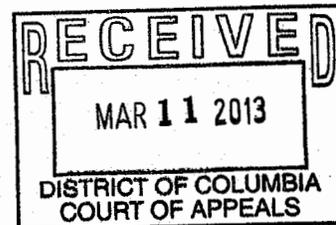

No. 12-AA-1441



DISTRICT OF COLUMBIA COURT OF APPEALS

E.C.

Petitioner,

v.

RCM OF WASHINGTON, INC.,

Respondent.

**On Petition for Review from the District of Columbia
Office of Administrative Hearings**

**BRIEF FOR *AMICI CURIAE*
DOMESTIC VIOLENCE LEGAL EMPOWERMENT
AND APPEALS PROJECT (DV LEAP) *ET AL* IN SUPPORT OF PETITIONER
ARGUING FOR REVERSAL OF THE DECISION BELOW**

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D.C. Code § 22-3133	18, 19, 20
D.C. Code § 51-131 (2010).....	18
OTHER AUTHORITIES	
Adrienne E. Adams et al, <i>The Impact of Intimate Partner Violence on Low-Income Women's Economic Well-Being: The Mediating Role of Job Stability</i> , VIOLENCE AGAINST WOMEN 18:12, 1345-67 (Dec. 2012).....	13
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Am. Psychol. Ass'n, <i>Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family</i> 10 (1996)	9
Anne O'Leary-Kelly et al. <i>Coming Into the Light: Intimate Partner Violence and Its Effects at Work</i> . 22 ACADEMY OF MANAGEMENT PERSPECTIVES 57 (2008).....	13
Barbara Hart, <i>State Codes on Domestic Violence: Analysis, Commentary and Recommendations</i> Juv. & Fam. Ct. J. 34 (1992)	9
Carol A. Reeves and Anne M. O'Leary-Kelly, <i>Study of the Effects of Intimate Partner Violence on the Workplace</i> , Report to the U.S. Department of Justice, Document No. 227266 (2009).....	10, 14
Catherine K. Ruckelshaus, <i>Unemployment Compensation for Victims of Domestic Violence: An Important Link to Economic and Employment Security</i> , CLEARINGHOUSE REVIEW, Special Issue 1996, 209-21, 21112	10

Cortney A. Franklin & Tasha A. Menaker, <i>Differences in Education/Employment Status and Intimate Partner Victimization</i> . Crime Victims' Institute, College of Criminal Justice, Sam Houston State Univ., Report No. 2012-02. (Oct. 2012) http://dev.cjcenter.org/_files/cvi/Status%20Inconsistencyappr.pdf	11
Council of the District of Columbia, Comm. on Public Servs., Comm. Rep., B. 14-436 (D.C. 2004)	23
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Jennifer E. Swanberg, T.K. Logan & Caroline Macke, <i>Intimate Partner Violence, Employment, and The Workplace: Consequences and Future Directions</i> TRAUMA VIOLENCE ABUSE 286, 291 (2005).....	12
Jennifer E. Swanberg & TK Logan, <i>Domestic Violence and Employment: A Qualitative Study</i> J. OCCUPATIONAL HEALTH PSYCHOL. 3 (2005).....	passim
Jody Raphael & Richard M. Tolman, TRAPPED BY POVERTY, TRAPPED BY ABUSE: NEW EVIDENCE DOCUMENTING THE RELATIONSHIP BETWEEN DOMESTIC VIOLENCE AND WELFARE 33-34 (Taylor Institute 1997).....	14
Jody Raphael, SAVING BERNICE: BATTERED WOMEN, WELFARE AND POVERTY 40 (Northeastern Univ. Press 2000)	9, 11
Johnny Lee & Denise Trauth, Peace @ Work, DOMESTIC VIOLENCE ASSAULTS IN THE WORKPLACE 10 (2009)	13
Kate Cavanagh, <i>Understanding women's responses to domestic violence</i> , Qualitative social work 2: 229, 231 (2003)	4, 5, 6
Lee H. Bowker, <i>Beating Wife-Beating</i> 63-73 (1983)	5
Lisa Brush, POVERTY, BATTERED WOMEN, AND WORK IN U.S. PUBLIC POLICY (Oxford Univ. Press: 2011) 47	passim
Lisa Goodman, et al., <i>The Intimate Partner Violence Strategies Index: Development and application</i> , VIOLENCE AGAINST WOMEN, 9 (2), 184	4, 5, 8

Martha Mahoney, <i>Legal Images of Battered Women: Redefining the Issue of Separation</i> , 90 MICH. L. REV. 1 (1991).....	8
Mary Ann Dutton, <i>Battered women's strategic response to violence: The role of context</i> . In J. L. Edleson & Z. Eisikovits (Eds.), <i>Future interventions with battered women and their families</i> . (pp. 105-24) (1996).....	5
Mary Ann Dutton, <i>Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome</i> , 21 HOFSTRA L. REV. 1191, 1204-06 (1993).....	passim
Mary Ann Dutton, <i>Update of the "Battered Woman Syndrome" Critique</i> , VAWnet 8 at 2 (2009).....	5
New York State Dep't. of Labor, Report to the New York State Legislature on Employees Separated from Employment Due to Domestic Violence (Jan. 15, 1996).....	10
Patricia Tjaden & Nancy Thoennes, <i>Stalking in America: Findings from the National Violence Against Women Survey 1</i> , 7 (Apr. 1998), https://www.ncjrs.gov/pdffiles/169592.pdf	12
Domestic Abuse Intervention Programs (DAIP), "Power and Control Wheel", http://www.theduluthmodel.org/	3
Rebecca Smith, Richard W. McHugh & Robin R. Runge. <i>Unemployment Insurance and Domestic Violence</i> . SEATTLE JOURNAL OF SOCIAL JUSTICE 503 (2002).....	14
Ruth E. Davis, " <i>The Strongest Women</i> ": <i>Exploration of the Inner Resources of Abused Women</i> , QUAL HEALTH RES. 12, 1248, 1255 (2002).....	4
Sherry Hamby, <i>Battered Women's Protective Strategies</i> , VAWnet 2 (2009).....	5
T.K. Logan et al, <i>Partner Stalking and Implications for Women's Employment</i> , J. INTERPERSONAL VIOLENCE, 268, 269 (2007).....	12, 14, 15
U.S. Gen. Acct. Off., <i>Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients</i> 19 (1998), http://www.gao.gov/archive/1999/he99012.pdf	10

STATEMENTS OF INTEREST OF *AMICI CURIAE*

The Domestic Violence Legal Empowerment and Appeals Project (DV LEAP)

The Domestic Violence Legal Empowerment and Appeals Project (DV Leap) was founded in 2003 by one of the nation's leading domestic violence lawyers and clinical law professors to further the civil rights of battered women and children by making appellate litigation possible. DV LEAP's mission is to provide expert appellate advocacy for battered women and children and to establish strong precedents affirming the rights of victims of abuse. Systematic and sophisticated appellate litigation is critically needed to protect the legal rights of and provide safety and justice for victims of domestic violence. DV LEAP fills this vacuum for victims of abuse by providing *pro bono* appeals, training and strategic assistance to lawyers and courts. While DV LEAP prioritizes cases from the District of Columbia, it also accepts cases of substantial importance from other states. DV LEAP also organizes and spearheads the domestic violence community's advocacy in Supreme Court domestic violence litigation. DV LEAP is a partnership of the George Washington University Law School and a network of participating law firms.

Ayuda

Ayuda is the District of Columbia's leading source of multilingual legal and social assistance for low-income Latinos and foreign-born persons in immigration, human trafficking, domestic violence, and family law. For over 30 years, immigrants in the greater D.C. area have turned to Ayuda ("help" in Spanish) for legal representation and advice to protect their rights and address their grievances. In fact, Ayuda is the only agency that serves low-income immigrant clients on a walk-in basis in the entire metro area. While Ayuda has a history of serving the Latino community, it also represents a substantial number of individuals from Africa, Asia, and Eastern Europe. Ayuda has also successfully designed educational materials and conducted

many training events with legal and law enforcement professionals and has worked successfully in partnership with a variety of community organizations.

Bread for the City

The mission of Bread for the City is to provide vulnerable residents of Washington, DC, with comprehensive services, including food, clothing, medical care, and legal and social services. Bread for the City promotes the mutual collaboration of clients, volunteers, donors, staff, and other community partners to alleviate the suffering caused by poverty and to rectify the conditions that perpetuate it. The legal clinic at Bread for the City provides assistance to clients in landlord-tenant disputes, represents claimants who have been denied Social Security disability benefits, advocates in fair hearings for other public benefits and represents clients in family law matters including child custody, civil protection orders, child support and divorce. Through this work, Bread for the City attorneys regularly advocates for the interests of low-income survivors of domestic violence.

Catherine F. Klein

Catherine F. Klein is Professor of Law at the Catholic University of America and Director of Columbus Community Legal Services, the law school's live-client clinical program. She is also Co-Director of the Families and the Law Clinic at Catholic University, one of the first law school clinical programs in the United States designed to address the issue of domestic violence through individual representation, community outreach and education and legislative advocacy. Professor Klein has published numerous articles and organized many workshops and trainings on the legal responses to domestic violence. Professor Klein received her J.D. from the University of Cincinnati College of Law and a B.A. from Northwestern University, with a degree in philosophy. She was elected to the Order of the Coif and Phi Beta Kappa.

D.C. Volunteer Lawyers Project (DCVLP)

The D.C. Volunteer Lawyers Project (DCVLP) is a nonprofit legal services organization, which has pioneered an innovative program to recruit, train, and support volunteer lawyers to represent domestic violence victims in the Superior Court of the District of Columbia. DCVLP volunteer lawyers represent victims in petitions to obtain Civil Protection Orders, as well as in custody, child support, divorce and immigration matters. Started in 2008, the DCVLP has already mobilized over 700 volunteer lawyers to help hundreds of domestic violence victims escape abusive relationships and achieve safety and stability.

District of Columbia Coalition Against Domestic Violence (DCCADV)

The District of Columbia Coalition Against Domestic Violence (DCCADV), founded in 1986 and incorporated in the District of Columbia, is a non-profit organization serving as the professional association for the District's domestic violence service providers and is the primary representative of battered women and their children in the public policy arena. Members of DCCADV share the goal of ending domestic violence through community education, outreach, public policy development, and services for survivors. DCCADV is extremely interested in assuring that the judicial system adequately protects the rights of domestic violence victims and vulnerable, at-risk children.

Legal Aid Society-Employment Law Center

Legal Aid Society – Employment Law Center (LAS-ELC) is a public interest legal organization that advocates to improve the working lives of disadvantaged people. Since 1970, LAS-ELC has represented low-wage clients in cases involving a broad range of employment-related issues and has provided free legal information and advice to thousands of clients each year through its Workers' Rights Clinics. LAS-ELC's Project SURVIVE (Surviving Violence

and Increasing Viable Employment) helps ensure that people who experience domestic violence, sexual assault and stalking can keep their jobs while seeking safety, medical or legal help. The goal of Project SURVIVE is to empower survivors to maintain employment, and with it their financial independence, thus increasing their ability to exit an abusive relationship. Similarly, LAS-ELC's Claims Project, by providing clients with legal representation at administrative appeal hearings, helps ensure that recently unemployed low-wage workers, including survivors of domestic violence, receive the unemployment insurance benefits they deserve when they need them most. LAS-ELC has a strong interest in ensuring that survivors of domestic violence are granted unemployment benefits when they lose their jobs for reasons related to abuse.

Legal Momentum

Legal Momentum, the Women's Legal Defense and Education Fund, is the nation's oldest legal advocacy organization for women, www.legalmomentum.org. Legal Momentum advances the rights of all women and girls by using the power of the law and creating innovative public policy. For example, Legal Momentum was one of the leading advocates for passage of the landmark Violence Against Women Act and its subsequent reauthorizations, all of which have sought to redress the historical inadequacy of the justice system's response to domestic and sexual violence. Legal Momentum has also represented survivors of domestic and sexual violence in housing and employment discrimination-related cases stemming from the violence. Legal Momentum is also a partner in the National Resource Center on Workplace Responses to Domestic and Sexual Violence (*available at* www.workplacesrespond.org), a consortium funded by the U.S. Justice Department in order to help employers proactively adopt workplace violence-related policies and support employees who are experiencing domestic or sexual violence.

Legal Momentum has long been concerned with judicial decision-making in custody and visitation cases involving domestic violence. Legal Momentum's National Judicial Education Program (NJEP), founded in 1981, was instrumental in the nationwide formation of state Supreme Court task forces on gender bias in the courts. Through publications, curricula and training, Legal Momentum has addressed issues of gender bias in the courts in cases involving domestic violence, sexual assault and custody and visitation disputes.

Legal Momentum has a particular interest in ensuring that the judicial system adequately protects the rights of victims of sexual and domestic violence and their children. NJEP created a web course titled *Intimate Partner Sexual Abuse: Adjudicating This Hidden Dimension of Domestic Violence Cases* (available at www.njep-ipsacourse.org). NJEP's Director, Lynn Hecht Schafran, is the author of two articles drawn from this web course, *Risk Assessment and Intimate Partner Sexual Abuse: The Hidden Dimension of Domestic Violence*, JUDICATURE, Jan.-Feb. 2010 at 161 and *Intimate Partner Sexual Abuse: Adjudicating This Hidden Dimension of Domestic Violence Cases – A Free Resource for the DV Community*, DOMESTIC VIOLENCE REPORT, at 51 (2012), reprinted in 5 FAMILY & INTIMATE PARTNER VIOLENCE Q. 7 (2012).

Lisa Vollendorf Martin

Lisa Vollendorf Martin is a faculty member at the Columbus School of Law at the Catholic University of America, where she co-teaches the Families and the Law Clinic, one of the first law school clinical programs in the United States designed to address the issue of domestic violence through individual representation, community outreach and education, and legislative advocacy. Professor Martin also publishes articles, conducts trainings and workshops, and advocates for law and policy reform regarding domestic violence. Professor Martin received

a J.D. from the Georgetown University Law Center and a B.A. from the College of William and
Mary.

STATEMENT OF THE CASE

Amici adopt the Statement of the Case provided by the Petitioner in her Opening Brief to this Court.

SUMMARY OF ARGUMENT

This case presents a question of first impression in both the District of Columbia and across the country: when does an employee's firing for allowing an abusive partner to enter the worksite constitute a separation from employment "due to domestic violence" subject to unemployment compensation? This is the first case requiring interpretation of D.C. Code Section 51-131 in the District of Columbia; it is also the first case *in the country* on this subject to reach a court of appeals.

In this case the Administrative Law Judge ("ALJ") acknowledged that Ms. C. was a "victim of domestic violence" but found that her three infringements of company policy prohibiting outsiders from the worksite were "voluntary" and not "due to domestic violence." *Amici* submit this brief to provide research and additional information on how domestic violence impacts employment, and how in fact the three incidents pointed to as the cause Ms.

(C. s firing, as well as the abuser's accusatory phone call to the employer which succeeded in getting her fired, were indeed part and parcel of the domestic violence inflicted on Ms. C. by Mr. L.

Amici first explain that domestic violence encompasses more than specific incidents of violence and how ongoing abuse tends to force victims to take actions that they would otherwise avoid, in order to avoid further abuse. We then describe the broad intersection of domestic violence and employment, and how that is apparent in this case. Finally, we suggest that a properly liberal construction of Section 51-131 renders it fully applicable to this case.

ARGUMENT

I. **DOMESTIC VIOLENCE CANNOT BE VIEWED AS MERE ISOLATED INCIDENTS OF VIOLENCE, BUT ENCOMPASSES A PATTERN OF BEHAVIOR BROADLY DEFINED BY AN ABUSER'S ASSERTION OF POWER.**

The Administrative Law Judge ("ALJ") found that Ms. C. was, in fact, a "victim of domestic violence." Order at 10. He disagreed, however, that she lost her employment "because of" that abuse. *Id.* Rather, the ALJ found that, during the three specific incidents which the employer stated led to her firing,

the evidence does not show . . . [that] her actions were so adversely and severely affected by being a victim of domestic violence that she lacked the required intent to commit an act or acts that constituted misconduct under the Act Indeed, on each occasion that Claimant directly or indirectly permitted Claimant to enter the worksite, she did so willingly and voluntarily, as there were no threats or coercive behavior from Mr. J.L. on those occasions. Claimant permitted Mr. J.L. to enter the facilities being fully cognizant that unauthorized persons, including Mr. J.L. , were not allowed in the facilities.

Order at 10.

For the reasons that follow, *Amici* believe that the ALJ erred by applying far too narrow an understanding of "domestic violence" and how it caused the acts found to constitute misconduct by Ms. C.

A. **Domestic Violence is a Pattern of Coercive Control, Domination and Intimidation Interspersed with Acts of Violence.**

Domestic violence is more than discrete acts of violence. Rather, it is "widely understood as an ongoing pattern of behavior defined by both physical and non-physical manifestations of power." Deborah Tuerkheimer, *The Real Crime of Domestic Violence*, in *VIOLENCE AGAINST WOMEN IN FAMILIES AND RELATIONSHIPS 2*, Vol. 3, Criminal Justice and the Law (Stark, E. & Buzawa, E. Eds.) (Praeger: 2009) (noting that this is "a remarkably

uncontroversial proposition”). The well-known “power and control wheel,” a common instrument used by advocacy and support programs, captures an array of tactics, including “intimidation; coercion and threats; using male privilege; economic abuse; using children; minimizing, denying and blaming; isolation; and emotional abuse.” See Domestic Abuse Intervention Programs (DAIP), “Power and Control Wheel”, *available at* <http://www.theduluthmodel.org/>. As researchers and scholars have explained:

an accurate description of battering is ‘premised on an understanding of coercive behavior and of power and control—including a continuum of sexual and verbal abuse, threats, economic coercion, stalking, and social isolation—rather than ‘number of hits.’

Id. (quoting Elizabeth Schneider, BATTERED WOMEN AND FEMINIST LAWMAKING 65 (New Haven, CT: Yale Univ. Press, 2000)); *see also*, Mary Ann Dutton, *Understanding Women’s Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1204-06 (1993).

Evan Stark, a foremost expert on coercive control in battering relationships, explains that violence in abusive relationships is not an end in itself: rather, the abuser seeks complete possession and control of his partner, which Stark terms “entrapment.” Indeed, Stark emphasizes that the most significant harm abusers inflict is preventing their partners from “doing for themselves by appropriating their resources; undermining their social support; subverting their rights to privacy, self-respect, and autonomy; and depriving them of substantive equality,” which is far more destructive to abused women than direct physical and emotional harm. Evan Stark, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE 13 (Oxford Univ. Press, 2007); *See also*, Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 986 (1995).

Accordingly, the harm that a victim suffers is not merely that caused by discrete incidents of violence, including the physical injuries and demoralization and suffering. The essence of the harm of abuse is the cumulative effect of the abuser's ongoing undermining of the victim in all dimensions:

What is taken from the women whose stories I tell . . . is the capacity for independent decision making in the areas by which we distinguish adults from children and free citizens from indentured servants. Coercive control entails a malevolent course of conduct that subordinates women to an alien will by violating their physical integrity (domestic violence), denying them respect and autonomy (intimidation), depriving them of social connectedness (isolation), and appropriating or denying them access to the resources required for personhood and citizenship (control).

Stark, COERCIVE CONTROL at 15.

B. Battering Often Forces the Victim to Engage in a Pattern of Behavior to Survive, Minimize the Abuse and Manage the Abuser.

Victims of domestic violence often engage in strategic behaviors that appease the abuser, in order to minimize and manage the abuse they face. Alafair S. Burke, *Rational Actors, Self-defense, and Duress: Making Sense, Not Syndromes, Out of the Battered Woman*, 81 N.C.L. REV. 211, 218 (2002); Ruth E. Davis, "The Strongest Women": *Exploration of the Inner Resources of Abused Women*, QUAL HEALTH RES. 12, 1248, 1255 (2002); Dutton, *supra* at 1195, 1202; Kate Cavanagh, *Understanding women's responses to domestic violence*, Qualitative social work 2: 229, 231 (2003); Lisa Goodman, et al., *The Intimate Partner Violence Strategies Index: Development and Application*, VIOLENCE AGAINST WOMEN, 9 (2), 184 (2003). Often these strategies enable battered women to endure and survive until they can fully disengage from their abuser. *Id.*

While a victim's behaviors can sometimes appear counterintuitive or "puzzling," when examined within the abusive relationship, the behaviors can be better understood as a strategy to

survive, manage and minimize the specific dangers. Dutton, *supra* at 1195, 1202; *see also* Lee H. Bowker, *Beating Wife-Beating* 63-73 (1983) (describing personal strategies women have employed in the face of violence). Appeasement and accommodation are common tactics used by abuse victims in order to cope with and manage abuse. Dutton, *supra* at 1195, 1202; *see also* Bowker, *supra*; Cavanagh, *supra* at 229, 231; Lisa Goodman, et al., *supra*; Mary Ann Dutton, *Update of the "Battered Woman Syndrome" Critique*, VAWnet 8 at 2 (2009). While some actions by women may appear passive, or indicative of dependence (*e.g.*, complying with a abuser's demands), often these are strategic choices aimed at ensuring survival and safety. *See* Mary Ann Dutton, *Battered women's strategic response to violence: The role of context*. In J. L. Edleson & Z. Eisikovits (Eds.), *Future interventions with battered women and their families*. (pp. 105-24) (1996).

Such strategies aim to avoid and protect themselves and others from abuse by their intimate partners. Dutton, *supra* at 1202, 1227; Sherry Hamby, *Battered Women's Protective Strategies*, VAWnet 2 (2009). Complying with the abuser's demands (or anticipated demands) are a key means of "keep[ing] the peace", thus avoiding a possible violent or abusive episode. Dutton, *supra* at 1227-28. Because control is an abusers' goal, victims of abuse often need to allow them that control by cajoling the abuser and/or acceding to his wishes. *See* Cavanagh, *supra* at 236-38 (discussing victim's responding to violence in ways that presented no direct threat to the abuser's overall authority and power); Goodman, *supra* at 168-69. For example, in one study, an abused woman described her strategy for managing the abuser and avoiding violence as "I'd make tea or coffee or just basically try anything to keep [the abuser] in a good mood. Sometimes it worked too." Cavanagh, *supra* at 238. Another woman described her

appeasing behavior saying "I would agree with him all the time if that's what he wanted to hear just to keep the peace." *Id.*

Given the cumulative history of abuse in many relationships, ongoing fear often drives victims' behaviors and strategic responses to abuse. Cavanagh, *supra* at 238-39. A victim's fear, vigilance, or perception that she has few options may persist, even after periods of time have elapsed between violent episodes, or during moments when the abusive partner appears to be peaceful and calm. Dutton, *supra* at 1208-09. The ongoing impact of prior abuse elucidates why at a moment when there *appears* to an outside to be no threat or immediate coercion from the abuser, a victim will often still engage in appeasement and compliant behavior.

C. These Known Dynamics of Domestic Violence Explain the Actions of Ms. (C.) In This Case.

The ALJ found that Ms. (C.) was not "so adversely and severely affected by her being a victim of domestic violence" because she initiated contact with the abuser, allowed him into the work space and asked him to support her with transportation and food.¹ The above discussion, as well as the testimony below of Petitioner's expert, Heather Powers, Licensed Clinical Social Worker, demonstrates that Ms. (C.) complied with her abuser's desires in order to satisfy his desire for her to be dependent on him, which reduced the risk of his anger and abuse against her and those nearby.² As both the above-mentioned literature and the testimony of Ms. Powers shows, Ms. (C.) was actually doing her best to survive and keep the violence and abuse minimized by not resisting Mr. (L.'s) insistence on coming into the

¹ Final Order at 10 (App. A334).

² The domestic violence expert in this case, Heather Powers, Licensed Clinical Social Worker, testified that it was her opinion that the victim knew that she was doing things to comply with her abuser's desires in order to reduce the possibility of abuse and keep herself safe. Tr. at 243-44 (App. A243-44).

workplace, driving her home, and in one instance, bringing breakfast to her. According to Ms. Powers, Mr. L.'s history of violence showed Ms. C. that his threats were real, and that, in order to stay safe, she "needed to focus a lot of time and energy on trying to contain his behavior, trying to give him what he wanted in order to keep things calm in her own life [...]."³

As supported by numerous studies, these appeasing behaviors helped the abuser feel that Ms. C. was dependent on him, which made him feel in control, and reduced the risk of violence and abuse against her. Indeed, on those occasions where Ms. C. did not appease and accommodate him he would not allow her to refuse him.⁴ On at least one occasion, when Ms. C. declined an offered ride from the abuser, he became angry and showed up at her workplace anyway.⁵ Asking her abuser for a ride, rather than getting a ride from someone else, provided her with "a greater likelihood of creating greater peace in their relationship and in her life in general."⁶ Ms. C. also appeased her abuser by asking him to bring her breakfast at work on one occasion when she had to work unexpectedly. This appeasement

³ See Tr. at 240 (App. A240).

⁴ See Tr. at 157 (App. A157); Tr. at 122-24 (App. A122-24); Tr. at 135-36 (App. A135-36); Tr. at 156 (App. A156); Tr. at 159-60 (App. A159-60) (discussions of Ms. C. breaking up with the abuser and him reacting with escalating violence).

⁵ On August 15, 2011, Ms. C. and Mr. L. "had an argument" and Mr. L. insisted on driving her to work. Tr. at 188 (App. A188). Ms. C. declined because her shift was scheduled such that she could rely on public transportation to go to work. Tr. at 188 (App. A188). She caught the bus, but when she arrived at her workplace, Mr. L. was sitting in his truck outside the facility. Tr. at 118-19 (App. A118-19). Ms. C. testified that Mr. L. "exited the truck and wanted to talk" to her. Tr. at 119 (App. A119). As always, I told Mr. L., you're not supposed to be here and he kept forcing his way, saying, I just want to talk to you. And because I've had past experiences with him, it's safer for me to allow him to say what he needs to say so that I can remain safe. Tr. at 119 (App. A119).

⁶ See Tr. at 244 (App. A244). Ms. C. testified that, in order to pacify Mr. L., she allowed him into a resident's home – while the resident was not there – for "about 20 minutes" while she prepared the resident's meal. Tr. at 131-32 (App. A131-32). Mr. L. was calm during the visit. Tr. at 132 (App. A132).

behavior, typical of many victims' "managing" of an abuser, also showed Mr. L. that she relied on him and needed him for her own survival, thus reinforcing his sense of her dependence, which kept his anger and violence at bay.⁷

Ms. C., like many domestic violence victims, also used more overt strategies to try to stay safe – she tried to break up with Mr. L. at least *four times* over the course of eleven months, and she sought a civil protection order ("CPO") to keep him away.⁸

Unfortunately, Mr. L., like many abusers, only escalated his violent and destructive abuse each time she tried to break up with him, sending a clear message that attempting to leave him would only increase her danger.⁹ See Goodman, *supra* at 169; Martha Mahoney, *Legal Images*

⁷ See Tr. at 146 (App. A146); Tr. at 245-46 (App. A245-46).

⁸ In August 2011, the victim sought and was granted a Temporary Protection Order (TPO) and filed a Civil Protection Order (CPO) petition against Mr. L. Tr. at 125-26 (App. A125-26); Temporary Protection Order, Aug. 23, 2011, Ex. 102 (App. A305); Petition and Affidavit for Civil Protection Order, Aug. 23, 2011, Ex. 103 (App. A306-10). The abuser filed a retaliatory CPO against her, and the court was dismissive and sent them both away. Tr. at 128 (App. A128). Ms. C. filed another TPO and CPO Petition on March 12, 2012, Ex. 107 at 2 (App. A315) (describing incident on Feb. 14, 2012). She was granted a Temporary Protection Order requiring Mr. L. to stay at least 100 feet away from her workplace, among other protections. Temporary Protection Order of Mar. 12, 2012, Ex. 106 (App. A313). On March 26, 2012 the Court granted Ms. C. a Civil Protection Order based on Mr. L. having committed the intrafamily offenses of "Harassment and Assault." Tr. at 197-200 (App. A197-200); Civil Protection Order of Mar. 26, 2012, Ex. 110 (App. A321-23).

⁹ Each time Ms. C. tried to break up with Mr. L., he engaged in extremely frightening and violent behavior, including grabbing her around the neck, Tr. at 157 (App. A157); vandalizing the front of her apartment building, Tr. at 122-24 (App. A122-24); Tr. at 135-36 (App. A135-36); kicking in her car window, Tr. at 156 (App. A156); slashing her tires, Tr. at 159-60 (App. A159-60); stalking her at work, Tr. at 137-40 (App. 137-40); and ultimately, threatening to get (and succeeding in getting) her fired, Tr. at 169 (App. A169); Tr. at 172-74 (App. A172-74); Ex. 105 (Text Messages sent by M. L. to Ms. C.) (App. A311-12).

of Battered Women: Redefining the Issue of Separation, 90 MICH. L. REV. 1 (1991) (coining the term “separation assault”).¹⁰

In short while Ms. C. acts in “permitting” Mr. L. to come on-site at her job may have been “voluntary” they were hardly the acts of a free agent. Rather, they were coerced by Mr. L.’s ongoing pattern of abuse, a pattern which she had been unable to end by ending the relationship, and by seeking legal protection.

II. ABUSERS OFTEN TARGET VICTIMS’ EMPLOYMENT

Because abusers seek to “own” and control their partners, they often target the partner’s employment. As explained below, places of employment serve as an escape route from the abusive relationship, and offer alternative relationships and social opportunities. As such, a partner’s employment can present a significant threat to a abuser’s control and dominance.¹¹

A. Rates of Abuser Interference with Employment are High.

Research shows high rates of interference with employment by abusers. The General Accounting Office¹² has reported that 55-56% of battered women were harassed at work, 55-

¹⁰ The literature is clear that separation increases the risk of violence and homicide by a batterer. Dutton, *supra* at 1212; Am. Psychol. Ass’n, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family* 10, 39 (1996) (stating that “the greatest risk for serious injury or death from violence is at the point of separation or at the time when the decision to separate is made.”); Burke, *supra* 268-69. Indeed, 75% of the most serious injuries and deaths occur after battered women leave their abusers. See Barbara Hart, *State Codes on Domestic Violence: Analysis, Commentary and Recommendations*, 43 Juv. & Fam. Ct. J. 34 (1992) (citations omitted).

¹¹ “If I work, I am going to interact with people. I am going to make money, develop skills. I am going to have confidence, be dedicated to something other than him. . . Billy knew that our life was nothing. If I went to work he would have lost me. He knew it and that was what he was afraid of. He was right. If I had been able to get a job, I would have been gone.” Jody Raphael, *SAVING BERNICE: BATTERED WOMEN, WELFARE AND POVERTY* 40 (Northeastern Univ. Press 2000) (quoting Bernice). See also Lisa Brush, *POVERTY, BATTERED WOMEN, AND WORK IN U.S. PUBLIC POLICY* 47 (Oxford Univ. Press: 2011) (describing abusive partners’ “jealousy” of their partners’ employment, and noting that “women’s labor force participation – and the economic resources, social networks, and potential for independence it represents – can be an important source of relationship strife”).

¹² The agency’s name was changed in 2004 to the “Government Accountability Office.”

85% missed work because of domestic violence, and 24-52% *lost their jobs* as a result of battering. U.S. Gen. Acct. Off., *Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients* 19 (1998), <http://www.gao.gov/archive/1999/he99012.pdf>. Subsequent studies have made similar findings. See New York State Dep't. of Labor, Report to the New York State Legislature on Employees Separated from Employment Due to Domestic Violence (Jan. 15, 1996) (74% of battered women were harassed at work, 54% missed at least three days of work per month, 56% were late for work at least five times per month and 75% use company time to make calls to needed services); Carol A. Reeves and Anne M. O'Leary-Kelly, *Study of the Effects of Intimate Partner Violence on the Workplace*, Report to the U.S. Department of Justice, Document No. 227266, p.3 (2009) (the most prevalent form of abuse at work of currently victimized individuals was reported to be stalking; of those victims who had experienced stalking, over 51% indicated that it had occurred at least once on work premises). See generally, Catherine K. Ruckelshaus, *Unemployment Compensation for Victims of Domestic Violence: An Important Link to Economic and Employment Security*, CLEARINGHOUSE REVIEW, SPECIAL ISSUE 209-21 (1996) (CITATIONS OMITTED).

Contrary to the conventional assumption that domestic violence takes place at home, it has thus become "clear that IPV is a work-related phenomenon." Reeves & O'Leary-Kelly at 11. See Lisa Brush, *POVERTY, BATTERED WOMEN, AND WORK IN U.S. PUBLIC POLICY* 62 (Oxford Univ. Press, 2011) ("Work-related control, abuse, and sabotage blur the distinction between public and private. 'Domestic' abuse is clearly not something that only happens at home"). Another study even found, conversely, that employed women were two times more likely than unemployed women (60% vs. 30%, respectively) to be subjected to some form of

physical violence by their intimate partner. Courtney A. Franklin & Tasha A. Menaker, *Differences in Education/Employment Status and Intimate Partner Victimization*. Crime Victims' Institute, College of Criminal Justice, Sam Houston State Univ., Report No. 2012-02. (Oct. 2012) available at http://dev.cjcenter.org/_files/cvi/Status%20Inconsistencyappr.pdf.

B. Abusers Interfere With Employment In Many Ways.

Extensive studies in the wake of the Violence Against Women Act and welfare reform have examined the link between domestic violence and employment. These studies reinforce the prevalence of abusers' attacks on their partners' independence and self-sufficiency, and describe the tactics used by abusers, both on-site and outside the work-site.

Such tactics may include abusers appearing uninvited at their partners' jobs, making harassing phone calls to the victims and their supervisors and co-workers, causing disruptions at the job, and getting the victim in trouble with the employer by distracting and harassing her and/or her coworkers. Jennifer E. Swanberg & TK Logan, *Domestic Violence and Employment: A Qualitative Study*, 10(1) J. OCCUPATIONAL HEALTH PSYCHOL. 3, 7 (2005). Abusers might tell employers that the partner "can't" work for any variety of purported reasons, and then bodily remove her from the premises. Jody Raphael, *SAVING BERNICE: BATTERED WOMEN, WELFARE, AND POVERTY* 34 (Northeastern Univ. Press, 2000). A particularly common and destructive form of interference is the making of false statements and accusations to the employer, about the partner. *Id.* at 34 (describing such tactics). Abusers will harass co-workers and disrupt operations, assault their partner on-site, or they will appear and insist that she leave if she wants to avoid him "making a scene." Swanberg & Logan, *supra* at 8.

Counter to common assumptions, a batterer's interference with a partner's employment often increases – not decreases – when a relationship ends.¹³ Many abusers stalk their ex-partner once she has moved out, making it clear that she cannot actually “leave” the relationship. Raphael, *supra* at 63. “[E]ven though a woman may take steps to avoid the stalker, her place of employment may be the easiest or only point of access.” T.K. Logan et al, *Partner Stalking and Implications for Women's Employment*, J. INTERPERSONAL VIOLENCE, 268, 269 (2007). Perhaps for this reason, research has found that rates of abusers' interference with women's employment are especially high when the abusers are also stalkers. “[W]omen being stalked by a violent partner are significantly more susceptible to on-the-job harassment, work disruption tactics, and job performance problems when compared with women who experience violence but no stalking.” *Id.* at 285. In fact, this study found that 95% of stalking victims experienced work interference, compared with 75% of abused women who had not been stalked. *Id.* at 274.

Stalking in general usually accompanies physical and verbal abuse, and threats of injury or death, and may take the form of repeatedly calling or texting, following the victim or appearing where she is expected to be, most obviously, at the victim's place of work. Patricia Tjaden & Nancy Thoennes, *Stalking in America: Findings from the National Violence Against Women Survey 1*, 7 (Apr. 1998) (<https://www.ncjrs.gov/pdffiles/169592.pdf>). Work-related stalking includes on-the-job “surveillance” and “harassment.” Jennifer E. Swanberg, T.K. Logan & Caroline Macke, *Intimate Partner Violence, Employment, and The Workplace: Consequences and Future Directions*, 6 TRAUMA VIOLENCE ABUSE 286, 291 (2005). The first includes behaviors such as looking into workplace windows, waiting for the victim at the end of the workday, or waiting for the victim along her commuting route. Often abusers wait in the parking

¹³ See n.10, *supra*, regarding “separation assault.”

lot for their victim to arrive or leave work. Johnny Lee & Denise Trauth, *Peace @ Work, DOMESTIC VIOLENCE ASSAULTS IN THE WORKPLACE* 10 (2009). The second may involve calling supervisors, appearing on the premises, and other means of focusing unwanted and repeated attention on the victim in the work setting. Anne O'Leary-Kelly et al. *Coming Into the Light: Intimate Partner Violence and Its Effects at Work* 22 *ACADEMY OF MANAGEMENT PERSPECTIVES* 57, 59 (2008). One study found that 56% of victims of intimate partner violence were stalked at work. Swanberg & Logan, *supra* at 7.

C. Abuse in the Workplace has a Significant Impact on Victims.

The effects of abuse on victims' employment are widespread. Victims of intimate partner violence often need to miss work to go to court, seek other assistance, to heal from injuries, or simply because they are too upset. Swanberg & Logan, *supra* at 9. Of those who make it to work, many are exhausted, distracted, and/or traumatized, and have difficulty concentrating or bringing their best minds to the job. "[B]attered women sometimes carry anxiety fear, and anger related to abuse from home to work. Persistent physical, mental, and emotional abuse can cause symptoms of traumatic stress." Brush, *supra* at 57; *see also*, Swanberg & Logan, *supra* at 9 (study participants reported feeling "too psychologically distressed . . . too depressed . . . and too anxious to function at work"). Not surprisingly, all of these effects substantially undermine victims' employment.

The most recent study of single mothers receiving cash assistance found that intimate partner violence significantly affected women's job stability and their overall economic and material hardships. Adrienne E. Adams et al, *The Impact of Intimate Partner Violence on Low-Income Women's Economic Well-Being: The Mediating Role of Job Stability*, *VIOLENCE AGAINST WOMEN* 18:12, 1345-67, 1355-58 (Dec. 2012). Low-income women in abusive relationships earned 76 cents less per hour (the equivalent of 15% of the then-minimum wage)

than other women. Brush, *supra* at 56. Not surprisingly, abused women were also much more pessimistic about their economic futures, a characteristic that has been found to affect individuals' actual outcomes. *Id.*¹⁴

The repeated presence of their abuser at or near the workplace often forces women to resign for their safety, or to be fired. Rebecca Smith, Richard W. McHugh & Robin R. Runge. *Unemployment Insurance and Domestic Violence*. SEATTLE JOURNAL OF SOCIAL JUSTICE 503, 503 (2002). T.K. Logan et al, *supra* at 22 (describing myriad cases of abusers' stalking at work leading to women's loss of jobs). In one study, 91% of respondents had resigned or been terminated as a result of domestic violence. Swanberg & Logan, *supra* at 9. Slightly over 50% resigned from at least one job during a 2-year period, and similar numbers had resigned from more than one job during that time. Most of these individuals would have preferred to keep their jobs. *Id.*

At least as common a response to the abuser's harassment, however, is being fired. Women experiencing intimate partner violence are often terminated from employment, and have difficulty sustaining jobs over the long term. Jody Raphael & Richard M. Tolman, TRAPPED BY POVERTY, TRAPPED BY ABUSE: NEW EVIDENCE DOCUMENTING THE RELATIONSHIP BETWEEN DOMESTIC VIOLENCE AND WELFARE 33-34 (Taylor Inst. 1997), *available at* http://humanservices.ucdavis.edu/resource/library/ch_details.asp?record=4; Brush, *supra* at 55 (when one woman's "partner harassed her at work and stole merchandise from her employer, his actions 'got me fired'") ("[h]e would be there at my lunch break just to see what I was doing. He was a pest—calling all the time to see what I was doing. They fired me"); Swanberg & Logan,

¹⁴ "[I]t seems probable that confidence in one's own economic power will be critical to the ability of a victimized woman to extricate herself from a dysfunctional family situation." Reeves and O'Leary-Kelly, *supra* at 4.

supra at 10 (“[m]y employer got tired of it and fired me...”) (“I work at a nursing home and I loved my job . . . they thought I was a real good worker . . . until I did not show up for work three days in a row . . . because of the fighting”).

Victims who disclose an abusive situation to their employers or co-workers sometimes receive supportive responses. Brush, *supra* at 54; Swanberg & Logan, *supra* at 11 (majority of women received supportive responses). However, often, as happened here, victims lose their jobs. Brush, *supra* at 55; Swanberg & Logan, *supra* at 10; Logan et al, *supra* at 281-83, 287 (“in many cases the responses of their employers or coworkers essentially punished the stalking victim for her partner and/or former partner’s behavior rather than developing remedies”).

In short, domestic violence has a profound impact on victims’ employment. Overall, victims of domestic violence have one third the probability of maintaining employment, compared to women who are not so victimized. Swanberg, Logan & Macke, *supra* at 294.

D. Mr. L. Deliberately Interfered with Ms. C. ’s Employment to Punish her for Attempting to Leave Him.

The intimate partner violence suffered by Ms. C. fit the “systematic pattern of dominance and control” by abusers at their victims’ work, in the manner described above. U.S. Department of Justice Findings from the National Violence Against Women Survey, *Extent, Nature, and Consequences of Intimate Partner Violence*, (2000), available at <http://www.nij.gov/pubs-sum/181867.htm>. Mr. L. frequently appeared at her workplace, even after she repeatedly told him not to come there. Tr. at 137 (App. A137) (describing how Mr. L. would show up at her workplace if she did not answer his frequent phone calls); Tr. at 141 (App. A141) (testifying that Mr. L. showed up uninvited at her workplace many times). On one occasion when the abuser appeared at Ms. C. s workplace uninvited, though she did not allow him in and repeatedly asked a co-worker to deny him access to the building, he

gained access by unknown means. Tr. at 161-65 (App. A162-165). When she then refused to allow him into the individual residence, Mr. L. became aggressive and began shouting expletives, including "I don't give a fuck about your workplace," prompting her to close the door and call the police. Tr. at 167-70 (App. A167-70). Finally, he threatened to call her boss and get her fired, and did just that. See Tr. at 171-74 (App. A171-74); Tr. at 93-94 (App. A93-94); Tr. at 92 (App. A92); Tr. at 94 (App. A94); Tr. at 184 (App. A184); Tr. at 200-02 (App. A200-02).

The literature on domestic violence and employment expressly addresses telephone calls to employers and describes them as a classic form of domestic violence aimed at a victim's employment. "Abuse during work time was the second type of job interference behavior that emerged from the data. Perpetrators interfered with victims' work duties in four ways: showing up at work (72%), making harassing phone calls to victims (20%) and to victims' supervisors (10%), stalking respondents while at work (56%), and engaging in a variety of other tactics..." Swanberg & Logan, *supra* at 7. This call and Mr. L.'s false allegations were the culmination of his overall pattern of victimization of Ms. C.

The three specific incidents for which Ms. C. was fired fit a classic pattern of how domestic violence causes women to be fired. The first incident occurred when Ms. C. allowed Mr. L. into an unoccupied residence (after he followed her on the bus), because she did not want to "make a scene" at work. Tr. at 129-32 (App. A129-32). The second incident occurred when Ms. C. allowed Mr. L. to pick her up from work – this time a coworker allowed Mr. L. into the facility. The third time Mr. L. set foot on RCM property, he was bringing her breakfast, and she buzzed him in briefly to receive the food, but the resident invited him inside. Tr. at 146 (App. A146). Ms. C.'s "caving in" to Mr.

L.'s ' demands for access to her at work, were classic instances of accommodation or appeasement by a victim of abuse seeking to minimize abuse.

III. THIS CASE FITS SQUARELY WITHIN THE INTENT OF SECTION 51-131, AS AMENDED, TO ENSURE THAT DOMESTIC VIOLENCE DOES NOT UNDERCUT WOMEN'S EMPLOYMENT AND ECONOMIC SELF-SUFFICIENCY.

In 2004, the District of Columbia Council, after substantial deliberation and public hearings, adopted D.C. Code Section 51-131, providing for unemployment insurance in cases where an individual is separated from employment "due to domestic violence." Testimony at the hearings detailed the difficulties faced by victims of domestic violence who either lose their jobs or are forced to leave them as a result of domestic violence. *See, e.g., Council of the District of Columbia Committee Report on Bill 15-436 the "Unemployment Compensation and Domestic Violence Amendment Act of 2004*, at 5 (testimony of Ms. Minatelli that 30% of domestic violence victims lose their jobs for many reasons, including when "the victim is fired because of too many absences or because the victim brought violence to the workplace"). The witnesses also stressed the importance of unemployment compensation when individuals lose their income due to domestic violence, as a preferable alternative to state assistance (TANF). *Id.* The Department of Employment Services (DOES) also supported the legislation, noting that the provision was consistent with that of 13 other states. *Id.*

Section 51-131 as adopted states that:

no otherwise eligible individual shall be denied benefits for any week because the individual was separated from employment by discharge or voluntary or involuntary resignation due to domestic violence. For the purposes of this part, the term 'domestic violence' means an intrafamily offense as defined in Sec. 16-1001(8).

D.C. Code § 51-131 (2010). Section 16-1001(8) defines an intrafamily offense as a crime occurring within certain enumerated relationships, including intimate partners who live or have lived together. D.C. Code § 16-1001(8) (2009).

In this case, the ALJ concluded that Ms. C. was indeed a victim of domestic violence, but that her victimization did not “cause” the three incidents which led to her firing. ALJ Order at 10. As described in Sections II and III above, however, the three relevant incidents were part and parcel of the pattern of abuse to which Mr. L. subjected Ms. C. Indeed, calls to supervisors to get the victim fired, such as the one by Mr. L. that triggered the investigation into Ms. C., are specifically identified in the literature as a form of domestic violence. The operative question, then, is whether this domestic violence comes within the statute’s definition.

A. Mr. L.’s Contacts with Ms. C. at Work were Part of a Pattern of Stalking.

The statute defines domestic violence for purposes of this provision as an intrafamily offense, and an intrafamily offense must be a crime. D.C. Code § 16-1001 (2012). *Amici* submit that Mr. L.’s pattern of harassment and stalking at Ms. C.’s job, detailed in this brief, satisfies the standard for “stalking” under the D.C. Criminal Code. D.C. Code § 22-3131 et seq. (2009). Under D.C. Code § 22-3133(a), “stalking” is when a person purposefully engages in a “course of conduct;” *e.g.*, on 2 or more occasions, they either follow, monitor, place under surveillance, threaten, or communicate about, the victim (it may be a different act on each occasion), with knowledge or intent that the conduct would cause a reasonable person in the victim’s circumstances to fear for her safety or the safety of another person, feel seriously alarmed, disturbed, or frightened; or to suffer emotional distress. *See* D.C. Code §§ 22-3132(3),(8(A)), 22-3133(d).

Under this definition, Mr. L. stalked Ms. C. extensively,¹⁵ and this extended to Ms. C.'s workplace. Ms. C. testified that he called "a lot" and appeared at her workplace if she did not answer her telephone. *See* Tr. 136-37. She described his uninvited appearances at her workplace as too often to count. *See* Tr. 141. She also testified that she told him he was not supposed to be there, *see* Tr. 137-41, and that he followed her when she went with the residents she served on community outings. *See* Tr. 97.

At least one of the three incidents that were attributed to her firing itself constituted stalking. On September 1, 2011, Ms. C. attempted to get a second TPO from the Superior Court of the District of Columbia after her TPO of August 23rd expired. The Court denied her petition when Mr. L. counter-filed, and he immediately thereafter followed her to work on public transportation, against her will. *See* Final Order 4. She testified that she was worried she would lose her job, which she needed to support her children, but that Mr. L. was adamant that he be admitted to the residence, noting that the resident was not there. She stated that she could not afford a "scene at my workplace," and that she, therefore, allowed Mr. L. to come into the otherwise empty residence for about 20 minutes until she left. *See* Tr. 132-34.¹⁶

¹⁵ On one occasion, Mr. L. purposefully attracted attention to his presence outside of her apartment building, knowing that building management had banned him on suspicion that he had spray painted threatening messages aimed at Ms. C. over the front, brickwork, windows, and pavements. When the occupants and management came out and saw him there, Ms. C. was given a 30-day notice to remove because she was held responsible for his presence. *See* Tr. 122, 134-136. On another occasion Mr. L. verbally abused her in a public restaurant, and she fled to her car and attempted to leave. Before she could do so, he kicked in the passenger side window of her car. *See* Tr. 155-156.

¹⁶ It is questionable whether Ms. C. would have been terminated for either, or both, of the other two incidents involving Mr. L. In both cases *other individuals* invited him in. In one, he picked her up at the end of her work shift, but her co-worker admitted him. She was in the process of exiting, and the two of them were off the premises within two minutes. *See* Tr. 142-144. In the second incident, she was called by her employer, unexpectedly, to fill in for another worker. Without time to have breakfast she asked Mr. L. to bring her some food.

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Mr. L.'s stalking at Ms. C.'s workplace also included his efforts to contact Ms. C.'s employer in order to have her fired. See Tr. 181, 182, 184,185. The March 11 incident described above, in which he yelled and cursed outside the apartment where she was working, causing her to call the police, ended with him threatening to call her employer. See Tr. 162-70. On March 12, 2012, he sent her text messages threatening to call her supervisor to report that she had admitted him to her workplace. See Tr. 171-74. On March 13, she learned from her employer that he had been continuously calling them. See Tr. 168-74. His behavior in calling and meeting her employer to make allegations about her was purposeful and met the criteria for stalking under the D.C. Code. See D.C. Code § 22-3133 stalking statute - - - ("communications" about the victim, by any means, see D.C. Code § 22-3132(2),(3), are part of stalking course of conduct). All of these acts constitute a purposeful, repeated course of conduct by Mr. L. that he knew would - and intended to - cause her emotional distress and fear.

B. Mr. L.'s Stalking Was the Dominant Cause of Ms. C.'s Firing.

Mr. L.'s communications to Ms. C.'s employer had their intended consequence – they triggered the investigation and her firing. She was interviewed by her employer on March 13 about his allegations against her, and she was put on unpaid leave immediately following the interview. See Tr. 184. It is undisputed that his allegations against her were the cause of the investigation, and her description of his contacts at the work-site were

Footnote continued from previous page

She was obliged to buzz Mr. L. into the building because she could not leave the individuals she served alone. He came to the apartment door, which she opened to receive the food. However, the resident whom she served (who had met Mr. L. at the employer's Christmas party) came out, greeted Mr. L. by name, shook his hand, and said, "Come on in, buddy." Ms. C. did not invite Mr. L. into the apartment. See Tr. 146-149. Amici believe that once the resident invited Mr. L. into his apartment, Mr. L. became the resident's visitor, not Ms. C.'s. Given the employer's practice of *allowing* visitors to the worksite with other employees, described above, it is unclear how these two instances *by themselves* could have triggered Ms. C.'s firing.

the employer's stated cause for firing her. *See* Exhibit 200. The Director of Human Services testified that prior to Mr. L.'s allegations, Ms. C.'s job was not known to her to be in jeopardy, nor had the employer ever received complaints about Ms. C.'s performance, and, furthermore, that Ms. C. was liked by everyone. *See* Tr. 66. Thus, Mr. L.'s calls and reports triggered her firing. Had he not communicated with her employer, she would not have been fired.

Other information in the record about the employer's normal flexibility toward employees who bring guests on-site further supports the view that Mr. L.'s history of harassment and domestic violence was the true cause of Ms. C.'s firing. For instance, Ms. C. testified without rebuttal that she had witnessed a sister of a co-worker watching television in a resident's apartment, while waiting for the co-worker to finish her shift, without negative consequence. *See* Tr. 149, 151-52. And the Director of Human Relations admitted that employees attending staff meetings on days they were not working sometimes brought their children into their workplaces at those times. *See* Tr. 81. The Director stated that this was allowed because ... "we're just happy to get the staff there, so if they have to bring their children because everyone - - people do have sitter issues. So if they are in that arena and, you know, we have a training, or we have a meeting, and they have to bring their children in, it is allowed." *Id.* (emphasis added). The employer's admitted reasonableness and flexibility with respect to its no-guest policy, indicates that this incident would not have triggered Ms. C.'s firing, were it not for the larger history of stalking and harassment.

Where, as here, domestic violence or stalking/harassment is the difference between job retention and job loss, the victim has lost her job "due to domestic violence."

C. Liberal Construction of the Statute Requires Compensation Here

Even if this Court were to find that the particular incidents for which Ms. C. was purportedly fired do not constitute a crime, and thus are not themselves an “intrafamily offense,” Ms. C. is still entitled to unemployment compensation under the statute. The statute must be liberally construed, consistent with its remedial intent of protecting victims of domestic violence from the economic harm inflicted deliberately by abusers who cause them to lose their jobs. *See Cruz-Foster v. Foster*, 597 A.2d 927, 929 (D.C. App. 1991) (IntraFamily Offense Act must be “liberally construed in furtherance of its remedial purpose”). Under the statute, so long as the domestic violence to which the individual has been subjected *includes* intrafamily offenses,¹⁷ if an abuser causes his victim to lose her job as part of his larger pattern of domestic violence, it follows that the job loss is “due to domestic violence” under the statute. *See* Br. of Petitioner at pp. 27-31 (describing the breadth of the “due to” causation standard, and the facts that it is broader than many other state statutes; and that The American Recovery and Reinvestment Act (“ARRA”) requires a broader, not narrower, construction).

The alternative interpretation -- to limit coverage to losses of employment only when triggered by acts which themselves constitute crimes -- would be illogical and inconsistent with the realities of domestic violence and employment, and would contradict the public policy underlying the statute’s purpose - to reduce the financial impact of abuse on employed women. Given the pattern of how domestic violence is perpetrated at victims’ jobs by abusers, which were testified to at the D.C. Council’s hearing on the Bill, and the fact that the provision is a

¹⁷ Mr. L. inflicted assaults and committed acts threatening bodily harm on Ms. C. that constitute “intrafamily offenses” under Section 16-1001(8). *See* Tr. at 157 (App. A157); Tr. at 156 (App. A156); Tr. at 159-60 (App. A159-60). In fact, the D.C. Superior Court granted Ms. C. a CPO based on his “harassment” at her job (i.e., treated it as an intrafamily offense). Tr. at 197-200 (App. A197-200); (App. A321-23).

remedial statute aimed at ameliorating economic harm from abuse, it would counter to the legislative intent to exclude classic abusive behavior from the statute's scope. Council of the District of Columbia, Comm. on Public Servs., Comm. Rep., B. 14-436 (D.C. 2004) (“[t]he purpose of the legislation is to provide unemployment compensation to individuals who leave work because of domestic violence . . . [t]his bill will minimize how money factors into the decision to leave an abusive situation.”). Therefore the statute should be construed liberally, both with respect to causation, and with respect to the definition of domestic violence.

CONCLUSION

For all the foregoing reasons, *Amici* respectfully request that this Court reverse the decision below and rule that the acts of “misconduct” in Ms. C. _____’s case were “due to domestic violence and therefore that she is entitled to unemployment compensation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Brief of *Amici Curiae* Domestic Violence Legal Empowerment and Appeals Project (DV Leap) et al to be served on the parties by placing it in the first class mail, postage prepaid on March 11, 2013.

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