



June 17, 2009

The Honorable Patrick J. Leahy
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

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RE: ACLU Statement in Support of Senate Hearing on Violence Against Women Act

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the American Civil Liberties Union (“ACLU”) and its more than half a million members and activists and 53 affiliates nationwide, we applaud your leadership in convening this hearing to examine the benefits the Violence Against Women Act (VAWA) has conferred upon women and families across the country since its passage. Such a hearing begins an important discussion that will culminate, next year, in a stronger, reauthorized VAWA. We write to express our support for the Committee’s attention to this legislation and look forward to working with the Committee as it moves to improve the protections for and rights of survivors of domestic violence.

Congress has long recognized the destructive impact of domestic and sexual violence on the lives of women and their families. Through passage of the Violence Against Women Act of 1994 and its reauthorization in 2000 and 2005, Congress has taken important steps in providing legal remedies and services for survivors of intimate partner abuse, sexual assault, and stalking. These efforts are vital to ensuring that women and their children can lead lives free of abuse.

Through its Women’s Rights Project, founded in 1972 by Ruth Bader Ginsburg, the ACLU has long been a leader in the legal battles to ensure women’s full equality. The ACLU has taken an active role at the local, state, and national levels in advancing the rights of survivors of domestic violence, sexual assault, and stalking by engaging in litigation, legislative and administrative advocacy, and public education.

We have been especially pleased with the housing protections enacted in the 2005 reauthorization of VAWA. The next reauthorization of VAWA should expand these housing rights and also guarantee that survivors of domestic violence, sexual assault, stalking, and dating violence do not experience employment or insurance discrimination because of the abuse they have experienced.

I. VAWA 2005

A. Landmark Housing Protections

In the last VAWA reauthorization, Congress specifically acknowledged the interconnections between housing and abuse. It found that domestic violence is a primary cause of homelessness, that 92% of homeless women have experienced severe physical or sexual abuse at some point in their lives, and that victims of violence have experienced discrimination by landlords and often return to abusive partners because they cannot find long-term housing. Our experience echoes these findings. The ACLU has represented a number of victims of violence who faced eviction because of the abuse perpetrated by their batterers.¹ For example:

- In 2001, the ACLU successfully represented Tiffani Alvera in a first of its kind lawsuit challenging a notice to quit issued by her subsidized housing provider in Oregon based on her husband's assault. Although Ms. Alvera had obtained a protection order barring her husband from the property and was cooperating in his criminal prosecution, her landlord nevertheless sought to evict her.
- In 2002, the ACLU of Michigan sued on behalf of Aaronica Warren, a single mother and then-VISTA volunteer who was living in public housing run by the Ypsilanti Housing Commission (YHC) in Michigan. After her ex-boyfriend forced his way into her apartment and assaulted her, YHC attempted to evict Ms. Warren and her son because of the violence that had occurred, even though Ms. Warren was the victim.
- In 2004, the ACLU represented Quinn Bouley, a Vermont resident who received a notice to quit her apartment after calling the police and reporting the domestic violence perpetrated by her husband, in a federal court action challenging her eviction.
- Also in 2004, the ACLU represented Laura K., a Michigan resident whose landlord locked her and her infant son out of her apartment at her batterer's request despite the order of protection she had barring him from coming near the home, thus rendering her homeless.
- In 2005, the ACLU represented Rubi Hernandez, who lived in California with her children in public housing operated by the Housing Authority of the City of Stanislaus. When her abusive estranged husband repeatedly physically attacked her, she sought an emergency transfer in an attempt to flee her husband. The housing authority initially refused the request, saying that although Ms. Hernandez had obtained a protective order and fled to a domestic violence shelter, she had not proven that she was in danger from her husband.

¹ Information about these cases can be found at www.aclu.org/fairhousingforwomen.

- Also in 2005, the ACLU represented Tina J., a resident of public housing operated by the St. Louis Housing Authority in St. Louis, Missouri. When Ms. J.’s ex-boyfriend broke her windows on multiple occasions because she refused to let him into her home, the Housing Authority attempted to evict Ms. J., despite the fact that she had obtained a protective order against him and had consistently reported his unlawful behavior to the police and to the Housing Authority.
- In 2007, the ACLU sued on behalf of Tanica Lewis, a Michigan tenant of a property financed by the federal Low-Income Housing Tax Credit. Ms. Lewis had obtained a protective order against her ex-boyfriend, but when he broke into her apartment in violation of the order, her landlord blamed her for the actions of her “guest.”

These stories demonstrate the unfortunate reality faced by many victims of domestic violence—landlords, including public housing authorities, all too often blame them for the abuse, re-victimizing them by threatening their housing.

VAWA 2005 took a multi-pronged approach to the problem. For the first time, the law barred public housing authorities and Section 8 owners and landlords from discriminating against housing applicants or tenants based on status as a victim of domestic violence, stalking, or dating violence. Public housing and voucher tenants could no longer be evicted based on the criminal activity perpetrated against them by their batterers. Furthermore, public housing authorities were given the ability to “bifurcate” a victim’s lease, thereby removing an abuser from tenancy while permitting the rest of the family to remain, and the ability to permit a voucher holder to move with her voucher to another unit before her prior lease term was up if necessary to ensure the voucher holder’s safety. In order to implement these protections, the law provided a mechanism by which a tenant could certify that she had been a victim of one of these crimes and ensured that this certification would be confidential.

VAWA required public housing authorities to provide notice of VAWA’s protections to public housing and voucher tenants, as well as voucher owners and managers. Congress also obligated public housing authorities to describe the programs provided to child and adult victims of domestic violence, dating violence, sexual assault, and stalking in the Annual and Five-Year Plans public housing authorities are required to submit to the Department of Housing and Urban Development (HUD).

By including these vital protections in VAWA 2005, Congress took an important first step in addressing some of the worst housing discrimination faced by survivors. Had the law been in place years earlier, our clients Aaronica Warren, Rubi Hernandez, and Tina J. – all public housing residents – would have benefited. And since the law’s enactment, the ACLU has consulted with attorneys, advocates, and survivors from across the country who have successfully invoked the law to stop evictions based on domestic violence. In a recent case litigated in New York City, a court dismissed the eviction of a Section 8 tenant who had been accused of committing a “nuisance” when she experienced domestic violence.² The court found that the evidence submitted by the tenant – her statement, three police reports, and a criminal court order of protection – clearly established that she was a victim of domestic violence whose

² *Metro North Owners v. Thorpe*, 2008 N.Y. Slip Op. 28522 (N.Y. Civ. Ct. Dec. 25, 2008).

tenancy was protected by VAWA, despite her ex-partner's accusations against her. The law has served as an important shield for survivors facing homelessness because they have experienced abuse.

B. Enforcement of Protective Orders

In June 1999, Jessica Gonzales' estranged husband abducted her three daughters, in violation of a protective order. Ms. Gonzales called and met with the police repeatedly to report the abduction and restraining order violation. Her calls went unheeded. Nearly ten hours after her first call to the police, Ms. Gonzales' estranged husband, Simon Gonzales, arrived at the police station and opened fire. The police immediately shot and killed Mr. Gonzales, and then discovered the bodies of the Gonzales' children – Leslie, 7, Katheryn, 8, and Rebecca, 10 – in the back of his pickup truck. Ms. Gonzales filed a lawsuit against the police, but in June 2005, the U.S. Supreme Court found that she had no constitutional right to police enforcement of the order.

Following Ms. Gonzales' ordeal, we were pleased to see that VAWA 2005 established Jessica Gonzales Victim Assistance Grants, which support the placement of special victim assistants in local law enforcement agencies to serve as liaisons between victims of domestic violence, dating violence, sexual assault, and stalking and personnel in local law enforcement agencies in order to improve the enforcement of protective orders.

II. LOOKING AHEAD TO VAWA REAUTHORIZATION

The next version of VAWA should build on this record of progress by expanding the housing rights of survivors of violence and providing new protections when victims experience employment and insurance discrimination.

A. Extension of Housing Protections

While VAWA 2005 created a vital baseline of housing rights for survivors of violence, our experience has taught us that there are many gaps that have yet to be addressed. We outline below some of the pressing issues that the next reauthorization should tackle.

Currently, VAWA's anti-discrimination provisions apply only to residents of public and Section 8 housing. For that reason, our client Tanica Lewis, referenced earlier, could not rely on VAWA when she and her children were evicted from their home because of the property damage caused by her ex-boyfriend in 2006. In the few states that have passed laws prohibiting housing discrimination against survivors of violence, advocates have reported that they have been able to prevent evictions and keep victims and their families in their homes. Survivors across the U.S. should be able to access these same protections, regardless of what type of housing they have or in what state they live. At a minimum, the anti-discrimination provisions should be extended to cover other types of federally-funded housing, such as housing funded by the Low Income Housing Tax Credit, where Ms. Lewis lived, and USDA Rural Housing, where Tiffani Alvera lived.

While VAWA 2005 included victims of domestic violence, dating violence, and stalking in the list of protected victims, sexual assault survivors are not explicitly mentioned. However, sexual assault victims, much like victims of domestic violence, dating violence, and stalking, face evictions and subsidy terminations based on criminal acts committed against them. The statute should be expanded so as to cover these tenants.

VAWA 2005 did not provide for a mechanism of administrative enforcement. HUD's office of Fair Housing and Equal Opportunity (FHEO) currently does not accept or investigate complaints regarding violations of VAWA's housing provisions. As a result, victims who have been denied, terminated, or evicted from housing do not have a federal administrative remedy for VAWA violations. Additionally, although housing discrimination based on an individual's status as a victim of domestic violence, stalking, or sexual assault can constitute sex discrimination,³ FHEO frequently has not looked into these types of claims. The law should explicitly provide that FHEO has jurisdiction to act on claims of discrimination based on an individual's status as a victim domestic violence, dating violence, stalking, or sexual assault. This could be done, for example, by recognizing status as a victim of one of these crimes as a protected class under the Fair Housing Act or by crafting an administrative remedy for VAWA violations. However, any such remedy should not preclude affirmative enforcement by the tenant of her rights.

The ACLU and its coalition partners also believe that the next VAWA should provide HUD with much clearer direction concerning VAWA implementation. For example, in November 2008, HUD issued an Interim Rule that was the first regulation that that purported to implement VAWA. Docket No. FR-5056-I-01, published at 73 Federal Register 72,336 (Nov. 28, 2008) ("Interim Rule"). However, dozens of organizations representing domestic violence survivors, tenants, public housing authorities, landlords, and housing managers filed comments objecting to the Interim Rule's lack of clarity and guidance.⁴ Domestic violence and housing advocates especially are concerned with the Interim Rule's departures from statutory language and the failure to adequately explain how public housing authorities and landlords can implement VAWA's protections. HUD has also approved Annual and Five-Year Plans submitted by public housing authorities that do not address the needs of domestic violence survivors as required by statute.⁵ Congress should ensure that HUD fulfills the promise of the VAWA 2005 housing protections.

B. Employment and Insurance Discrimination

Experiencing domestic or sexual violence is a direct cause of workplace problems for the vast majority of victims who work. Batterers often exercise control over victims by preventing them from going to work or harassing them on the job.⁶ The work lives of survivors are also disrupted if they need to seek housing or medical or legal help in response to abuse. Three studies

³ *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675, 677 (D. Vt. 2005); *Alvera v. CBM Group*, HUD ALJ 10-99-0538-8 (Apr. 16, 2001).

⁴ Available at www.regulations.gov, or on file with the ACLU.

⁵ Nat'l Law Ctr. on Homelessness & Poverty, *Insult to Injury: Violations of the Violence Against Women Act* (Apr. 2009) (finding that 40% of HUD-approved plans did not comply with VAWA).

⁶ Richard M. Tolman & Jody Raphael, A Review of Research on Welfare and Domestic Violence, 56 J. Soc. Issues 655, 664-70 (2000).

collected by the U.S. General Accounting Office found that between 24 and 52 percent of victims of domestic violence reported that they were either fired or had to quit their jobs as a result of abuse.⁷ Up to 96% of domestic violence victims have experienced employment difficulties because of abusers and violence.⁸

These statistics represent a troubling reality: thousands of employees who are suffering from intimate partner abuse are at great risk of losing their jobs. Without work, they may find that they do not qualify for unemployment insurance or health insurance for reasons directly related to the abuse they have experienced. For example, an employee who leaves her job when her employer will not accommodate her safety needs may be deemed ineligible for unemployment benefits because she left her position “voluntarily.” Health insurance companies frequently choose to deny, refuse to renew, or cancel a survivor’s policy or benefits plan, particularly when originally issued in the name of the abuser.

Some states and localities have addressed the employment and insurance issues faced by survivors of violence. New York City, for example, amended its Human Rights Law in 2001 to prohibit employment discrimination against victims of domestic violence – the first jurisdiction in the country to do so.⁹ The City extended these protections in 2003 to require employers to make reasonable accommodations – such as allowing time off from work or shifts in schedule – to employees who are experiencing domestic and sexual violence or stalking.

The ACLU relied on these provisions of the Human Rights Law when representing “Kathleen,”¹⁰ a long-time employee of the New York City public schools. After her intimate partner assaulted her, Kathleen obtained an order of protection. She needed to take off several days of work in order to attend court proceedings and seek medical attention. When her employer reprimanded her for excessive absences, she disclosed her partner’s violence and requested to be transferred to another school for safety reasons. Shortly after this conversation, she was fired. The same day, another woman at the school where Kathleen worked who had also experienced domestic violence was terminated under similar circumstances. Because she lost her job and was unable to find comparable employment, Kathleen was forced to move to substandard housing and send her son to live with a relative.

The ACLU brought suit against the New York City Department of Education on Kathleen’s behalf, invoking the anti-discrimination mandate of the City Human Rights Law. Ultimately, the Department of Education agreed to settle the case and to void Kathleen’s termination and pay her retroactive compensation and damages. It also agreed to undertake systemic changes, including amending its Equal Employment Opportunity policy to cover victims of domestic violence, sexual assault, and stalking as protected classes, acknowledging that reasonable accommodations must be offered to these survivors, and publicizing its new policies throughout the school system. Had the New York City Human Rights Law not existed, Kathleen could have been out of work

⁷ U.S. Gen. Acct. Office, *Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients* 19 (1998).

⁸ U.S. Dep’t of Labor, Women’s Bureau, *Domestic Violence: A Workplace Issue* 1 (1996).

⁹ N.Y.C. Admin. Code § 8-107.1.

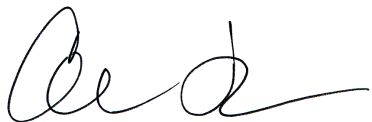
¹⁰ A pseudonym has been used to protect “Kathleen”’s identity.

with no recourse, as a result of the violent conduct of her partner. Had Kathleen lived almost anywhere else in the country, financial ruin likely would have been her fate.

Survivors need comprehensive federal legislation to address the obstacles to employment and economic security caused by violence. Members of Congress have previously introduced legislation that would bolster the financial independence of survivors by reducing the likelihood that violence will force survivors out of their jobs and by providing a safety net for those who do lose employment as a result of domestic violence, sexual assault, or stalking.¹¹ The ACLU urges Congress to include provisions in the next VAWA reauthorization that promote the employment opportunities of abuse survivors, including but not limited to provisions for emergency leave, unemployment insurance eligibility, reasonable employment accommodations, and protection from employment and insurance discrimination. This effort would transform the current state-by-state patchwork of laws and allow survivors across the U.S. to pursue both physical security and economic independence.

In conclusion, the ACLU applauds the Chairman and Ranking Member for your attention to and support of VAWA and we look forward to working with members of the Committee in the months ahead.

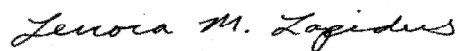
Sincerely,



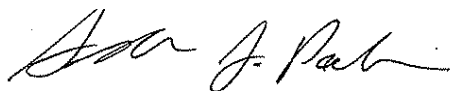
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¹¹ See, e.g., Security and Financial Empowerment Act (S 1801, HR 739); Unemployment Insurance for Survivors Act of 2007 (HR 4016); Survivors' Empowerment and Economic Security Act (S1136).