



WASHINGTON LEGISLATIVE OFFICE
Caroline Fredrickson
Director

915 15th Street, NW Washington, D.C. 20005

(202) 544-1681 Fax (202) 546-0738

Written Testimony of the American Civil Liberties Union
Before the Committee on the Judiciary
U.S. Senate

Hearing to Consider S. 1197
Violence Against Women Act of 2005

July 23, 2005

Caroline Fredrickson, Director
ACLU Washington Legislative Office

LaShawn Warren, Legislative Counsel
ACLU Washington Legislative Office

Lenora M. Lapidus, Director
ACLU Women's Rights Project

The ACLU is a national, nonpartisan public interest organization of more than 400,000 members, dedicated to protecting the constitutional rights of individuals. 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. This commitment includes fighting for equal housing and employment opportunities for women and working to protect the rights of battered women. In recent years, the ACLU Women's Rights Project has taken a leading role at the local, state, and national levels in working to ensure safety and improve access to housing and employment opportunities for survivors of domestic violence and their children. Through these efforts, the ACLU has been at the forefront of efforts to establish that discrimination against domestic violence victims is a form of gender discrimination.

The ACLU offers its full support for the Violence Against Women Act (VAWA) of 2005. VAWA 2005 reauthorizes VAWA 1994, a strikingly effective piece of legislation enacted to end domestic violence, dating violence, sexual assault, and stalking. VAWA 1994 has dramatically improved law enforcement's response to violence against women and has provided critical services necessary to support women and their children in their struggle to overcome and escape domestic abuse. Because VAWA remains an essential tool for combating domestic violence, it is important for Congress to continue programs established under VAWA 1994 and to build upon the success of the law by passing VAWA 2005. Indeed, the very lives of women and children are dependent on the Senate's reauthorization of this important legislation.

The ACLU's work on behalf of battered women and their families has focused on securing safe housing, employment opportunities, and responsive police procedures for survivors of domestic violence. A woman's ability to escape an abusive relationship will often depend on socio-economic factors such as her success in finding and keeping a job and in obtaining a home that provides safety to her and her children. Obstacles to obtaining adequate employment and affordable housing leave women more vulnerable to domestic violence, because these obstacles constrict their economic independence and limit their choices. Once in a violent relationship, lack of housing options or living wage employment can make it all but impossible for women to escape the abuse and achieve independence, even when their lives and the lives of their children are in danger. Victims of domestic violence face further obstacles to escaping a violent relationship and ensuring their physical safety when the broader community, including law enforcement, fails to provide an adequate response or appropriate resources to address the violence. Poor women and immigrant women are especially vulnerable to being trapped in cycles of abuse because of inadequate housing, employment, and community resources. VAWA 2005 effectively addresses these barriers faced by survivors of domestic violence as they seek to escape abusive relationships and protect themselves and their children from further violence.

Studies show that domestic violence is the immediate cause of homelessness for between 22 and 57 percent of homeless women.¹ Some women and children lose their homes when they

¹ See Emily J. Martin & Naomi S. Stern, *Domestic Violence and Public and Subsidized Housing: Addressing the Needs of Battered Tenants Through Local Housing Policy*, 38 CLEARINGHOUSE REV. J.L. & POL'Y. Nos. 9-10, at 552 (Jan.-Feb. 2005).

flee abuse and cannot subsequently find affordable transitional or long-term housing at a time when housing for low-income individuals and families is increasingly scarce. Other domestic violence survivors become homeless as the result of “zero tolerance” housing policies that permit the eviction of all members of the household when any crime occurs in the home, without regard to whether the tenant was victim or perpetrator.¹ Such policies are too often misapplied to evict innocent victims of domestic violence from public and federally-subsidized housing, thus punishing them for being battered. Victims of domestic violence are thus forced to choose between keeping the abuse secret and risking homelessness. Such housing discrimination against domestic violence survivors undermines a battered woman’s efforts to successfully separate herself from the abuse and enhances the danger to her and her children.

Employers also frequently demonstrate “zero tolerance” for victims of domestic violence, especially victims in low-wage positions. Some employers fire women because of the violence against them. In fact, three studies collected by the U.S. General Accounting Office found that 52 percent of victims of domestic violence reported that they were either fired or had to quit their jobs as a result of the abuse they experienced.² Many employers refuse to accommodate survivors’ need for time off to attend court dates or doctors’ appointments, thus making it all but impossible for survivors to address the violence in their lives while maintaining the income they need to support themselves independently. Domestic violence thus renders women economically vulnerable. Indeed, studies indicate that a sizeable proportion of welfare recipients have been or are victims of abuse by an intimate partner.³

When landlords and employers deny housing and jobs to domestic violence survivors, battered women are forced to make the difficult choice between suffering in silence and risking loss of their homes and jobs. Victims of domestic violence are thus discouraged from reporting their abuse or otherwise taking steps to protect themselves. Battered women are further isolated and endangered when law enforcement and other community agencies fail to respond appropriately to protect them from their abusers. Through its housing, employment, and police responsiveness provisions, VAWA 2005 takes important steps toward removing these obstacles to safety for domestic violence survivors.

Below we elaborate on five sections of VAWA that are particularly important to the work of the ACLU and the women and children whom we serve.

¹ See Brief of Amici Curiae National Network to End Domestic Violence et al., U.S. Dep’t of Hous. & Urban Dev. v. Rucker, 535 U.S. 125 (2002) (Nos. 00-1771 & 00-1871).

² Gen. Acct. Off. Health, Educ. & Human Serv. Div., “Research Findings Regarding the Extent to Which Victims of Domestic Abuse Report Specific Impacts of the Abuse on Their Employment,” Nov. 1998 [GAO-HEHS-99-12] at 19.

³ *Id.* at 3.

VAWA 2005 Expands Housing Opportunities and Safety for Battered Women and Their Children

Title VI of VAWA 2005 will offer substantial assistance to domestic violence survivors attempting to obtain and keep safe, secure, and affordable housing and will eliminate many of the obstacles that survivors of domestic violence currently face in attempting to reach this goal. As a crucial part of this effort, Title VI prohibits public housing authorities and Section 8 voucher landlords from discriminating against, and thus revictimizing, battered women and their children by evicting them from their homes on the basis of the violence against them. Such provisions are an important and much-needed step toward addressing the profound impact of the current nationwide housing crisis on victims of domestic violence.

Specifically, Title VI would amend the Low Income Housing Assistance Voucher Program and the Public Housing program to specify that a victim of domestic violence may not be evicted, denied program assistance, or have her lease terminated simply because of the violence against her. In addition, these sections make clear that if a voucher holder must flee her home in violation of her lease because her safety is threatened by domestic violence, she may take her voucher to another jurisdiction in order to protect her safety. VAWA 2005 thus recognizes that individuals should not face homelessness merely because they have been the victims of crime. Title VI makes clear, however, that public housing authorities and Section 8 voucher landlords may terminate assistance to or evict an abuser based on his violent acts. Moreover, in order to ensure that the protection from eviction offered by these provisions goes only to individuals who are in fact victims of domestic violence and their dependents, a public housing authority or landlord can require an individual to provide documentation of the abuse, such as a police report or a statement from a victim advocate. *See* §§ 606,607.

The ACLU offers its strongest support for these provisions. Too many of our clients have been evicted from public housing or had their Section 8 leases terminated after they have reported domestic abuse to the police, sought civil protection orders against their abusers, or taken other protective measures encouraged by VAWA.

For instance, the ACLU of Michigan represented Aaronica Warren, a single mother and VISTA worker who lived in public housing operated by the Ypsilanti Housing Commission in Ypsilanti, Michigan. One evening in 2000, an ex-boyfriend appeared at her door after she put her son to bed and immediately became argumentative and abusive. He threw Ms. Warren into her entertainment center, picked her off the ground, dragged her outside, and threw her face first onto the pavement. Thereafter he fled, and Ms. Warren called the police. When the Ypsilanti Housing Commission learned about the violence, instead of seeking to assist Ms. Warren by banning her abuser from the property, or perhaps relocating her to another unit in order to help her evade her abuser, the Housing Commission sought to evict Ms. Warren and her son based on the "one strike" provision in Ms. Warren's lease. As a result of the ACLU's involvement, Ms. Warren was permitted to remain in her home and the Ypsilanti Housing Commission ultimately agreed in 2003 to stop enforcing the one-strike provision against domestic violence victims. Ms. Warren, however, was among the fortunate few. Her case

demonstrates the risk of homelessness too often faced by victims of domestic violence in public housing.

Unfortunately, Ms. Warren's story is not unique. The ACLU currently represents "Tina," a woman living in public housing with her three children in St. Louis, Missouri. Tina is currently facing eviction because her physically abusive ex-boyfriend is stalking her and has repeatedly broken her apartment windows from the outside. Although Tina has called the police each time her home has been vandalized, filed complaints against her ex-boyfriend, sought and obtained civil protective orders barring him from the property, reported each incident to apartment management, and requested that she be moved to a different unit in order to conceal her location from her ex-boyfriend, the public housing authority is still seeking to evict Tina, claiming that the ex-boyfriend that she barred from her home was her "guest," and that she is therefore responsible for his actions.

Similarly, previously this year, the ACLU represented "Denise," who lived in an apartment in Cincinnati, Ohio, subsidized by a Section 8 housing voucher. In 2004, the Cincinnati Metropolitan Housing Authority (CMHA) terminated her voucher, rendering her homeless. CMHA reasoned that although Denise was the victim of repeated attacks by her ex-boyfriend, and although he was ultimately jailed for domestic abuse, she had disturbed the "peaceful enjoyment of neighbors" and should thus be terminated from the Section 8 voucher program. We have also recently consulted on a similar case in Baltimore, where in 2004 a voucher recipient called the police for assistance on multiple occasions in response to repeated violence by her abuser. Her landlord complained to the housing authority about the police visits, and as a result, the woman lost her voucher and thus her home.

Sometimes, a public housing authority endangers victims of domestic violence by requiring unreasonable levels of documentation to prove that violence is occurring in the household. For instance, the ACLU represented Rubi Hernandez, who lived in Modesto, California with her children in public housing operated by the Housing Authority of the County of Stanislaus. When her abusive estranged husband repeatedly physically attacked her, Ms. Hernandez fled to an emergency shelter with her children and obtained a protective order. She then sought from the housing authority an emergency transfer to alternative housing, in an attempt to flee her husband. The housing authority refused the request, saying that despite Ms. Hernandez's protective order and the fact that she had fled to shelter, she had failed to prove that she was in danger from her husband because she did not have a police report documenting her ex-husband's violation of the protective order. In fact, Ms. Hernandez had deliberately not called the police to report her husband's abusive behavior, which she knew violated the protective order, for several reasons. First, her husband had pulled the phones out of the wall and had taken Ms. Hernandez's cell phone away from her. Additionally, Ms. Hernandez knew from experience that the local police often responded slowly to domestic violence calls. Finally, she feared her husband would violently retaliate against her or their children for making the violence public. After the ACLU's intervention in the case, the housing authority agreed that its initial denial was inappropriate and helpfully cooperated in finding a solution that protected Ms. Hernandez's safety. Ms. Hernandez's case, however, demonstrates the danger posed

when housing authorities demand unreasonable levels of documentation to prove that domestic violence is occurring in the household.

These cases are only the tip of a much larger iceberg. In the past six months alone, the ACLU has consulted on similar cases involving domestic violence victims threatened with the loss of public and subsidized housing in Illinois, Texas, Michigan, Delaware, and Arizona. Legal services attorneys report that they see such cases on a regular basis. Title VI of VAWA 2005 thus fills an important gap by granting housing security to poor victims of domestic violence otherwise faced with the impossible choice between living in terror at home and living homeless on the streets.

Moreover, the other provisions of Title VI also importantly serve this goal. VAWA 2005 would provide \$10 million for public and Indian housing authorities and federally-subsidized housing providers to take appropriate action to address domestic violence, thus enhancing public and subsidized housing responsiveness to the needs of survivors consistent with guidance promulgated by the U.S. Department of Housing and Urban Development (HUD) in 2003.¹ Grants would be available to provide education and training to agency staff, promote the development of improved housing admission and occupancy policies and “best practices,” enhance collaboration with victim service providers, and reduce evictions and denials of housing to victims based on crimes committed by their abusers. The best practices enabled by Title VI will serve as important models to public and subsidized housing providers across the country. *See* § 41405.

Title VI of VAWA 2004 would also provide \$10 million to the Department of Health and Human Services to fund local collaboratives to develop long-term housing solutions for domestic violence survivors. These funds would provide battered women and their children with assistance in their search for housing; financial assistance for security deposits and utilities; transportation, child care, and counseling services; and funds for purchasing, building, or renovating affordable housing units. Such support is crucial for efforts to help women and their children establish lives free from abuse. *See* § 41404.

Title VI would also expand the current transitional housing options available to victims and increase the funding for transitional housing programs from \$30 million to \$40 million. Individuals who must flee their homes because of domestic abuse but have no immediate permanent housing options overwhelmingly depend on emergency shelters and other transitional housing options. Due to limited funds, however, emergency shelters have been unable to satisfy the dire need for transitional housing. In 2004, for example, 32 percent of homeless families that requested emergency shelter were unsuccessful in obtaining it.² Title VI appropriately responds to this need. *See* § 602.

¹ U.S. Department of Housing and Urban Development, *Public Housing Occupancy Guidebook 215-21* (Ch. 19: Domestic Violence) (2003).

² U.S. Conference of Mayors, *A Status Report on Hunger and Homelessness in America's Cities: A 27-City Survey* (December 2004).

Title VI would also amend HUD's planning requirements for public housing authorities, thus ensuring that public housing authorities formally address domestic violence and the needs of victims of domestic violence in their regular planning processes. Public and Indian housing authorities would be required to include in their consolidated plans and five-year plans a statement of the goals, objectives, policies, or programs that would enable the housing authority to serve the needs of victims of domestic violence, dating violence, sexual assault, and stalking. Such planning provisions are particularly valuable given the requirement that the community have the opportunity to review and comment on these plans. Requiring housing authorities to address domestic violence during the planning process thus provides valuable transparency and an important opportunity for community collaboration with victim service providers and others in addressing these issues. *See* §§ 603 and 604.

VAWA 2005 Improves Economic Security for Victims

The fear of job loss and resulting economic instability prevents many battered women from escaping abusive relationships. Title VII of VAWA 2005 would provide victims with emergency benefits and leave in order to address domestic or sexual violence in their lives. This is an important first step toward ensuring victims the economic security they need to leave their abusers.

Specifically, Title VII would permit eligible employees to take up to 10 days of unpaid leave in a 12-month period to address domestic violence, dating violence, sexual assault, or stalking. Leave is permitted to seek medical or psychological attention, obtain emergency housing, or seek legal or law enforcement assistance. The provision makes clear that an employee would be required to provide reasonable notice to his or her employer, along with certification that the employee or his or her family member is a victim of domestic or sexual violence and that the requested leave is for one of the aforementioned purposes. Employers who refuse to grant the required leave or who retaliate against employees who seek such leave, by firing them or otherwise penalizing them, would be subject to a civil action for monetary damages, such as lost wages, employee benefits, public assistance, or other actual monetary losses sustained by the employee as a direct result of the violation. Employees would also be entitled to equitable relief, such as job reinstatement, in appropriate cases. *See* §§ 41504, 41505.

In order to lessen the economic burden that taking unpaid leave might place on families, Title VII also permits states to use Temporary Assistance to Needy Families (TANF) dollars to provide nonrecurring short-term emergency benefits to an individual for the duration of leave described above. *See* § 41506.

Finally, Title VII provides \$10 million toward the establishment and operation of a national clearinghouse and resource center designed to provide information and assistance to employers, labor organizations, and advocates to aid victims of domestic and sexual violence in their efforts to maintain their employment in the face of violence. Such information is

central to efforts to create and expand employer programs to address the needs of employees threatened with abuse. *See* § 702.

Through these provisions, Title VII of VAWA 2005 would enhance survivors' economic security and their ability to address the violence in their lives. For example, the ACLU is currently working with "Louise," who was recently fired from her position as a teaching assistant at a New York City public school. Although Louise had performed well in her position throughout her 10-year tenure, she was recently fired because she had missed several days of work due to domestic violence in her life. After Louise's husband battered her last year, she had several appointments with doctors, prosecutors, police officers, lawyers, and therapists. Never before had Louise experienced domestic violence, and she was struggling to keep her life together in the midst of this crisis. Having lost her job as the result of her domestic violence related absences, she is now struggling to avoid homelessness and to pay the medical bills associated with the domestic violence. Out of financial necessity, she has sent her son to live in a different city with his grandfather. VAWA 2005 would assist women like Louise to avoid being financially devastated by the violence against them.

VAWA 2005 Enhances Victims' Privacy Protections

For survivors of domestic violence, the need for informational privacy is particularly acute. Often the safety of a domestic violence victim who has escaped from her abuser hinges on her ability to keep her identity and location confidential. An abuser can use insecure information to track down and further victimize a survivor, and this risk of exposure and retaliation may make survivors less likely to access emergency housing, health care, and other supportive services. Homeless Management Information Systems (HMIS) is a program recently mandated by HUD to track the use of shelters and services by homeless persons, with the result that anyone who has access to local and regional HMIS databases may be able to gain information on the location and movements of a woman who is homeless because she is fleeing abuse. We are gravely concerned that this collection and dissemination of identifying information presents serious safety hazards for survivors of domestic violence.

VAWA 2005 directly responds to these concerns by providing resources to enhance privacy protections for victims of domestic violence, dating violence, sexual violence, and stalking. These protections range from improvements in protocols, procedures, and policies, to incentives to develop more advanced technology and database systems to protect personally identifying information. *See* § 106.

Similarly, Title VI of VAWA addresses HMIS's impact on victims of domestic violence by amending the McKinney-Vento Homeless Assistance Act to protect the confidentiality of victims of domestic violence, dating violence, sexual assault, and stalking who are seeking housing. Title VI instructs HUD grantees not to disclose personally identifying information about these individuals in HMIS databases. *See* § 605.

VAWA 2005 Broadens Services and Outreach to Victims of Domestic Violence

VAWA 2005 makes it possible for victims of domestic violence and sexual assault to gain access to the services they need to escape from violence. It promotes a coordinated approach to domestic violence that brings together federal, state, and local law enforcement agencies and service providers. Specifically, Title II of VAWA 2005 would provide education, training, and enhanced services to end violence against immigrant, rural, disabled, and older women. These segments of the population are particularly vulnerable to violence due to several factors: geographic isolation and resulting inability to access victim services; physical, economic, social, or psychological dependence on others; and language barriers. Title II also increases the resources allocated to support the national domestic violence hotline. *See* §§ 203-206.

In addition, Title I of VAWA 2005 continues the STOP (Services and Training for Officers and Prosecutors) grants program, which brings police, prosecutors, and victim service providers into close collaboration with one another and works to ensure increased victim safety and support. Title I also provides grants to police departments for the enforcement of protection orders, a proven and necessary tool for increasing victim safety. And, in order to ensure that domestic violence, dating violence, sexual assault, and stalking victims have adequate legal representation, VAWA 2005 would increase support for programs that provide such legal assistance. *See* §§ 101-103.

Such efforts to enhance police and community responsiveness to domestic violence are especially necessary in the aftermath of the Supreme Court's recent decision in *Town of Castle Rock v. Gonzales*. Jessica Gonzales lived in Castle Rock, Colorado, and had a protective order against her estranged husband that ordered him to stay away from her and their three daughters. When her daughters disappeared while playing outside one afternoon, she immediately knew that her husband had taken them, and called the police to seek their help in enforcing the protective order. Despite state law requiring them to make an arrest or seek an arrest warrant in this situation, the police did nothing in response to her repeated, increasingly panicked requests for assistance, even when Ms. Gonzales learned where her husband had taken the girls and informed the police of their location. Instead, the police urged her to wait to see if her daughters would return. Late that night, her husband appeared at the police station, opened fire, and was killed. The bodies of Ms. Gonzales's three daughters were found in his truck; he had murdered them earlier that evening.

Last month, the Supreme Court held that the police department's inaction in the face of state law requiring them to enforce protective orders did not violate the U.S. Constitution. Given this holding, and the lack of police accountability to victims of domestic violence under the Constitution, the importance of efforts pursuant to VAWA to enhance law enforcement and community response to domestic violence has never been greater. These life saving programs must not be permitted to expire.

VAWA 2005 Provides Crucial Protections for Immigrant Victims

Immigrants who are victims of domestic violence face tremendous obstacles when they attempt to flee abusive relationships. The situation is exacerbated when the abusive partner controls the immigration status of the family and uses the threat of deportation to prevent battered immigrant women from seeking help. Recognizing the multiple problems faced by immigrant domestic violence victims, Congress included immigration provisions in VAWA 1994 and VAWA 2000. These provisions were designed to remove obstacles presented by immigration law that prevent immigrant victims from safely fleeing domestic violence. Crucially, VAWA 2000 allowed victims to obtain immigration relief without their abusers' cooperation or knowledge in certain instances. Although these changes in the law have helped to reduce violence against immigrant women, more remains to be done to prevent VAWA-eligible victims of domestic violence, sexual assault, child abuse, or human trafficking from being deported and to provide an economic safety net for those immigrant victims trying to escape violent situations. Title VII of VAWA 2005 proposes changes to enhance the effectiveness of the immigration relief provided to victims under VAWA 2000. These provisions would implement policies to stop the deportation of immigrant victims of domestic violence, sexual assault, and human trafficking; extend immigration relief to all victims of family violence; guarantee economic security for immigrant victims and their children; and provide an economic safety net for trafficking victims. *See* §§ 801-820.

Conclusion

VAWA 2005 is a landmark piece of legislation that makes great inroads toward ending violence against women. We strongly urge you to support the Violence Against Women Act of 2005. The lives of many battered women and children may depend on your support of this important legislation.

For additional information, please contact LaShawn Warren at (202) 675-2317.