynamic of the relationship has forever changed.

The nature of domestic violence supports the General Assembly's determination that there should be no time limit on former dating relationships or an ongoing requirement of "romantic intimacy." A victim of domestic violence needs protection that lasts over extended periods of time, because the victim is in increased danger when the

relationship ends. Studies show that domestic abuse often escalates over time, and often the abuser's conduct becomes even more dangerous after the parties separate. *See, e.g.*, Jennifer L. Hardesty & Grace H. Chung, *Intimate Partner Violence, Parental Divorce and Child Custody*, 55 FAMILY RELATIONS 200 (2006); *see also Wilson*, 214 Ill. 2d at 403 (recognizing "the threat of domestic violence does not end when a relationship ends"). For example, studies have found that "it is quite common for a batterer to continue or even escalate their violence after the relationship ends." *See* Ruth E. Fleury et al., *When Ending the Relationship Doesn't End the Violence: Women's Experiences of Violence by Former Partners*, 6 Violence Against Women 1363, 1364 (2000).[3]

Moreover, a study by the National Institute of Justice determined the domestic violence re-arrest rate was almost 60 percent for arrested abusers over an average of five years. This figure only accounts for individuals who are arrested for domestic violence. The percentage of repeat abusers (including those not caught or arrested) over a longer period of time is certainly higher. *See* Andrew R. Klein, *NCJ 225722, Special Report: Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges*, NAT'L INST. OF JUSTICE 1, 20 (2009); *see also* Jennifer L. Truman & Rachel E. Morgan, *NCJ 244697, Nonfatal Domestic Violence, 2003–2012*, BUREAU OF JUSTICE STATISTICS 9 (2014) (citing a study conducted from 2003 to 2012 that determined that only 56 percent of intimate partner violence was reported to police).

The Appellate Court concluded that, to fall under Illinois's interest in preventing abuse between persons who share an intimate relationship, for persons who formerly

[3] *See also* the People of the State of Illinois' Brief at 18-19 (discussing and citing additional studies and statistics indicating a significant percentage of domestic violence is committed by former partners).

dated, the victim and abuser's relationship at the time of the offense must still be "under the effect of the romantic intimacy from their [prior] relationship." *Gray*, 2016 IL App (1st) 134012, ¶ 47. Placing subjective conditions or a time limit on former dating relationships, as the Appellate Court's narrow construction implicitly does, would define intimacy more narrowly than the Illinois General Assembly rationally intended. The General Assembly had the opportunity to place limits on who is covered under "family or household members," and chose only to exclude "casual acquaintanceships" and "ordinary fraternization" between two individuals in business or social contexts. *See* 720 ILCS 5/112A-3(3). It did not, however, place a time limit on former dating relationships. Nowhere in the definition of "family or household members" is there a requirement that the dating relationship at the time of the offense still be under the effect of the prior romantic intimacy. There is no reference in the statute to "romantic intimacy" at all. This reflects the legislature's rational judgment that a higher risk of violence exists for those in former dating relationships regardless of any continuing "romantic" effects. Indeed, the other kinds of relationships included in the definition of "family or household members" (persons related by blood, persons with disabilities and their caregivers) makes clear that the legislature rationally understood that relationships other than romantically intimate ones may carry a high risk of violence.

The Appellate Court's reasoning in analyzing former dating relationships differently also falls apart when applied to other formerly intimate relationships covered under the domestic battery statute. A reasonable extension of the Appellate Court's logic that the victim and abuser's relationship at the time of the offense must still be "under the effect of the romantic intimacy from their [prior] relationship," *Gray*, 2016 IL App (1st)

134012, ¶ 47, in order to rationally qualify as a prior "dating relationship" would also apply, for example, to individuals that were formerly married, where the marriage ended many years ago. As with persons who dated for only two years more than 15 years ago, the current relationship of persons who were married for only two years more than 15 years ago may not be "under the effect of the romantic intimacy from their [prior] relationship"—and, indeed, most likely would not be. Under the Appellate Court's analysis, however, an individual who attacks his or her former spouse would not fall under the umbrella of the Illinois domestic battery statute if a court determines (using inevitably subjective criteria) that the marriage was too long ago or for too short a duration or was not under the current effect of romantic intimacy to have a rational relationship to the violence.

II. THE APPELLATE COURT'S NARROW VIEW OF THE PURPOSE OF THE DOMESTIC BATTERY STATUTE DOES NOT COMPORT WITH THE FEATURES OF A DOMESTIC VIOLENCE RELATIONSHIP

The Appellate Court's conclusion that the definition was unconstitutional as applied apparently resulted from a misunderstanding of the nature of domestic and partner violence. The court's focus on (1) the length of time since the formal dating relationship between the victim and her abuser ended, and (2) the "Tinder age of hook-ups and one-night stands" to determine a lack of a current "dating relationship" between the victim and abuser under Section 112A-3(3) runs contrary to the plain language and legislative history of the domestic battery statute, as discussed above (*see infra* Section I), focuses on the wrong characteristics of violent relationships, and fails to appreciate typical features of such relationships. *See Gray*, 2016 IL App (1st) 134012, ¶¶ 39-40. This case indisputably does *not* involve a "Tinder" style encounter. The victim and

abuser knew each other. *Id.*, ¶¶ 8, 19. They dated "seriously" in the past. *Id.* Their families were close. *Id.*, ¶ 8. And they spent multiple nights together over the years. *Id.*

Domestic violence often continues beyond the length of a relationship. The protections under the law for domestic victims thus focus on the nature, not the length of the relationship at issue. *See*, *e.g.*, 725 ILCS 5/112A-3(3) (family or household members include persons who "have or have had" a dating relationship). It is also well settled that domestic violence does not just occur between two people who are married, share a child or live together. Sarah Lawson, *Expanding The Scope Of Who May Petition For Domestic Violence Protective Orders In Kentucky*, 102 KY. L.J. 527, 544 (2013-14). Violent relationships are instead characterized by "heightened accessibility, the opportunity for power imbalances, or dependence." *Id.*; Orly Rachmilovitz, *Bringing Down the Bedroom Walls: Emphasizing Substance Over Form In Personalized Abuse*, 14 WM. & MARY J. WOMEN & L. 495, 500 (2008).

When these characteristics are present, as they are here, the law must be liberally construed to ensure protection for the victim. *See* 750 ILCS 60/102 (requiring the Domestic Violence Act to be liberally construed to support victims, expand remedies and recognize the legal system's past ineffectiveness at addressing domestic violence). The Appellate Court ignored these factors in reaching its conclusion, and instead focused on the length of time since the victim and abuser had dated and whether they were still influenced by "romantic intimacy." *Gray*, 2016 IL App (1st) 134012, ¶¶ 40, 47. These factors actually have a *minimal* rational relationship to the purposes of the statute. This Court should correct this flawed analysis, not only for this victim, but for all similarly situated victims seeking protection under the Illinois domestic abuse statutes.

A. The Victim and Abuser's Relationship Was Characterized by Accessibility and Familiarity.

"One reason violence in a relationship differs from random violence between strangers is that the perpetrator takes advantage of the relationship to gain access to the victim." Rachmilovitz, 14 WM. & MARY J. WOMEN & L. at 500. Such knowledge "enables the accessibility that makes domestic violence most harmful, as it increases the victim's exposure and vulnerability to the abuser." *Id*; *see also* Lisa G. Lerman, Commentary, *The Decontextualization of Domestic Violence*, 83 J. CRIM. L. & CRIMINOLOGY 217, 234 (1992) (continued access to the victim increases the likelihood of additional and more severe acts of violence).

By contrast, violent acts between strangers tend to be more "random and are devoid of the personal aspects of accessibility and familiarity, which enable domestic violence to be ongoing and effective in intimidating and controlling the victim." Rachmilovitz, 14 WM. & MARY J. WOMEN & L. at 501; *see also* Marion Wanless, Note, *Mandatory Arrest: A Step Toward Eradicating Domestic Violence, But Is It Enough?*, 1996 U. ILL. L. REV. 533, 546-47 (1996) (the severity of domestic violence is amplified by the isolated nature of violence between strangers). Accessibility and familiarity "facilitate the planning and premeditation of violence." Rachmilovitz, 14 WM. & MARY J. WOMEN & L. at 501.

Breach of trust is another component of a domestic violence relationship. Trust is "one's expectation that one's actions, beliefs, and feelings will be positively accepted by another[.]" Rachmilovitz, 14 WM. & MARY J. WOMEN & L. at 502. "Trust leads to the voluntary surrender of something valuable in expectation that the other person will care for it." *Id*. Domestic violence is therefore a "deep violation of trust; not only is the

abuser unworthy of trust, but - much like with accessibility - he or she manipulates the victim's trust to facilitate the abuse." *Id*; *see also* Ruth Colker, *Marriage Mimicry: The Law of Domestic Violence*, 47 WM. & MARY L. REV. 1841, 1853-55 (2006).

Given these features typical of domestic violence, it is perfectly rational to consider the defendant and the victim to be "family or household members" for purposes of the domestic battery statute. The record here demonstrates a level of accessibility, familiarity and trust between the victim and her abuser such that the victim should be entitled to heightened protection under the law. The victim testified at trial that she and the defendant knew each other for twenty years, their families were familiar, and on at least one occasion she left clothes at his apartment. *Gray*, 2016 IL App (1st) 134012, ¶ 8. She also testified she and her abuser spent numerous nights together, and in fact slept together the night of the incident. *Id.,* ¶ 9. The defendant testified he kept a bag of the victim's clothing for her while she was at work, purchased whiskey, cigarettes and juice for Carthron the afternoon of the event, identified the victim as sounding "depressed" when she called him that same evening, and testified that the victim stayed with him while he took a nap. *Id.*, ¶¶ 20-21. Both the 911 operator and Detective Scott testified that the defendant identified the victim as his "girlfriend" shortly after the altercation was over. *Id.*, ¶¶ 27-28. Indeed, the argument that led to the stabbing only started because the defendant accepted a telephone call from another woman and Carthron found it disrespectful that he was talking to another woman while she was there. *Id.*, ¶ 9.

This testimony evidences that there was a level of familiarity, access and trust between the victim and her abuser such that the defendant had access to, established trust with, and was familiar to the victim. That these features existed despite the dating

relationship having ended 15 years earlier demonstrates the rational basis of including the relationship in the definition of a "family or household member."

B. The Relationship between the Defendant and the Victim Reflects Imbalanced Power Dynamics and Control.

An imbalance of power and control is also a common characteristic in domestic violence relationships. "Domestic violence is the abuser's way of exerting control over the victim." Rachmilovitz, 14 WM. & MARY J. WOMEN & L. at 503. And different kinds of power exist in violence domestic relationships, physically and emotional. "Violence is meant to maintain or advance one of the parties' interests and high position in the relational structure, while keeping the other party inferior." *Id.*; *see also* Bonita C. Meyersfeld, *Reconceptualizing Domestic Violence in International Law*, 67 ALB. L. REV. 371, 390 (2003) (arguing domestic violence is distinguished by a power imbalance between the parties.).

Power dynamics are related to dependence in a relationship. Lawson, 102 KY. L.J. at 543. Emotional dependence (based on a history of shared experience) can "create an environment where one partner is more powerful and create an opportunity for abuse." *Id.* This emotional attachment "makes it extremely difficult for the victim to end the relationship despite, and sometimes because of, the abuse." Rachmilovitz, 14 WM. & MARY J. WOMEN & L. at 506. Psychological research explains this phenomena through traumatic bonding theory. *Id.*; Geneva Brown, *When the Bough Breaks: Traumatic Paralysis - An Affirmative Defense for Battered Mothers*, 32 WM. MITCHELL L. REV. 189, 194, 240 (2005).

The record here demonstrates an imbalance of power and control between the victim and her abuser. The defendant was physically larger than the victim, and the

victim testified she passed out after the defendant choked her. *Gray*, 2016 IL App (1st) 134012, ¶ 10, 22. The defendant testified that the victim asked to move into his apartment, but he said no. *Id*., ¶ 19. He also testified that he allowed the victim to come to his home the day of the altercation because she sounded depressed, and that he had purchased certain items, including whiskey and cigarettes, for the victim and that she owed him money for the transaction. *Id*., ¶ 20. The Appellate Court failed to consider these facts, or consider any imbalance of control and power in the relationship in determining whether there was a rational basis to treat Carthron as part of the defendant's family or household.

C. The Court's Focus on Sexual Intimacy Alone Was Misplaced.

The Appellate Court's primary focus on the length of time since the "formal" dating relationship between the victim and the defendant ended, and the nature of sexual relations in today's "Tinder" society was thus misplaced. The General Assembly created a rational definition in which neither the nature of sexual intimacy, nor the length of time since a past relationship ended, determines whether an individual is a member of a "family or household" for the purposes of the domestic battery statute. Instead, the nature and scope of the relationship must be determinative. The accessibility and familiarity, trust, dependence and imbalance of power that characterized the relationship involved in this case demonstrate that there is nothing irrational about applying the "family or household member" definition to that relationship—if anything, this case illustrates the soundness of including past dating relationships regardless of when the relationship ended, because the features typical of domestic violence in this case did long outlast the "formal" relationship.

III. THE APPELLATE COURT'S INTERPRETATION OF THE ILLINOIS DOMESTIC BATTERY STATUTE WOULD HAVE A CHILLING EFFECT ON CIVIL ORDERS OF PROTECTION, AND WOULD LEAVE VICTIMS WITH INEFFECTIVE RECOURSE TO JUSTICE

The main legal recourse for victims of domestic violence in Illinois is an order of protection, an "effective yet underused weapon[] against domestic violence." Judith A. Smith, *Battered Non-Wives and Unequal Protection-Order Coverage: A Call for Reform*, 23 YALE L. & POL'Y REV. 93, 95 (2005). The Illinois Domestic Violence Act specifically provides that "any person abused by a family or household member" may seek an order of protection from the courts. The Act defines "family or household member" to include, among other categories of relationship, "persons who have or have had a dating or engagement relationship." 750 ILCS 60/201(a), 60/103(6).

If the Appellate Court's analysis of the Illinois domestic battery statute is left uncorrected, such an interpretation may substantially undermine the protections under the Illinois Domestic Violence Act, a result this Court should avoid. The definition of a dating relationship under the Domestic Violence Act should not be construed to restrict access to the legal system. The General Assembly made clear this statutory regime is to be "liberally construed and applied to promote its underlying purposes," which includes recognizing that the legal system has ineffectively dealt with domestic violence in the past, and supporting victims of domestic violence to avoid future abuse. 750 ILCS 60/102(1)-(4). The Appellate Court's decision that the definition is unconstitutional when applied to relationships that have long ceased to be romantic would significantly undermine the purpose of this statutory framework.

The Appellate Court's construction of the domestic battery statute's scope and purpose may also have a chilling effect on domestic violence victims coming forward

under the Domestic Violence Act. A victim may be more willing to seek a civil remedy, such as an order of protection, on the belief that the abusive partner is less likely to retaliate than with criminal proceedings. Matthew J. Carlson, Susan D. Harris, George W. Holden, *Protective Orders and Domestic Violence: Risk Factors for Re-Abuse*, 14 J. OF FAM. VIOLENCE 205, 206 (1999). But the Appellate Court's analysis of the domestic battery statute will chill this effort. Placing an arbitrary limitation on when a past dating relationship ended, unless the ongoing effect of romantic intimacy can be demonstrated, will discourage victims from coming forward. Such a result would run directly contrary to the underlying purpose of the Illinois domestic violence statutes aimed at protecting victims and increasing access to justice.

A. Under the Appellate Court's Analysis, Carthron, and Those Similarly Situated, Would Not Have a Statutory Remedy.

This case provides a key example of the detrimental impact that the Appellate Court's analysis of the "family or household" definition and *de facto* implementation of a time limit to a "dating relationship" may have on victims of abuse in Illinois. The victim in this case went to the home of her former boyfriend, whom she had seriously dated for a period of two years, drank with him, slept with him, remained at his home while he napped and while she was wearing nothing but her underwear, was then choked by him to the point of unconsciousness, stabbed in the chest and stabbed in the back. Criminal charges were filed, and he was found guilty of the assault. Yet, if the Appellate Court's interpretation and conclusion are permitted to stand, then Carthron, or a person in a similar situation, would have no statutory civil remedy to obtain protection from abuse, given the holding that the relationship did not qualify as a current "dating relationship," and could not rationally qualify as a former "dating relationship." Although the victim

and the defendant had previously formally dated, had a current more-than-casual acquaintance relationship, and were sexually intimate the night before the incident, she would not be considered a family or household member. As such, she would not be able to obtain a civil order of protection under the Illinois Domestic Violence Act.

Nor would Carthron be able to obtain protection under any other Illinois protection statutes. She would be precluded from obtaining protection under the Stalking No Contact Order Act, 740 ILCS 21/1, *et seq.,* unless she was able to demonstrate a specific course of conduct, which would require her to demonstrate two or more defined acts of threat or intimidation by the defendant before she could obtain an order. *See id.* at 21/10. She would also be precluded from obtaining protection under the Civil No Contact Order Act, 740 ILCS 22/101, *et seq.,* unless she had previously been sexually assaulted by the defendant. *See id.* at 22/201(b)(1).

Although she was choked to the point of unconsciousness and stabbed in the chest and back by a man that she formerly dated and still maintained a relationship with, at his home, under the Appellate Court's approach, Carthron could never obtain a protective order of any kind under any of these acts: Not an order of protection. Not a No Stalking Order. Not a Civil No Contact Order. She would be precluded from obtaining any type of protective order ensuring her personal safety. That cannot be what the legislature intended, and such a result would be directly contrary to the purpose of the Illinois Domestic Violence Act. *See Sanchez v. Torres,* 48 N.E.3d 271, 274 (Ill. App. Ct. 2016) ("The devastating and horrific effects of domestic violence on women, children, and families led to the Act, a law that seeks to provide victims of domestic violence with the highest level of protection possible.").

Unable to obtain protection under any of the Illinois protection statutes, Carthron, or a victim in a similar situation, instead would be limited to seeking a civil restraining order, which is no substitute for the security an order of protection provides a victim. Unlike restraining orders, orders of protection are specifically designed to combat domestic violence. Orders of protection provide an immediate, criminal remedy against further abuse and provide a process that *pro se* victims can navigate easily and affordably. The remedy is mandatory, *see* 750 ILCS 60/101(3) ("an order of protection prohibiting the abuse, neglect, or exploitation *shall issue*….") (emphasis added), and the orders provide confidence to the victims that the abusers can be stopped. *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 respond if their abusers attempt to violate their orders of protection).

The Illinois Domestic Violence Act also requires the courts to create and use simplified forms for orders of protection. 750 ILCS 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). The Act also expressly allows *pro bono* advocates to assist victims with any component of the protective order process without having to be admitted to practice, *see* 750 ILCS 60/205, which further enables victims to easily access the courts' protections. Such assistance and simplification of process is not readily available when a victim has to seek a restraining order.

One significant reason that orders of protection are more effective for victims of domestic violence, and unique to orders of protection compared to restraining orders, is that the Illinois Domestic Violence Act authorizes police officers to immediately arrest those who violate an order of protection (regardless of whether violence has occurred) and mandates a 24-hour arrest for a second violation. 750 ILCS 60/301(a). The Act also created a monitoring program enabling law enforcement officers to quickly verify that an order of protection is in place.[4] *Id.* at 60/301(b). Although certain situations permit a police officer to arrest an abuser, *see id.* at 60/301(a), without an order of protection in place, police have limited ability—and often limited willingness—to defuse a domestic violence incident *before* violence ensues, and to arrest a known abuser *before* a crime is committed.

Restraining orders, by contrast, are practically unenforceable and largely ineffectual against domestic violence. Violation of a restraining order is merely a civil wrong, like violating any other civil court order, requiring enforcement through time and resources, and the likely assistance of an attorney to navigate the maze of the civil contempt process. And victims cannot rely on the police to immediately enforce restraining orders, likely subjecting victims to the illegal behavior or continued abuse until they have the resources to invoke the issuing court's contempt power. As the Illinois Appellate Court has previously recognized: "A civil restraining order is simply no substitute for an order of protection." *Sanchez,* 48 N.E.3d at 276; *see also Andrews v. Andrews,* No. 3-11-0307, 2012 WL 7006326, at *3 (Ill. App. Ct. Mar. 1, 2012) ("the

[4] An order of protection carries automatic registration with the Law Enforcement Agencies Data System (LEADS), enabling law enforcement officers to verify the existence of an order of protection and make an arrest if probable cause exists to believe the order has been violated. *See Sanchez,* 48 N.E.3d at 276.

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") (unpublished).[5] Even when there is enforcement of a restraining order, it is likely unhelpful in protecting the victim, "typically amount[ing] to a verbal slap on the hand." Jane K. Stoever, *Enjoining Abuse: The Case for Indefinite Protection Orders*, 67 VAND. L. REV. 1015, 1040-41 (2014).

It is reasonable and rational that the victim here be entitled to an order of protection. The Appellate Court's decision would stand as a bar to her ability to obtain one (and all others in a similar circumstance). This case should thus serve as a prime example of why the legislature rationally and appropriately did not include a time limit (or other subjective conditions) in defining a prior dating relationship.

B. The Appellate Court's Decision May Also Have Other Unexpected and Unwanted Detrimental Effects that Will Hinder Abuse Victims Obtaining Protection under the Illinois Domestic Violence Act.

The Appellate Court's decision, if not corrected, may also have a detrimental impact on the process for obtaining an order of protection that the legislature never envisioned or intended. First, under the Illinois Domestic Violence Act, the issuance of an order of protection is mandatory if abuse is shown: "[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." 750 ILCS 60/214(a). But the Appellate Court's approach risks creating an additional evidentiary bar for victims seeking an order of protection.

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[5] *Amici* cite *Andrews* not as precedential authority, *see* SUPREME CT. R. 23(e), but rather to assist this Court by noting that additional Illinois appellate courts have previously acknowledged the differences between restraining orders and orders of protection.

Under the Appellate Court's approach, it may no longer be sufficient for a victim to establish that the victim and the abuser "have had a dating or engagement relationship." *Id.* at 60/103(6). Circuit courts may, instead, read the Appellate Court's decision to require victims to additionally prove as a threshold requirement to protection that the "relationship at the time of the offense was still under the effect of the romantic intimacy from [the prior ended] relationship." *Gray*, 2016 IL App (1st) 134012, ¶ 47. Engrafting such a requirement onto the Illinois Domestic Violence Act or the Illinois domestic battery statute would thwart the rational intent of the legislature.

If the Appellate Court decision stands, and the "prior dating relationship" language is unconstitutional as applied to a past dating relationship in which the parties lack a certain "level of intimacy," every order of protection filed under the category of "prior dating relationship" would require the court to determine if the petitioning victim had standing to bring the case by assessing whether there is a current level (or ongoing effect) of intimacy between the parties. Adding this requirement would not only add to the burden of the judicial system but would also, contrary to the legislature's direction that the process for obtaining an order be streamlined, *see* 750 ILCS 60/202(D), make the process more burdensome, confusing, and intimidating for petitioners. Adding such an additional and subjective step would also likely increase the risk of orders being appealed, especially since victims themselves (petitioners for orders of protection) might deny that there exists a current level of intimacy even when the respondent's abusive behavior results from the prior dating relationship. Indeed, requiring parties to admit that they are still intimately involved with each other at a time when a petitioner is seeking an order to enjoin the respondent from coming near her, and at a time when respondent has a

vested interest in denying any residual feelings toward petitioner, places courts in the impossible position of assessing intimacy between two people who are likely to deny it. Such an outcome cannot be reconciled with the legislature's purpose and intent in passing the Illinois Domestic Violence Act and, taking a step back and making the process more difficult, should not be the direction that this Court should permit.

Second, the Appellate Court's approach also risks inappropriately causing courts to consider petitioners' "lifestyle" choices when determining whether to issue an order of protection. The legislature rationally chose not to incorporate lifestyle choice into the "family or household member" definition. But the Appellate Court's specific emphasis on "this Tinder age of hook-ups and one-night stands," *Gray*, 2016 IL App (1st) 134012, ¶ 40, and repeated focus on the victim's (Carthron's) consumption of alcohol, *see id.*, ¶¶ 9, 10, 11, 20, 21, 24, may wrongly suggest that such lifestyle choices are relevant. The approach not only adds a condition to the Illinois Domestic Violence Act that the legislature did not include, but is contrary to the purpose of the Act to "[s]upport the efforts of victims of domestic violence to avoid further abuse," 750 ILCS 60/102(4), by likely deterring victims from seeking orders of protection for fear of judicial review of their lifestyle choice.

The Appellate Court's decision regarding what rationally qualifies as a "past dating relationship" under the criminal domestic battery statute may have significant and detrimental effects to the protection of domestic abuse victims under the Illinois Domestic Violence Act. Because the definitions of a "family or household member" in the two statutes are "in all pertinent respects, identical," *Gray*, 2016 IL App (1st) 134012, ¶ 38, this risk is substantial, or at a minimum, may introduce unnecessary uncertainty into

the streamlined procedures. Such an impact, and corresponding shrinking of protective remedies, would be directly contrary to the intent of the legislature and rational purpose of the Illinois Domestic Violence Act, including the express purpose to "[e]xpand the civil and criminal remedies for victims of domestic violence; including, when necessary, the remedies which effect physical separation of the parties to prevent further abuse." 750 ILCS 60/102(6).

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the Appellate Court.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 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 33 pages.

Respectfully Submitted,

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CERTIFICATE OF SERVICE AND FILING

The undersigned certifies that on January 11, 2017, the foregoing **Brief of *Amicus Curiae*** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and three copies were served upon the following, by placement in the United States mail, in envelopes bearing sufficient first-class postage:

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