

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAKISHA BRIGGS	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	NO. 2:13-cv-02191-ER
BOROUGH OF NORRISTOWN and	:	
DAVID R. FORREST, ROBERT H.	:	
GLISSON, RUSSELL J. BONO, WILLIE G.	:	
RICHET and JOSEPH E. JANUZELLI, in	:	
their individual and official capacities	:	
Defendants	:	

**BRIEF *AMICUS CURIAE* OF THE PENNSYLVANIA COALITION AGAINST
DOMESTIC VIOLENCE, ET AL., IN SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

I. INTEREST OF *AMICI CURIAE* 1

II. STATEMENT OF FACTS 2

III. ARGUMENT 6

 A. NORRISTOWN ORDINANCE 245-3 CREATED A SUBSTANTIAL BARRIER THAT PREVENTED MS. BRIGGS FROM CALLING THE POLICE AND JEOPARDIZED HER LIFE. 6

 1. *Norristown’s former ordinance prevented Ms. Briggs from calling the police for fear that she would be evicted and become homeless.*6

 2. *Norristown’s former ordinance increased Ms. Briggs’ risk of harm and the severity of her injuries because it chilled her from contacting the police, who could have defused the escalating violence of her abusive boyfriend.*.....10

 B. THE EXCEPTION IN NORRISTOWN’S REVISED ORDINANCE FOR CASES INVOLVING DOMESTIC VIOLENCE DOES NOTHING TO RELIEVE THE BARRIER THAT IT CREATES BECAUSE IT FAILS TO ADDRESS THE CHILLING IMPACT THAT THE ORDINANCE HAS ON VICTIMS’ ABILITY TO CALL POLICE AND REQUIRES THE VIOLENCE TO FIRST ESCALATE TO VISIBLE PHYSICAL INJURY TO THE VICTIM. 14

 1. *Norristown’s domestic violence arrest policy is irrelevant to its enforcement of the Norristown ordinance at issue because the policy is not cross-referenced in the ordinances and its existence is inconsequential to the chilling impact that the ordinance has on victims of domestic violence.*.....14

 2. *The exclusion in the revised ordinance for “domestic disturbances” that result in a “mandatory arrest” is grossly deficient to address the barriers it creates for victims of domestic violence in need of police assistance because it fails to exclude many potentially lethal violent or aggressive acts.*15

 C. NORRISTOWN’S REQUIREMENT THAT MS. BRIGGS OBTAIN A PROTECTION FROM ABUSE (PFA) ORDER AGAINST HER DAUGHTER AND BOYFRIEND AS A CONDITION TO PREVENT HER EVICTION CONTRADICTED BASIC LEGAL PRINCIPLES, PLACED MS. BRIGGS AT GREATER RISK OF HARM, AND VIOLATED THE FEDERAL VIOLENCE AGAINST WOMEN ACT (VAWA). 18

 1. *A requirement to obtain a PFA order contradicts basic legal principles and presents an issue of prejudgment before the court.*.....18

 2. *A PFA order is effective for some victims of domestic violence, but for other victims, obtaining and/or enforcing a PFA order places the victim at greater risk of imminent harm.*18

 3. *The Violence Against Women Act prohibits eviction from publicly funded housing for incidents related to an individual’s victimization.*.....21

IV. CONCLUSION..... 22

TABLE OF AUTHORITIES

U.S. Statutes and Authorities

24 C.F.R. § 982.551..... 9
 24 C.F.R. § 982.552..... 9
 42 U.S.C. § 14043..... 8, 9
 42 U.S.C. § 41411..... 8, 21
 Fed. R. App. P. 29..... 1

U.S. Court of Appeals Cases

United States v. Mahin, 668 F.3d 119 (4th Cir. 2012) (citing 139 Cong. Rec. 30,578-79 (1993) (statement of Sen. John Chafee))..... 19

Pennsylvania Statutes

18 Pa. C.S. § 1417..... 18
 18 Pa. C.S. § 2711..... 14, 17
 18 Pa. C.S. § 6015..... 18
 23 Pa. C.S. § 6108..... 8, 18
 40 Pa. C.S. § 1171.1..... 18

Secondary Authorities

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I. INTEREST OF *AMICI CURIAE*

Amicus Curiae, the Pennsylvania Coalition Against Domestic Violence (“PCADV”) submits this brief in accordance with applicable case law and pursuant to the parameters in Federal Rule of Appellate Procedure 29.¹ A motion requesting leave to file was submitted in tandem with this brief. PCADV has not received any remuneration for its participation in this proceeding from either party or other interested individuals.

PCADV is a private non-profit organization that provides services and advocacy on behalf of victims of domestic violence and their minor children. PCADV was established in 1976 and nearly 40 years later, PCADV has grown to a membership of 60 organizations across Pennsylvania consisting of shelters, hotlines, counseling programs, safe home networks, legal and medical advocacy projects, and transitional housing projects for victims of abuse and their children. PCADV offers consultation and technical expertise to state domestic violence coalitions, private and government agencies, and state and federal policy-makers, and provides information and resource materials to the media and general public. PCADV also provides extensive training to law enforcement, judges and justice system personnel, health care providers, religious leaders, drug and alcohol counselors, child protective services workers, batterer intervention service providers, and other professionals who seek justice and safety for victims of domestic violence.

PCADV is well versed in the danger and lethality of domestic violence, as well as the social dynamics and community impact that domestic violence has on our Commonwealth and its citizenry. We submit this brief to assist the court in understanding the dynamics of domestic violence and the potential for the Norristown ordinance – both in its former and revised iteration

¹ See *Waste Mgmt., Inc. v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995); see also *Pa. Environmental Defense Found. v. Bellefonte Borough*, 718 F. Supp. 431, 434-5 (M.D. Pa. 1989).

– to further endanger the lives of victims of domestic violence. Unfortunately, the ordinance at issue fail to properly account for domestic violence and compound the risk of harm to both the victim and the greater community by creating a serious and substantial barrier for victims of domestic violence in need of immediate police assistance. Essentially, the ordinance at issue forces victims to choose between calling police and retaining their housing. But victims need to freely access both safe and stable housing and emergency police assistance to stay safe.

PCADV has a significant and substantial interest in ensuring that victims of domestic violence are able to access both safe and stable housing and emergency police assistance, as they are intrinsically linked to victim safety. Domestic violence is intimately linked to homelessness of women and children. The ordinance, even as revised, increases the already onerous barriers that victims face when attempting to achieve safety because it penalizes a victim's landlord for abuse perpetrated against the victim, and encourages landlords to evict victims of domestic violence who have too many calls to police. This penalty serves only to exacerbate the homelessness rates for victims and their children and may contribute to an attendant increase in the frequency and severity of domestic violence injury and homicide. If allowed to remain in effect, this harmful ordinance will cause untold harm to victims in need of emergency assistance and will contribute to the already sizeable population of homeless individuals in the Commonwealth.

Statements of Interest from the following *Amici Curiae* are appended to this brief:

- **A Woman's Place**
Doylestown, Bucks County, PA
- **Alle-Kiski Area HOPE Center, Inc.**
Tarentum, Allegheny County, PA
- **Blackburn Center Against Domestic & Sexual Violence**
Greensburg, Westmoreland County, PA
- **Centre County Women's Resource Center**
State College, Centre County, PA
- **Clinton County Women's Resource Center, Inc.**
Lock Haven, Clinton County, PA
- **Crisis Center of Lawrence County**
New Castle, Lawrence County, PA
- **Domestic Violence Services of Southwestern PA**
Washington, Greene and Fayette counties, PA
- **Futures Without Violence**
(formerly Family Violence Prevention Fund)
Washington, D.C.
- **Laurel House**
Norristown, Montgomery County, PA
- **Lutheran Settlement House, Bilingual Domestic Violence Program**
Philadelphia, Philadelphia County, PA
- **National Housing Law Project**
San Francisco, CA
- **National Network to End Domestic Violence (NNEDV)**
Washington, D.C.
- **Sargent Shriver National Center on Poverty Law**
Chicago, IL
- **Schuylkill Women In Crisis**
Pottsville, Schuylkill County, PA
- **Survivors, Inc.**
Gettysburg, Adams County, PA
- **Women Against Abuse**
Philadelphia, Philadelphia County, PA
- **Women's Center and Shelter of Greater Pittsburgh**
Pittsburgh, Allegheny County, PA
- **Women's Center of Montgomery County**
Norristown, Montgomery County, PA
- **Women's Resource Center of Northeastern PA**
Scranton, Lackawanna & Susquehanna Counties, PA
- **Women In Need, Inc.**
Chambersburg, Franklin & Fulton Counties, PA
- **Women Of Color Caucus, PCADV**
Harrisburg, PA
- **YWCA of Greater Harrisburg**
Harrisburg, Dauphin County, PA

II. STATEMENT OF FACTS

Defendants' repeated threats of eviction for calling police pursuant to Norristown Ordinance 245-3 deterred Ms. Briggs from calling the police on numerous occasions. Forced to choose between police protection and the loss of her housing, Ms. Briggs stopped calling the police even when she most direly needed their assistance, which resulted in increased physical attacks by Ms. Briggs' then boyfriend. While the ordinance has since been revised, the revisions do not alleviate the serious and substantial barrier that the ordinance presents for victims of domestic violence – including Ms. Briggs. *Amici Curiae* provide the following chart to assist this Court in sorting out the snarl of facts, as it is imperative to understand the sequence of events in order to see the extent of the chilling impact that Norristown's Ordinance had on Ms. Briggs, and continues to have on victims of domestic violence in need of police intervention and assistance.

January 20, 2012	Police responded to Ms. Briggs' call for assistance because her adult daughter broke a window in the home. (Pl. Complaint para. 49, p. 9; Def. Memo p.3; <i>See</i> Def. Exhibit 5.)
February 4, 2012	Police responded to Ms. Briggs' call for assistance and cited her daughter for public drunkenness because of an argument between Ms. Briggs and her adult daughter in her home. (Pl. Complaint para. 49, p. 9; Def. Memo p.3; <i>See</i> Def. Exhibit 5.)
March 12, 2012	Police responded to Ms. Briggs' call for assistance. (Pl. Complaint para. 49, p. 9; Def. Memo p.3.)
March 17, 2012	Police responded to Ms. Briggs' call for assistance. (Pl. Complaint para. 49, p. 9; Def. Memo p.3.) Police responded to this call and the aforementioned calls but failed to inform Ms. Briggs of the former Norristown Ordinance (Section 245-3), nor mention at that time whether these calls would count as a strike. (Pl. Complaint para. 50, p. 9.)
April 9, 2012	Ms. Briggs' adult daughter called police to respond to Ms. Briggs' home after Ms. Briggs' boyfriend hit Ms. Briggs. The boyfriend was cited for disorderly conduct, possession of marijuana and public drunkenness. (Pl. Complaint para. 51-53, p. 10.) Defendants claim that boyfriend was cited, not because of any injury, but because he was being loud. (Def. Memo p. 3.) When police arrived, they informed Ms. Briggs that they were tired of responding to calls at her residence and this was her first strike against her

	<p>pursuant to the Norristown Ordinance (Section 245-3). (Pl. Complaint para. 55, p. 10.)</p> <p>Ms. Briggs was not provided with any information or documentation about the ordinance, or its potential exceptions. In fact, the officer who informed Ms. Briggs of the ordinance, and her strikes, actually said, “You are on three strikes. We’re gonna have your landlord evict you.” (Pl. Complaint para. 55-56, p. 10)</p> <p>Ms. Briggs spoke with her adult daughter and boyfriend after receiving this warning, told them that any “disorderly behavior” could result in her eviction, and stressed to them that she needed to keep her housing to raise her three-year-old daughter. (<i>Id.</i> para. 57, p. 10; See Def. Exhibit 5.)</p>
April 15, 2012	<p>Neighbors called police, reporting erroneously that shots were fired, and police entered the residence with firearms drawn. A fight arose in Ms. Briggs’ home between Ms. Briggs’ boyfriend and the boyfriend of Ms. Briggs’ adult daughter. Both men were arrested and charged with simple assault and reckless endangerment. Ms. Briggs did not receive any warning regarding enforcement of the ordinance while police were at the home. (Pl. Complaint para. 59-63, p. 11.)</p> <p>The police report identified Ms. Briggs’ home as a “Three Strike Property.” (Def. Exhibit 5.)</p>
April 16, 2012	<p>Mr. Sudman, Ms. Briggs’ landlord, received a letter from the Borough of Norristown indicating that the April 15 police call was Ms. Briggs’ second strike. A third strike would result in her eviction and suspension of Mr. Sudman’s rental license. (Pl. Complaint para. 64, p. 11; Def. Exhibit 7.)</p> <p>After learning that she had two strikes against her, Ms. Briggs broke up with her boyfriend in an attempt to keep her housing and make the violence stop. (Pl. Complaint para. 65-67, p. 11.)</p>
May 2, 2012	<p>An unknown person called the police when Ms. Briggs’ now ex-boyfriend chased her with a brick in the alleyway and attacked her on the porch. When police responded, Ms. Briggs was on the porch in only her bra because her ex-boyfriend had ripped off her shirt in the attack. Ms. Briggs declined to tell police about the attack because she feared it would result in her eviction. Police eventually removed her ex-boyfriend from her home and cited him for public drunkenness and disorderly conduct. Police also cited Ms. Briggs for disorderly conduct. (Pl. Complaint para. 68-74, p. 1-12; Def. Exhibit 5.)</p> <p>On the same day, Norristown sent a letter to Mr. Sudman, informing him of the third call to police and initiating a rental license revocation proceeding. (Def. Memo p.2; Def. Exhibit 8.)</p>
May 23, 2012	<p>Norristown borough officials convened a meeting with Mr. Sudman and Ms. Briggs regarding Mr. Sudman’s license revocation and Ms. Briggs’ continued occupancy of her home. There are no records, transcript, or minutes from this meeting, and Ms. Briggs was not given an opportunity to present any information to explain the events leading up to each police call.</p>

	<p>(Pl. Complaint para. 76-83, p. 12-13; Def. Memo p. 2.)</p> <p>Defendant Forrest wrote to Mr. Sudman that same day and explained that the property was placed on a 30-day probationary period. As a condition to this probationary period, Ms. Briggs was ordered to obtain a Protection From Abuse order (PFA) and was informed that she could not have any further police calls to her home during the probationary period.</p> <p>(Pl. Complaint para. 84-86, p. 13-14; Def. Memo p.2; Def. Exhibit 9.)</p>
Early June 2012	<p>As a result of the May 2 incident, Ms. Briggs' ex-boyfriend was incarcerated and released in mid-June. He promptly went to Ms. Briggs' residence and threatened, "You are going to be with me or you are going to be with no one." Ms. Briggs asked him to leave, but he refused. Unable to physically remove him on her own, and unable to call police for fear of eviction, Ms. Briggs acquiesced to his demands and allowed him to stay in her apartment.</p> <p>(Pl. Complaint para. 87-92, p. 14.)</p>
June 23, 2012	<p>A neighbor called the police because of an altercation at Ms. Briggs' home. Ms. Briggs' ex-boyfriend invited his friends over and, unable to call police for fear of eviction, she allowed them to stay. Later that evening, Ms. Briggs' ex-boyfriend attacked her for allegedly "flirting" with his friends. He bit and tore her lip and broke a glass ashtray across her face, leaving a two-inch gash. He then stabbed her in the neck with the broken glass, leaving a four-inch puncture wound. In an attempt to escape this brutal assault, Ms. Briggs fled her home only to be followed by her ex-boyfriend wielding a large stick. By the time a neighbor finally called police, Ms. Briggs had to be flown by helicopter to the University of Pennsylvania hospital for trauma treatment.</p> <p>(Pl. Complaint para. 93-102, p. 14-15; Def. Exhibit 5.)</p>
June 26, 2012	<p>Just three days after Ms. Briggs was stabbed, her landlord received a letter from Defendant Forrest informing him that his rental license was revoked, and that Ms. Briggs had 10 days to vacate the property.</p> <p>(Pl. Complaint para. 104, p. 15; Pl. Exhibit D.)</p>
July 12, 2012	<p>Ms. Briggs obtained a PFA against her ex-boyfriend, which is set to expire on July 11, 2015.</p> <p>(Pl. Complaint para. 103, p. 15.)</p>
August 22, 2012	<p>After initially postponing the eviction proceeding to allow for the Borough of Norristown to reconsider its decision, the local Magisterial District Justice ruled that Ms. Briggs could remain in her home if she paid her rent to date as well as Mr. Sudman's filing fees.</p> <p>(Pl. Complaint para. 107-113, p. 16-17.)</p>
August 27, 2012	<p>The Norristown Borough continued to pursue removal of Ms. Briggs from her home, and revocation of Mr. Sudman's rental license. Defendant Forrest strongly urged Mr. Sudman to encourage Ms. Briggs to voluntarily vacate the property.</p> <p>(Pl. Complaint para. 114-115, p. 17.)</p>
Sept. 6, 2012	<p>Defendant Forrest emailed Mr. Sudman stating the Borough of Norristown reconsidered the situation and decided to drop the matter, restore his license</p>

	and permit Ms. Briggs to remain in the residence. (Def. Exhibit 1-A.)
Sept. 9, 2012	An anonymous female called the police. Ms. Briggs left her home to go to work when her ex-boyfriend approached and confronted her about his arrest for previously assaulting her. The ex-boyfriend physically assaulted Ms. Briggs resulting in two large areas of redness and slight swelling on her forehead and a flesh wound to her thumb caused by his biting her. Her ex-boyfriend was charged with assault, PFA violation, outstanding warrants and possession of a controlled substance. (Def. Exhibit 5.)
Sept. 10, 2012	Counsel for Ms. Briggs in the instant case sent a letter to the Borough of Norristown demanding that it cease its repeated attempts to enforce its ordinance against Ms. Briggs and outlining the various ways that the ordinance violated the Constitution. (Pl. Exhibit F.) At a subsequent meeting, Norristown agreed to cease its enforcement of the ordinance against Ms. Briggs and Mr. Sudman, restore the pre-enforcement positions of other recently impacted individuals (tenants and landlords) and seek repeal of the ordinance in its entirety. Defendant's counsel later reneged on its agreed settlement terms. (Pl. Complaint para. 116-121, p. 17-19.)
Nov. 7, 2012	Defendants repealed the ordinance because it resulted "in deprivation of property rights for tenants without due process in violation of the 5 th and 14 th Amendments to the U.S. Constitution and other federal and state statutes, [and its repeal was] in the best interests of protecting the rights of the residents of Norristown." (Pl. Complaint para. 123-124, p. 19.)
Dec. 4, 2012	Defendants enacted a new ordinance (Ordinance No. 12-15) to replace former section 245-3 of the Norristown Municipal Code. This replacement ordinance allows – but does not require – landlords to evict tenants for repeated police calls and permits Norristown Municipal Administrator to assess a series of daily, escalating criminal fines against landlords of properties where police have been called to respond to "disorderly behavior" on three occasions within a four-month period. (Pl. Exhibit J.) The Norristown Chief of Police was vested with the sole discretion to determine what constitutes "disorderly behavior," and it may include any "domestic disturbances that do not require that a mandatory arrest be made." (Pl. Complaint para. 125-135, p. 19-21.)

III. ARGUMENT

A. Norristown Ordinance 245-3 Created a Substantial Barrier That Prevented Ms. Briggs From Calling the Police and Jeopardized Her Life.

Domestic violence is a pattern of abusive behaviors used by an adult or adolescent against a current or former intimate partner to establish or maintain power and control in the relationship. It includes a range of tactics that may be physical, sexual, psychological or economic in nature. According to the Centers for Disease Control and Prevention, an astounding one in every three women and one in every seven men experience domestic violence in their lifetime.² The Norristown ordinances at issue in this case, both former section 245-3 (hereinafter “former ordinance”) and the newly adopted Ordinance 12-15 (hereinafter “revised ordinance”) passed in December 2012, create barriers for victims of domestic violence within Norristown’s jurisdiction – and in particular, Ms. Briggs – for utilizing police intervention to protect themselves and their families from the dangerous and abusive acts of their batterers.

1. Norristown’s former ordinance prevented Ms. Briggs from calling the police for fear that she would be evicted and become homeless.

Close examination of the facts in the instant case establishes that, for Ms. Briggs, the former ordinance created a real, substantial and dangerous barrier that prevented her from contacting police for emergency assistance. As the timeline in the statement of facts highlights, Ms. Briggs was hindered from calling police in the early part of 2012. As the evidence submitted by Plaintiff and Defendants illustrates, Ms. Briggs made phone calls to the police when she needed police intervention at her home. In fact, police responded to calls at her home on January 20, February 4, March 12, and March 17 without hesitation. (Pl. Complaint para. 49, p. 9; Def. Memo p.3; Def. Exhibit 5.) On April 9, 2012, however, police informed Ms. Briggs that as a

² Ctr. for Disease Control & Prevention, *The National Intimate Partner and Sexual Violence Survey* (2010), available at <http://www.cdc.gov/violenceprevention/nisvs/>.

result of her call to them, she now had a strike against her pursuant to Norristown's former ordinance. Further, the police informed her that any further calls to police would lead to her eviction. The timeline reveals that following the April 9 contact with the police, Ms. Briggs no longer called the police. Neighbors or other bystanders made all calls to the police from that point forward.

Ms. Briggs made her decision to stop calling police in the same manner that any reasonable individual does, by weighing the potential consequences and risks. Ms. Briggs knew that she and her three-year-old daughter would be homeless if she were evicted because an eviction would destroy her chances of obtaining a second housing subsidy and finding a new landlord willing to rent to her. Ms. Briggs informed her boyfriend and adult daughter of the former ordinance and pleaded with them not to cause further disruption. (Pl. Complaint para. 57, p. 10; See Def. Exhibit 5.) And, after another attack by Ms. Briggs' boyfriend less than a week later resulted in "strike two" based on a neighbors' call to police, she attempted to end the relationship to save her housing and make the violence stop. (Pl. Complaint para. 65-67, p. 11.)

The threat that Ms. Briggs might lose her housing as a result of the former ordinance was real and substantial. The Statement of Interest submitted by *Amicus Curiae, Survivors Inc.*, a local domestic violence program serving Adams County, further illustrates this reality. Survivors Inc.'s statement recounts the horrific facts of a client who recently sought refuge and services from their program.³ After gathering the resources she needed, the client chose to relocate to Norristown. Unfortunately, her husband followed her there and continued to stalk, harass, and threaten her. Each time, neighbors called police. Shortly after another attack, she was shocked to learn that she was being evicted. Sadly, this client and her two small children had no place to go,

³ See *infra* Appendix, Statement of Interest: Survivors Inc.

they were homeless.⁴

In light of the palpable threat of homelessness, Ms. Briggs' decision to refrain from contacting police after learning of the former ordinance was both justified and reasonable. Domestic violence is a leading cause of homelessness in the Commonwealth and across the United States.⁵ One study of homelessness in regions across the nation, including the Philadelphia region, revealed that as many as 57 percent of homeless women reported domestic violence to be the *immediate* cause of their homelessness.⁶ The reality of homelessness for victims of domestic violence is highlighted by the legislative efforts of both state and federal governments to prevent victims from becoming homeless.⁷

In enacting the Violence Against Women Act, Congress made findings that further illuminate the issues victims of domestic violence face if they become homeless.⁸ Congress found that “women who leave their abusers frequently lack adequate emergency shelter options. The lack of adequate emergency options for victims presents a serious threat to their safety and the safety of their children.”⁹ The National Network to End Domestic Violence found in its one-day census of domestic violence programs across the country that 65 percent of the unmet needs of victims of domestic violence were for emergency shelter and transitional housing.¹⁰ Even with adequate shelter available, the average permissible stay at an emergency shelter is 60 days, while

⁴ *Id.*

⁵ Nat'l Law Ctr. on Homelessness & Poverty, *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country*, Executive Summary (Feb. 2007).

⁶ *Id.*

⁷ 23 Pa. C.S. § 6108 (providing that a PFA petitioner may request, and the court may grant, exclusive possession of shared residences); 42 U.S.C. § 41411 (prohibiting publically funded housing or subsidized housing providers from discriminating against victims of domestic violence).

⁸ 42 U.S.C. § 14043(e).

⁹ 42 U.S.C. § 14043(e)(5).

¹⁰ Nat'l Network to End Domestic Violence, *Domestic Violence Counts 2012: A 24-Hour Census of Domestic Violence Shelters and Services*, (2013) available at http://www.nnedv.org/downloads/Census/DVCounts2012/DVCounts12_NatlReport_Color.pdf.

the average length of time it takes a homeless family to secure housing is 6 to 10 months.¹¹

The intersection between homelessness and domestic violence is attributable to a multitude of factors that prevent victims from accessing safe, stable housing. Inadequate housing and shelter options, discrimination and poverty exacerbate a victim's plight. Even if a victim finds a suitable and affordable place to live, housing providers often refuse to rent to housing applicants when they learn that the applicant is a domestic violence victim.¹² The Violence Against Women Act prohibits public and subsidized housing providers from discriminating based on the victim's status, but the lack of affordable housing and long wait lists for assisted housing force many women and children to choose between abuse and homelessness.¹³ Additionally, the protections provided under the Violence Against Women Act are not self-implementing and many victims do not have access to legal assistance to assert their rights under the act. Therefore, when a victim who receives a public housing subsidy or Section 8 voucher is evicted by a landlord in the manner that both the former and current Norristown ordinances set forth, the victim faces the very real threat of losing that subsidy or voucher as a result of the eviction.¹⁴

¹¹ 42 U.S.C. § 14043(e)(6).

¹² *Id.* (A study of housing providers in New York City that found 27.5% refused to rent or failed to follow up as promised when they learned that an applicant was a victim of domestic violence).

¹³ *Id.*

¹⁴ While VAWA prohibits public and subsidized housing providers, landlords, and owners from discriminating against victims of domestic violence, dating violence, sexual assault, and stalking, it is not self-implementing. Many housing providers are not aware of the prohibition and, even if they are aware, it is not always apparent to the victim the reason why she or he is denied housing assistance. Thus, as a result of this disconnect in proper implementation, eviction places tenants who are victims of domestic violence in a position where she or he may be threatened with the loss of public assistance. *See* 24 C.F.R. § 982.552(b)(2) (mandatory termination for eviction for serious violation of the lease and discretionary termination for serious or repeated violation of the lease); 24 C.F.R. § 982.551 (termination for violation of family obligations). If the tenant is terminated, she may have to wait a long time before getting another voucher, as waiting lists are long and, in some cases, the programs are closed to new applications. Some public housing authorities (PHAs) deny vouchers to families who have been previously terminated from the program or who have been evicted. Further, the housing choice voucher regulations allow a PHA to reject applicants if they have been evicted from federally assisted housing in the prior five years. 24 C.F.R. 982.552(c)(ii); *see also* 24 C.F.R. 982.552(c), 24 C.F.R. 982.551.

See also Nat'l Law Ctr. on Homelessness & Poverty, *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country*, Executive Summary (Feb. 2007).

Establishing a residence and paying for childcare or other necessities can also be a daunting and sometimes insurmountable task for victims who have been subjected to the isolation and control that so often accompanies physical violence.¹⁵ Abusers often forbid victims from working or establishing relationships outside the home and regularly isolate them from family or other supportive networks. This tactic of isolation makes it very difficult for victims to establish independence from an abuser, even after separation. Moreover, homelessness may exacerbate the trauma a victim has already suffered, making it even harder for victims to recover.¹⁶

The facts in the case at bar show that Ms. Briggs refrained from contacting police only after she learned of Norristown's former ordinance and the impending threat of eviction. If it weren't for her neighbors' call to police, the injuries she sustained would have likely killed her. Thus, it is undeniable that Ms. Briggs' decision to refrain from calling police was directly and causally related to Norristown's former ordinance and her injuries were, unfortunately, exacerbated by Norristown's attempts to enforce the former ordinance against her.

2. *Norristown's former ordinance increased Ms. Briggs' risk of harm and the severity of her injuries because it chilled her from contacting the police, who could have defused the escalating violence of her abusive boyfriend.*

Given the clear threat of homelessness, Ms. Briggs' decision to refrain from contacting police after learning of the former ordinance was both justified and reasonable. Unfortunately, when Ms. Briggs weighed the relative risks involved in her decision to both stop calling police and break up with her boyfriend to prevent her eviction, she did not predict that the severity of violence in an abusive relationship would increase and escalate. In fact, research shows that

¹⁵ Mary Ann Dutton, *Symposium on Domestic Violence: Article: Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 Hofstra L. Rev. 1191, 1233 (1993).

¹⁶ *Id.*

violence more regularly results in homicide after separation.¹⁷ Domestic violence causes serious injury and death to women and children in Pennsylvania and across the country. In 2011, there were 166 domestic violence fatalities in Pennsylvania; 118 victims were killed.¹⁸

In domestic violence cases, “the death blow [may be] the culminating event in a long history of violent interpersonal tensions.”¹⁹ Indeed, “[i]t is vital to understand that battering is not a series of isolated blow-ups. It is a process of delicate intimidation intended to coerce the victim to do the will of the victimizer.”²⁰ And, notably, violence against victims of domestic violence is more likely to occur after a couple has separated or divorced than during the time of cohabitation.²¹ *The most dangerous time for a victim of domestic violence is the point at which he or she decides to end the relationship or leave the batterer because the abuser equates the victim’s leaving with a loss of control over the victim.* Thus, the batterer is more likely to increase physical abuse in order to regain control after the victim leaves or ends the relationship. Ms. Briggs’ experiences over the past year unfortunately bears witness to the escalation of abuse that so often occurs after a victim has attempted to end a violent or coercive relationship.

After being released from prison just a few weeks after his last attack against Ms. Briggs, her ex-boyfriend – emboldened by the fact that she would no longer call police – forced his way into Ms. Briggs home and would not leave, despite Ms. Briggs’ request for him to do so. (Pl. Complaint para. 87-92, p. 14.) As research could have predicted, the violence against Ms. Briggs

¹⁷ It is noteworthy that the Norristown domestic violence arrest policy explicitly recognizes the increased threat to victims of domestic violence upon separation: “[M]ost serious assaults and killings occur at the time a victim is separating from the assailant.” (Def. Memo, Exhibit 2.)

¹⁸ See PCADV, *Domestic Violence Fatalities In Pennsylvania*, <http://www.pcadv.org/Learn-More/Domestic-Violence-Topics/Fatalities/>.

¹⁹ Ann Goetting, *Female Victims of Homicide: A Portrait of Their Killers and the Circumstances of Their Deaths*, 6 *Violence and Victims* 163 (1991).

²⁰ Ann Jones, *Next Time, She’ll Be Dead: Battering and How to Stop It* 88 (1994).

²¹ See *supra* note 17.

intensified in seriousness and severity after her attempted separation.²² But, unlike victims in other jurisdictions who may rely on police assistance in the face of escalating post-separation violence, Ms. Briggs was unable to call police to defuse the violence before it escalated to the point where neighbors overheard and called the police. On June 23, 2012, Ms. Briggs' ex-boyfriend slashed and stabbed her neck with pieces from a glass ashtray that he had broken on her face. (Pl. Complaint para. 93-102, p. 14-15; Def. Exhibit 5.) By the time neighbors were aware of the violence and notified police, Ms. Briggs required life-flight assistance to transport her to the hospital. (*Id.*)

Implementing Norristown's former or revised ordinance against Ms. Briggs and other victims of domestic violence in Norristown's jurisdiction creates a serious risk to the safety of victims of domestic violence, bystanders, and police in Norristown's jurisdiction. Norristown knows the safety risks associated with escalated domestic violence first-hand. The rationale for the Norristown police department's domestic violence policy states:

A review of research about law enforcement responses to domestic violence shows that

a. domestic violence calls are dangerous;

...

f. most serious assaults and killings occur at the time a victim is separating from the assailant;

g. the majority of officers killed in domestic violence cases were killed out-of-doors, most before even getting to the residence.

h. domestic violence incidents have a very high percentage of ambushes.

For all these reasons this department requires very serious attention to specific safety tactics to minimize risks to victims, witnesses and police officers.²³

The police department policy correctly identifies that the risk of injury to police officers, as well as bystanders and children, increases when abuse escalates. Between 2008 and 2012 in

²² Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* 115 (2007). "Indeed, the risk of severe or fatal injury increases with separation. Almost half of the males on death row for domestic homicide killed in retaliation for a wife or lover leaving them." *Id.*

²³ Def. Memo, Exhibit 2.

Pennsylvania, six police officers and forty-six children were murdered during domestic violence attacks.²⁴ Countless other bystanders, family members, and friends were also harmed, and some of them murdered, when caught in the line of fire.²⁵ As Ms. Briggs' horrific story exemplifies, if a victim tries to end the relationship with an abusive partner because police have warned that further calls will result in eviction, that victim is unintentionally but substantially increasing the risk that physical violence will escalate in frequency and severity. The ordinance's threat of eviction – in both the revised and former version – only compounds this escalation because, at the same time that the victim is forced to separate from her or his abuser to save their housing, the abuser is given carte blanche to continue to harass and abuse the victim without concern that the victim will call the police.

It is important to understand that victims of domestic violence can, and often do, successfully leave an abuser. But the decision to leave an abusive relationship must rest exclusively with the victim, and should not be at the behest of local government or under threat of eviction from stable housing. It takes careful planning for a victim to successfully separate from an abuser. In fact, it takes victims an average of seven unsuccessful attempts to leave before successfully separating from an abuser. The process of separation is lengthy because abusers employ a range of tactics, including physical and emotional abuse, financial control, stalking and threats to compel their victim to return. Each time a victim attempts to leave, he or she is able to gather more resources, making the next attempt to leave more likely to be lasting.

Ultimately, victims are successful at separating from abusive partners when a community of neighbors, friends, family members, law enforcement, and other professionals assist them to

²⁴ See PCADV, *Domestic Violence Fatalities In Pennsylvania*, <http://www.pcadv.org/Learn-More/Domestic-Violence-Topics/Fatalities/>.

²⁵ *Id.*

gain the necessary resources and protection to allow them to leave successfully.²⁶ Unfortunately, the justice system fails victims in this respect. As the American Bar Association explains, prior negative experience with the justice system is often cited as the reason for why a victim stays with or returns to an abuser.²⁷ When a government entity forces a victim to leave before she or he is able to gather essential information and resources, the victim is more likely either to return to the abuser or become homeless.

B. The exception in Norristown’s revised ordinance for cases involving domestic violence does nothing to relieve the barrier that it creates because it fails to address the chilling impact that the ordinance has on victims’ ability to call police and requires the violence to first escalate to visible physical injury to the victim.

1. *Norristown’s domestic violence arrest policy is irrelevant to its enforcement of the Norristown ordinance at issue because the policy is not cross-referenced in the ordinances and its existence is inconsequential to the chilling impact that the ordinance has on victims of domestic violence.*

PCADV commends Norristown’s police department for its policy regarding domestic violence arrests. But the police policy for domestic violence arrests is irrelevant to the case at bar. The exception in both the former and revised ordinances do not exempt all domestic violence calls, it only exempts calls that result in a “mandatory arrest.” But there is no cross-reference to the domestic violence arrest policy that “mandates” arrests to be made in certain cases, nor does either ordinance contain an explanation of the type of calls that would be exempted. These deficiencies are glaringly fatal to the clarity of the exception in both the former and revised ordinances, especially given that the law of the Commonwealth permits arrests when there are visible injuries, but does not mandate that an arrest be made.²⁸

²⁶ Am. Bar Ass’n, Comm’n on Domestic Violence, *Why Abuse Victims Stay: Breaking the Silence: Journeys of Hope: Guide to Community Outreach*, available at

<http://www.americanbar.org/content/dam/aba/migrated/publiced/whystay.authcheckdam.pdf>.

²⁷ *Id.*

²⁸ 18 Pa. C.S. § 2711.

Moreover, neither the former or revised versions of the ordinance require police to advise individuals of the exception. When police respond to an incident involving “disorderly conduct” that does not require a mandatory arrest, but warn the tenant that future calls to police will result in additional strikes in violation of the ordinance, the tenant is chilled from calling police for assistance to defuse incidents of domestic violence or crimes perpetrated against them.

2. *The exclusion in the revised ordinance for “domestic disturbances” that result in a “mandatory arrest” is grossly deficient to address the barriers it creates for victims of domestic violence in need of police assistance because it fails to exclude many potentially lethal violent or aggressive acts.*

While the law in this Commonwealth does not mandate arrest, the exception in the former and revised ordinances for incidents resulting in “mandatory arrest” presumably refers to the Norristown domestic violence arrest policy.²⁹ According to the Norristown domestic violence arrest policy, arrests are mandated when a responding officer has probable cause to arrest based on injuries visible to the officer or other corroborating evidence. (Def. Memo, Exhibit 2, p 9.) But domestic violence attacks do not always result in visible injury, even when the abuser has brought their victim within inches of her or his life. In cases involving strangulation, for example, visible injuries often do not appear until days or weeks later – if at all. In a comprehensive study of 300 strangulation cases, researchers found that police reported no visible injuries in fifty percent of the cases and, in thirty-five percent of the cases, the victims’ injuries were too minor to photograph.³⁰ The lack of visible injury in strangulation cases is not an indication that the attack was not severe. Latent and/or hidden injuries, such as swelling or other

²⁹ See *supra* section III.b. 1. , page 14.

³⁰ Nat’l Dist. Atty Ass’n, Nat’l Ctr. for Prosecution of Child Abuse, *And Then He Choked Me: Understanding, Investigating, and Prosecuting Strangulation Cases*, 20-8 UPDATE NEWSLETTER, at 2 (2007) (citing Gael B. Strack, et al., *A Review of 300 Attempted Strangulation Cases, Part I: Criminal Legal Issues*, 21-3 J. EMERG. MED. 303, 305 (2001)).

injuries to the neck or throat, can be life threatening.³¹ Even without a latent or hidden injury, the use of strangulation by an abuser is a factor highly correlated with domestic violence homicide.³² In fact, the *Journal of Emergency Medicine*, a publication of the American Academy of Emergency Medicine, recently published a study which found that “[p]rior non-fatal strangulation was associated with greater than six-fold odds of becoming an attempted homicide, and over seven-fold odds of becoming a completed homicide.”³³

Moreover, police are often unable to identify corroborating evidence sufficient to ascribe an incident to one of the parties. This lack of corroborating evidence may result in a dual arrest or no arrest at all.³⁴ The case at bar presents a perfect illustration of this unfortunate reality. On May 2, 2012, Ms. Briggs’ then-boyfriend chased her with a brick and assaulted her, ripping her shirt off in the process. (Pl. Complaint para. 68-74, p. 1-12; Def. Exhibit 5.) The responding officers cited both Ms. Briggs and her then-boyfriend for disorderly conduct. In fact, they noted in their report that Ms. Briggs had “removed” her shirt during the fight. (*Id.*) Characterization of the events on May 2 as a mutual fight is a far cry from the real and imminent danger that confronted Ms. Briggs. Thus, the exception in both the original and revised ordinance for incidents resulting in “mandatory arrests” did not and would not have applied to Ms. Briggs and is insufficient to assuage the serious safety concern that the ordinance presents to all victims of domestic violence within Norristown’s jurisdiction.

Domestic violence takes many forms, and often does not result in injuries or present any corroborating evidence. But even without visible injury or corroborating evidence, an incident

³¹ *Id.* at 3.

³² *Id.*

³³ Nancy Glass et al., *Non-fatal Strangulation is an Important Risk Factor for Homicide of Women* 35 *J. Emerg. Med.* 329-335 (2008), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2573025/>.

³⁴ See generally David Hirschel et al., *Explaining the Prevalence, Context, and Consequences of Dual Arrest in Intimate Partner Cases* (2007), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/218355.pdf>

involving domestic violence may indicate a high degree of lethality.³⁵ Strangulation is one example mentioned above, but there are many other examples of lethal behavior that does not rise to the level of a “mandatory arrest” under Norristown’s domestic violence arrest policy. Terroristic threats, repeated calls to police, and violation of a non-registered foreign protection orders are all examples of behavior that do not rise to the level of a mandatory arrest in the Norristown police policy.³⁶ (Def. Memo, Exhibit 2, at 9-10). But these behaviors do indicate a substantial risk of lethality for the victim.³⁷ To truly protect both victims, police and the public from a potentially lethal attack by an abuser, victims must be confident in their ability to call police to diffuse a potentially lethal incident without fear of consequences to stable housing.

Defendants assert that Ms. Briggs did not suffer an injury from either the original or revised ordinance because “Norristown halted any attempt to pursue its remedies under the old ordinance ... and had specifically advised Plaintiff that it would not pursue its remedies.” (Def. Memo p. 7). First, Norristown did not halt its proceedings until after Ms. Briggs was brutally attacked on June 23, 2012. In fact, it continued to aggressively pursue Ms. Briggs’ eviction even while she recovered from her stab wounds. Norristown’s assurance does not overcome Plaintiff’s fear of eviction if she would have future need for police assistance. Norristown may have pledged not to enforce the former ordinance against Ms. Briggs, as they faced legal action for so doing, but the possibility remains that Norristown may still legally enforce its revised ordinance against Ms. Briggs. And, Norristown’s pledge to Ms. Briggs does nothing to address the chilling

³⁵ Jacquelyn C. Campbell et al., *Assessing Risk Factors for Intimate Partner Homicide*, 250 NAT’L INST. OF JUSTICE J. 14 (2003) (“The Danger Assessment study found that women who were threatened or assaulted with a gun were 20 times more likely than other women to be murdered. Women whose partners threatened them with murder were 15 times more likely than other women to be killed.”); *see also* Jacquelyn C. Campbell, et al., *The Danger Assessment Instrument: Risk Factors of Homicide of and by Battered Women*, in C.R. Block & R.L. Block, Nat’l Inst. of Just., QUESTIONS AND ANSWERS IN LETHAL AND NON-LETHAL VIOLENCE, 30 (1992).

³⁶ It is interesting to note that the Norristown domestic violence arrest policy does not mandate arrest for terroristic threats; however, the law does allow for probable cause arrests for the same. 18 Pa. C.S. § 2711; *see also supra* Section III.b. 2. Page 15.

³⁷ *See Campbell et al., supra* note 35.

impact that the ordinances continue to have on other victims of domestic violence within its jurisdiction.

C. Norristown's Requirement That Ms. Briggs Obtain a Protection From Abuse (PFA) Order Against Her Daughter and Boyfriend As a Condition to Prevent Her Eviction Contradicted Basic Legal Principles, Placed Ms. Briggs At Greater Risk of Harm, and Violated the Federal Violence Against Women Act (VAWA).

1. *A requirement to obtain a PFA order contradicts basic legal principles and presents an issue of prejudgment before the court.*

The Protection From Abuse Act provides civil relief to victims of intimate partner abuse. Like any other civil remedy, the petitioner is required to meet the legal standards at issue in order to access relief and, likewise, must go before a judge to determine whether that standard is met. Awarding a civil remedy is at the discretion of the trial court³⁸ and, thus, requiring anyone to *obtain* a PFA order – or any civil court order for that matter – goes beyond what an individual can reasonably be required to do.

2. *A PFA order is effective for some victims of domestic violence, but for other victims, obtaining and/or enforcing a PFA order places the victim at greater risk of imminent harm.*

Pennsylvania has a high stake in protecting victims of domestic violence.³⁹ Those impacted directly by domestic violence cross ethnic, racial, age, national origin, religious and socioeconomic lines. In its effort to ameliorate the scourge of domestic violence, the Pennsylvania legislature enacted broad relief under the PFA Act and continues to reform other areas of the law to assist victims of domestic violence.⁴⁰ Pennsylvania's Department of Public

³⁸ 23 Pa. C.S. § 6108 (providing for relief).

³⁹ *See generally*, FINAL REPORT OF THE PENNSYLVANIA SUPREME COURT COMMITTEE ON RACIAL AND GENDER BIAS IN THE JUSTICE SYSTEM, CH. 10, 386-418 (2003), *available at* <http://www.courts.state.pa.us/index/supreme/BiasReport.htm>. *Hereinafter* "RACIAL AND GENDER BIAS REPORT"

⁴⁰ The legislature has also enacted provisions for the safety and protection of domestic violence victims in its Uniform Firearms Act, 18 Pa. C.S. § 6015; criminal code, 18 Pa. C.S. § 2711; and utility and insurance laws, 18 Pa. C.S. § 1417 (utility protections); 40 Pa. C.S. § 1171.1 (Unfair Insurance Practices Act).

Welfare also administers statutory funding to 60 domestic violence shelters and programs that provide services to victims of domestic violence in all 67 counties in Pennsylvania.

While the PFA Act provides an important tool for victims of domestic violence, it is not the only tool available, nor is it always the safest or most appropriate option for a victim.⁴¹ As recently explained by the United States Court of Appeals for the Fourth Circuit:

For a victim of domestic abuse, seeking refuge in the court system may be a measure of last - or even desperate - resort. Indeed, it may require some summoning of courage for a victim to request a protective order against an intimate partner. **But although a restraining order aims to avert a credible future risk of domestic violence, it offers no guarantee.** ... abuse victims who have secured a protective order 'remain[] vulnerable' to harm: "There have been far, far too many dreadful cases in which innocent people ... [are] wounded or killed by a former boyfriend or girlfriend, partner, or other intimate ... despite the fact that the attacker was subject to a restraining order."⁴²

The decision to leave or end an abusive relationship is a difficult and dangerous one for victims of domestic violence. Victims of domestic violence are frequently warned by their abusers not to contact the police or the courts for help and, when they do, the results can be disastrous.⁴³ The facts in this case unfortunately reflect that the protection order was unable to deter Ms. Briggs' ex-boyfriend from attacking her to retaliate against her. On September 6, 2012, an anonymous female called the police because as Ms. Briggs left her home to go to work, her ex-boyfriend approached and confronted her about his arrest for previously assaulting her. The ex-boyfriend physically assaulted Ms. Briggs resulting in two large areas of redness and slight swelling on her forehead and a flesh wound to her thumb caused by his biting her.⁴⁴

⁴¹ Leigh Goodmark, *The Legal Response to Domestic Violence: Problems and Possibilities: Law is the Answer? Do We Know that for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 11 (2004).

⁴² *United States v. Mahin*, 668 F.3d 119 (4th Cir. 2012) (citing 139 Cong. Rec. 30,578-79 (1993) (statement of Sen. John Chafee)) (emphasis added).

⁴³ Goodmark, *supra* note 41, at 23.

⁴⁴ Defendants' Exhibit 5.

According to a survey conducted by the National Institute of Justice and the Centers for Disease Control and Prevention, women who were separated from their abuser were four times more likely to be raped, physically assaulted, or stalked by the abuser than women who remained in their home with the abuser.⁴⁵ When the victim is a person of color, immigrant, in a same-sex relationship, disabled or elderly, the impediments to safely accessing the justice system may be exacerbated even further.⁴⁶

Despite research and statistics showing that victims of domestic violence are the best assessors for predicting the dangerousness of their abusers,⁴⁷ they are regularly deprived of the ability to make crucially important decisions about their own safety and well-being when they turn to the justice system for help.⁴⁸ Ironically, when the system takes the decision-making away from the victim, it is further strips the victim of personal autonomy and may cause additional trauma in the process.

In the instant matter, Ms. Briggs was ordered to obtain assistance from the justice system as a condition to maintaining her housing, regardless of her fears of future and escalated violence. This directive is both contradictory to existing law and dangerous for Ms. Briggs and others within Norristown's jurisdiction who may be similarly situated or who may be caught in the cross-fire of retaliatory violence.

⁴⁵Patricia Tjaden & Nancy Thoennes, U.S. Dep't of Just., NCJ Doc. #181867, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey* 37 (July 2000).

⁴⁶Patricia Mahoney, Linda M. Williams & Carol M. West, *Violence Against Women by Intimate Relationship Partners* in SOURCEBOOK ON VIOLENCE AGAINST WOMEN, 165-68 (Renzetti, Edleson & Bergen eds., 2001); *see also*, Andrea C. Farney & Roberta L. Valente, *Creating Justice Through Balance: Integrating Domestic Violence Law Into Family Court Practice*, *Juvenile & Family Ct. J* 47 (Fall 2003). "Calling the police for example, or using the criminal justice system present unique challenges for many women of color. For example, the disproportionate rates of incarceration for African-American men, including the risk of police brutality and lethal encounters, can make police response a less viable option for black women than for white women. ... Immigration status concerns and language barriers create different burdens for battered Latinas and other immigrants. ... Non-English speakers are seriously disadvantaged in courts, legal services, advocacy programs, and social services." *Id.*

⁴⁷Lesley Laing, *Risk Assessment in Domestic Violence*, AUSTRALIAN DOMESTIC & FAMILY VIOLENCE CLEARINGHOUSE 8-10 (2004), *available at* http://www.austdvclearinghouse.unsw.edu.au/topics/topics_pdf_files/risk_assessment.pdf.

⁴⁸Goodmark, *supra* note 41, at 32.

3. *The Violence Against Women Act prohibits eviction from publicly funded housing for incidents related to an individual's victimization.*

In addition to being legally unsound and potentially dangerous for Ms. Briggs, the requirement that Ms. Briggs obtain a PFA order also contravenes federal law. The federal Violence Against Women Act (VAWA) prohibits public housing agencies, providers, owners, and managers from evicting or terminating assistance to victims of domestic violence, dating violence, sexual assault, and stalking for incidents related to an individual's victimization, regardless of whether the victim seeks a protection order in her or his state.⁴⁹ Ms. Briggs is a Section 8 Housing Choice Voucher recipient, and her housing is covered by the anti-discrimination housing protections in VAWA. Norristown acted in violation of federal law when it forced Ms. Briggs' landlord to institute eviction proceedings against her and required her to obtain a PFA in order to retain her housing. These actions are strictly prohibited by VAWA. To protect both the integrity of the law and the safety of the public, it is necessary for this Honorable Court to permanently enjoin the Defendants from enforcing its revised ordinance.

⁴⁹ 42 U.S.C. § 41411.

IV. CONCLUSION

For the reasons explained above, PCADV urges this Honorable Court to permanently enjoin Defendants from enforcing the ordinance at bar and prohibit Norristown from passing a similar ordinance in the future. Further, PCADV urges this Honorable Court to provide justice to Ms. Briggs. Such a result is in the best interests of the residents of Norristown who rely on police to respond to domestic violence calls within the community before they escalate to the point of serious injury.

Respectfully Submitted,

/s/ Laurie L. Baughman

Laurie L. Baughman

Pa Attorney ID: 86564

lbaughman@pcadv.org

Date: May 31, 2013

The Pennsylvania Coalition Against

Domestic Violence

3605 Vartan Way, Suite 101

Harrisburg, PA 17110

717-671-4767 (tel)

On behalf of *Amici Curiae*