

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	
<i>Appellee</i>	:	Docket No. 57 MAP 2018
	:	
v.	:	
	:	
PATRICK TIGHE,	:	
<i>Appellant</i>	:	
	:	

**BRIEF FOR *AMICI CURIAE* 23 ORGANIZATIONS DEDICATED TO
IMPROVING SOCIETAL RESPONSES TO SEXUAL VIOLENCE IN
SUPPORT OF APPELLEE**

Appeal from the Judgment of the Superior Court, No. 266 MDA 2017, dated
April 12, 2018, Affirming the Judgment of Sentence of the Court of Common
Pleas of Lackawanna County, Criminal Division, 2012 CR 1297, entered on
January 13, 2016

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Legal Momentum, the Women's Legal Defense and Education Fund
Legal Voice
National Crime Victim Law Institute
National Crittenton
National Organization for Women Foundation
National Women's Law Center
Pennsylvania Coalition Against Domestic Violence
Southwest Women's Law Center
SurvJustice
Victim Rights Law Center
Women's Law Center of Maryland
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STATEMENT OF INTEREST

Amici curiae are 23 nonprofit organizations dedicated to improving societal responses to victims of sexual and domestic violence. Due to the prevalence of sexual abuse and assault and its devastating effect on victims, particularly children, *Amici* endeavor to ensure that the criminal justice system treats victims fairly with the goal of achieving justice for victims as well as increasing public confidence in the legal system.

Amici include many types of organizations with expertise in sexual abuse. Some provide direct services to victims of sexual harassment and assault, including child abuse survivors. These services range from crisis intervention and counseling to assistance navigating judicial and quasi-judicial systems. Many *Amici* engage in policy advocacy to improve court and institutional responses to sexual abuse and assault and to reduce the incidence of violence against women and children. These efforts include lobbying for law reform as well as designing and implementing programs to improve societal understanding of the prevalence and seriousness of sexual abuse and assault.

Amici have expertise regarding the extent and impact of sexual violence on survivors. They share their expertise in this brief in support of a determination that requiring standby counsel to cross-examine a child victim is a reasonable limitation

on the defendant's right to self-representation under the state and federal constitutions.

Individual statements of interest of *Amici curiae* are contained in the Appendix. Counsel is unaware of anyone other than *Amici* who (i) paid in whole or in part for the preparation of this brief or (ii) authored in whole or in part this brief.¹

SUMMARY OF ARGUMENT

The trial court correctly prohibited Patrick Tighe, a *pro se* defendant, from personally cross-examining a child victim² who accused him of sexual violence. The defendant, 58 years of age at the time of his crimes against the 15-year-old victim, was ultimately convicted by a jury of rape, involuntary deviate sexual intercourse, and sexual assault. The trial court's decision to preclude personal cross-examination of the child victim by the defendant—allowing the defendant to direct the cross-examination as he saw fit while requiring his standby counsel to conduct it—was based on many factors, including the circumstances of the case, the victim's youth (only 16 at the time of the trial), and the victim's testimony that

¹ Attorney Advisor Teresa Garvey, J.D., of AEquitas provided substantial assistance in the preparation of this brief. *See App.*, Statement of Interest of *Amici curiae*, AEquitas.

² Although the term "child" is specifically defined in some Pennsylvania statutory provisions, *Amici* use the term herein to refer generally to a person under the age of majority.

the defendant shocked and scared her when he violated a no-contact bail condition by calling her to beg that she not “put me in jail for life.”

In situations like this, it is appropriate for courts to place reasonable limitations on a defendant’s right to self-representation. Requiring standby counsel to conduct cross-examination otherwise directed by the *pro se* defendant balances the defendant’s right to advance the evidence, arguments, and positions of their choice with the important goals of reducing emotional harm to victims and upholding the integrity of the justice system. To further these interests, *Amici* urge the Court to affirm the decision of the Superior Court affirming the defendant’s conviction.

ARGUMENT

I. SOCIAL SCIENCE RESEARCH SHOWS THAT INTERACTIONS WITH THE CRIMINAL JUSTICE SYSTEM CAN EXACERBATE EMOTIONAL TRAUMA FOR VICTIMS OF VIOLENCE.

Participation in the criminal justice system can be traumatic for victims of violence, individuals who are already coping with the emotional and physical consequences of the criminal acts they endured. Many victims, especially survivors of rape, sexual assault, and domestic violence, fear the way law enforcement, lawyers, and the courts will treat them, and these fears likely contribute to the

staggering percentage of victims who do not report the violence.³ Due to this underreporting, is it difficult to determine the exact number of people affected by this violence, but it is clear that sexual violence, including child sexual abuse and assault, is widespread. Based on self-report surveys of adolescents, about 26% of females and about 5% of males — or 1 in 4 girls and 1 in 20 boys — experienced sexual abuse or sexual assault during childhood, including late adolescence.⁴

Victims who disclose this violence often find themselves caught in an adversarial legal system that may take a toll on their emotional health.⁵ Testifying in court is often stressful for victims, and among the most distressing parts includes facing or interacting with the defendant in the courtroom.⁶ This stress affects victims regardless of age, but child victims are particularly vulnerable to emotional distress related to testimony and cross-examination in the presence of their alleged abuser. Social science research suggests that this stress may be more damaging for

³ Rachel E. Morgan & Jennifer L. Truman, U.S. Dep’t of Justice, *Criminal Victimization, 2017* (2018)(Reviewing survey responses from respondents ages 12 or older, finding “the percentage of rapes or sexual assaults that were reported to police rose from 23% in 2016 to 40% in 2017.”); see Amy M. Cohn, *Correlates of Reasons for Not Reporting Rape to Police: Results from a National Telephone Household Probability Sample of Women With Forcible or Drug-or-Alcohol Facilitated/Incapacitated Rape*, 28 *J. Interpersonal Violence* 455, 468 (2013); Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victims’ Mental Health*, 23 *J. Traumatic Stress* 182, 183 (2010).

⁴ David Finkelhor, et al., *The Lifetime Prevalence of Child Sexual Abuse and Sexual Assault Assessed in Late Adolescence*, 55 *J. Adolesc. Health* 329, 331 (2014).

⁵ Parsons & Bergin, *supra* note 3, at 184.

⁶ See Jodi A. Quas, et al., *Childhood Sexual Assault Victims: Long-Term Outcomes after Testifying in Criminal Court*, 70 *Monographs of the Society for Research in Child Development* I, 12 (2005).

children because of their immature cognitive development, which leaves them less able to understand the legal system and compounds the stress they are already experiencing as a result of the sexual abuse they suffered.⁷

Older minors are also vulnerable to distress stemming from testifying in court in the presence of the defendant. In a study following 218 minors, researchers found that “the older children were particularly negative about having to go to court, perhaps because they more fully understood the implications of doing so.”⁸ The children stated they were scared and nervous, feelings that derived from having to testify, interact with the defense attorney, and face the defendant.⁹

Having to testify can be a stressful and anxiety-inducing event for victims, especially children, and the prospect of doing so in front of, let alone being questioned personally by, the defendant can create additional negative consequences for victims. When children become noticeably anxious and fearful

⁷ *Id.* at 10 (stating that young children “have limited ability to cope effectively with stressors” from legal involvement, which “may increase the emotional harm done to the child victim/witnesses”).

⁸ Gail S. Goodman, et al, *Testifying in Criminal Court: Emotional Effects on Child Sexual Assault Victims*, 57 *Monographs of the Society for Research in Child Development* i, 20 (Tab. 2) 76 (1992)(the child-victims ranged in age from 4 to 17); see also Jodi A. Quas & Gail S. Goodman, *Consequences of Criminal Court Involvement for Child Victims*, 18 *Psychology, Public Policy, and Law* 392, 399-400 (Table 1) (2012) (the studies reviewed involved a wide range of ages, including adolescence and early adulthood, and while testifying in court is empowering for some victims, many studies found that testifying had a negative impact on mental health for some victims for a variety of reasons, including testifying repeatedly and having to face the defendant).

⁹ Goodman, et al, *supra* note 8, at 75.

while facing the defendant, they may be less able to communicate clearly, potentially resulting in reduced accuracy and limited responsiveness.¹⁰ In addition to the immediate and short-term distress and anxiety that victims may experience, there may be lasting consequences that leave victims with worsened mental health and negative feelings toward the legal system.¹¹

Most of the social science research regarding the emotional impact on victims of sexual violence as a result of testifying involves minors who had to be in the same room as the defendant— “facing” them while enduring cross-examination by defense counsel—but does not involve the rarer situation presented here in which the defendant demands the opportunity to personally cross-examine the child victim. If merely seeing a defendant in the courtroom while testifying is stressful and potentially traumatizing for victims, as studies suggest, then it is reasonable to infer that being subjected to personal cross-examination by the defendant would result in a similar or worse impact on the emotional health of the victim. To reduce this negative impact, the law should not force minors to interact in court with the defendants they have alleged to have harmed them.¹²

¹⁰ See Sue D. Hobbs, et al., *Child Maltreatment Victims’ Attitudes About Appearing in Dependency and Criminal Courts*, 44 *Children and Youth Services Review* 407, 414 (2014); Rebecca Nathanson & Karen Saywitz, *The Effects of Courtroom Context on Children’s Memory and Anxiety*, 31 *J. Psychiatry & L.* 67, 71 (2003).

¹¹ See Quas, et al., *supra* note 6, at 15.

¹² Quas & Goodman, *supra* note 8, at 406 (noting “it is imperative [to have] appropriate supports in place before, during, and after [a child testifies, including] minimizing children’s contact with the defendant while testifying.”).

II. PENNSYLVANIA HAS A HISTORY OF PROTECTING VICTIMS FROM EMOTIONAL DISTRESS EXPERIENCED IN THE COURT SYSTEM AND ENSURING THE INTEGRITY OF LEGAL PROCEEDINGS.

Pennsylvania has an established history of recognizing the need to protect victims from revictimization while interacting with the criminal justice system. One of the clearest examples of promoting these policies for child victims involves the 2003 amendment to the “confrontation clause” in Article I, § 9 of the Constitution of Pennsylvania to allow child victims to testify outside of the presence of defendants in criminal proceedings. Although the right of confrontation is different from self-representation, the right at issue here, this amendment to the Constitution demonstrates Pennsylvania’s recognition of the difficulties child victims may experience when testifying—difficulties that, as the social science research discussed *supra* demonstrates, older minors also face. This amendment and other legislation indicate that allowing a criminal defendant to personally cross-examine a child conflicts with the public policies of Pennsylvania.

In *Maryland v. Craig*, the United States Supreme Court concluded that a child victim’s testimony in a criminal proceeding via one-way closed-circuit television did not violate the Confrontation Clause of the Sixth Amendment of the U.S. Constitution where it was necessary to protect a child from trauma that would likely result from testifying in the presence of the defendant. 497 U.S. 836, 857

(1990). In reaching this decision, the Court recognized “the growing body of academic literature documenting the psychological trauma suffered by child abuse victims who must testify in court,” the foundation of the social science research presented in Part I, *supra. Id.* at 855 (citing the Brief for American Psychological Association as *Amicus Curiae*).

To permit the same protection of child victims in Pennsylvania, the General Assembly and the electorate amended the state constitution to supersede *Commonwealth v. Ludwig*, a case in which the Pennsylvania Supreme Court determined that the state constitution granted criminal defendants greater confrontation clause rights than the federal provision as analyzed in *Craig*. 594 A.2d 281, 283 (Pa. 1991). The amendment to Article I, § 9, which deleted the words “face-to-face” and specifically permitted accommodations for child victims testifying in criminal proceedings, passed the General Assembly in the 2002 and 2003 sessions and was then approved by the electorate on November 4, 2003.¹³

The remarks on this constitutional amendment in the General Assembly demonstrate a recognition of the secondary trauma that child victims may experience in the court system and a desire to ensure that the “process is

¹³ 187 General Assembly SB 55 (2003), History, available at https://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?year=2003&sind=0&body=S&type=B&bn=55 (last visited Feb. 20, 2019).

reasonable and fair to all parties in a criminal case.”¹⁴ There was an acknowledgement in the Senate that:

[T]he process is not fair to a child witness who breaks down in the presence of the accused or is terrified in open court, because today [prior to the amendment] in the Commonwealth of Pennsylvania, if such a child cannot testify as an adult does, there is no trial and there is no chance of justice for the victim.¹⁵

In the House, the remarks also noted that the intent of the bill is to protect child victims and ensure that they do not have to endure unnecessary revictimization through court involvement.¹⁶

The Child Victims and Witnesses Act, which predates the 2003 Constitutional Amendment to Article I, § 9, also illustrates the Commonwealth’s commitment to protecting children from emotional trauma related to court involvement. First enacted in 1986, and subsequently amended in 1996, 2002, 2004, and 2013, this Act states:

In order to promote the best interests of the residents of this Commonwealth who are under 18 years of age, especially those who are material witnesses to or victims of crimes, the General Assembly declares its intent, in this subchapter, to provide, where necessity is shown, procedures which will protect them during their involvement with the criminal justice system.

¹⁴ 187 General Assembly SB 55, 69 (daily ed. Feb. 3, 2003).

¹⁵ *Id.*

¹⁶ 187 General Assembly SB 55, 1069 (daily ed. June 23, 2003).

42 Pa. Cons. Stat. Ann. § 5981. This Act applies to criminal proceedings beyond sexual offenses, recognizing that other terrorizing or violent crimes are also traumatizing for victims.¹⁷ Among other provisions to further this policy, the Act urges the media to refrain from identifying child-victims, *id.*, permits recorded testimony, *id.* at § 5984.1, and permits testimony by a contemporaneous alternative method, *id.* at § 5985; *see Commonwealth v. Williams*, 624 Pa. 183, 212 n. 2 (2014) (noting the history of § 5985, enacted following constitutional amendment).

From these examples, it is clear that Pennsylvania has a longstanding commitment to protecting child victims from trauma experienced through court involvement and to buttressing the integrity of the criminal system. While the right of confrontation is distinguishable from the right of self-representation, the limitations that the people of Pennsylvania placed on that right through its General Assembly and by direct vote stem from a strong desire to protect children from the very harms that allowing a criminal defendant to personally cross-examine a minor would likely exacerbate.

Much of the legislative focus has been on the protection of minors under 16, but the situation addressed (“facing” the defendant in court) represents much less of an intrusion than being personally cross-examined by the defendant. If the victim in this case had been forced to endure such direct and personal interaction

¹⁷ 188 General Assembly SB 979, 1498-99 (daily ed. Mar. 17, 2004).

with the defendant in the courtroom, she would have been at much greater risk of exposure to harassing and potentially traumatizing questions. Such a scenario runs afoul of the public policies Pennsylvania embraced when it enacted its rape shield statute to support the integrity of the process by excluding irrelevant evidence of a victim's past sexual conduct and to encourage the reporting of crimes as well as to protect victims from embarrassment and emotional distress.¹⁸ *See Commonwealth v. Strube*, 274 Pa. Super 199, 207 (1979) (“What is certain is that the introduction of such evidence at trial has a highly traumatic and embarrassing effect on the complaining witness.”); *see also infra* Part III (b) and (c).

Finally, by enacting the Crime Victim's Act, the Pennsylvania General Assembly recognized that “all victims of crime are to be treated with dignity, respect, courtesy, and sensitivity.” 18 Pa. Stat. Ann. § 11.02(1). Accordingly, law enforcement, prosecutors, and judges are to treat victims “in a manner no less vigorous than the protections afforded criminal defendants.” *Id.* at § 11.02(2).

III. THE TRIAL COURT APPROPRIATELY EXERCISED ITS DISCRETION TO PROHIBIT THE PRO SE DEFENDANT FROM PERSONALLY CROSS-EXAMINING THE CHILD VICTIM.

As the Superior Court below recognized, the trial court's decision to restrict the *pro se* defendant from personally cross-examining the child victim—ordering

¹⁸ *See* 159 General Assembly HB 580, 3249-50 (daily ed Nov. 25, 1975).

that cross-examination instead be conducted by defendant’s standby counsel, using questions supplied by the defendant—was a proper exercise of judicial discretion. *See Commonwealth v. Tighe*, No. 266 MDA 2017 (Pa. Sup. Ct. April 12, 2018) at 6-18. This restriction amounted, at most, to a *de minimis* limitation on the defendant’s implied constitutional right of self-representation—one that was greatly outweighed by the trial court’s interest in protecting the well-being of the child victim. Although the interests protected by the right of confrontation and the right of self-representation are different, the manner by which those rights are exercised can have similarly traumatic effects on vulnerable victims. If preventing the emotional distress of a child is sufficient grounds to impose limitations on the manner of confrontation, then it should also be sufficient grounds to reasonably limit the right of self-representation. *See Fields v. Murray*, 49 F.3d 1024, 1034-37 (4th Cir. 1995).

a. The Right of Self-representation is Not Absolute.

In *Faretta v. California*, 422 U.S. 806 (1975), the Supreme Court held that the Sixth Amendment’s guarantee of the assistance of counsel necessarily implies a concomitant right of self-representation; the State may not force an attorney upon a competent defendant who wishes to waive his right to representation by an attorney at trial. The right vindicates a defendant’s interest in making their own decisions about how best to mount a defense at trial. *Id.* at 834.

Nevertheless, this right of self-representation, like other important constitutional rights, is not without limits. The *Faretta* Court noted that a trial court may, even over the defendant's objection, appoint standby counsel to assist the defendant upon request and "to be available to represent the accused in the event that termination of the defendant's self-representation is necessary." *Id.* at 835 n.46. The Court also noted that the right to self-representation is not a license to disrupt the proceedings and that "serious and obstructionist misconduct" may result in forfeiture of the right. *Id.* In addition, a *pro se* defendant must be "able and willing to abide by rules of procedure and courtroom protocol." *McKaskle v. Wiggins*, 465 U.S. 168, 173 (1984). As the Court explained in *Wiggins*:

A defendant's Sixth Amendment rights are not violated when a trial judge appoints standby counsel—even over the defendant's objection—to relieve the judge of the need to explain and enforce basic rules of courtroom protocol or to assist the defendant in overcoming routine obstacles that stand in the way of the defendant's achievement of his own clearly indicated goals. Participation by counsel to steer a defendant through the basic procedures of trial is permissible even in the unlikely event that it somewhat undermines the *pro se* defendant's appearance of control over his own defense.

Id. at 183-184. Thus, the role of standby counsel serves not only to assist the *pro se* defendant upon request, but also to help ensure that courtroom decorum and efficiency do not suffer as a result of an untutored defendant's exercise of the right of self-representation. "[T]he government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his

own lawyer.” *Martinez v. Court of Appeal of California, Fourth Appellate Dist.*, 528 U.S. 152, 162 (2000).

b. Standby Counsel’s Questioning of the Child Victim on Cross-examination, Using Questions Provided by Defendant, Did Not Impermissibly Infringe Defendant’s Right of Self-representation.

The *Wiggins* Court identified two primary ways in which standby counsel’s unsolicited participation may unacceptably undermine a defendant’s right to self-representation: first, counsel’s participation may usurp the defendant’s right to present their own case, in their own fashion, by advancing arguments or taking positions inconsistent with the defendant’s wishes; second, counsel’s unsolicited participation in the presence of the jury may undermine the jury’s perception that the defendant is conducting their own defense. 465 U.S. 168 at 178. The Court held that unsolicited participation outside the presence of the jury would not infringe the defendant’s right to self-representation so long as the defendant received an adequate opportunity to be heard, and so long as any disagreements between the defendant and standby counsel on issues that would normally be a matter of counsel’s discretion were resolved in favor of the defendant. *Id.* at 179.

Of greater concern to the Court was the unsolicited participation of standby counsel in the presence of the jury, which creates the risk of “destroying” the jury’s

perception that the defendant is acting *pro se*.¹⁹ *Id.* at 181-82. The *Wiggins* Court concluded, however, that standby counsel's uninvited participation at trial in that case was sufficiently limited that it did not significantly affect the jury's perception of defendant's role. *Id.* at 184-87.²⁰

Applying the two-part *Wiggins* test in the present case, it is clear that the trial court's procedure in no way interfered with the defendant's ability to present the evidence, arguments, and positions he wished. It was defendant who decided which witnesses to call. Trans. July 8, 2013, 23:9-33:24. Defendant personally argued several motions. *See, e.g., id.* at 118: 14-25. Defendant independently decided to postpone his opening statement until after the Commonwealth rested its case, at which time he delivered his own opening statement and, at the conclusion of the trial, he delivered his own summation. *Id.* at 117:14-19; Trans. July 10, 2013, 280:24-300:24. Defendant personally conducted the questioning of all other witnesses, and he was afforded ample time following direct examination to privately prepare, with standby counsel, the cross-examination of the victim. *See, e.g.,* Trans. July 8, 2013, 60:6-10, 158-159:21. He was also granted liberal

¹⁹ The opinion in *Wiggins* twice references the Court's concern that the jury's perception of defendant's role in representing himself would be "destroyed," not that it would be undermined or affected to a lesser degree. *See* 465 U.S. at 178, 181.

²⁰ In sharp contrast to the present case, the unsolicited participation of standby counsel in *Wiggins* was not attributable to the need to protect some important countervailing public policy interest. Rather, counsel's participation in *Wiggins*, to the extent it was unsolicited, was largely due to "spillover" resulting from the *pro se* defendant's intermittent requests for assistance during the course of the trial.

permission to consult with counsel throughout the questioning and at the conclusion, to ensure that the questioning was as he wished. *Id.*

The only apparent point of disagreement defendant had with standby counsel arose from defendant's desire to question the victim about her virginity—a line of questioning that standby counsel rightly concluded would have violated the provisions of the rape shield statute and the court's pretrial order prohibiting such questioning.²¹ Consistent with the law and the court's pretrial ruling, that line of questioning was barred. In sum, the court honored, in every important respect, this defendant's right to present his own defense as he saw fit.

Defendant's claim that standby counsel made his own "tactical" decision, contrary to defendant's wishes, to refrain from confronting the victim with her phone records during her initial appearance at trial, Appellant's Brief at 37 & n.25, is a gross mischaracterization. As standby counsel explained to the trial court, defendant provided *all* of the questions that were asked on cross-examination. Trans. July 10, 2013, 113:1-114:9. None was the product of counsel's own work; his role was limited to putting the questions in proper form. *Id.* This was in

²¹ The victim testified she had told the defendant, at the time of the assault, that she was a virgin, hoping it might stop the attack. Trans. July 8, 2013, 139:10-11; Trans. July 9, 2013, 34:7-35:3. Counsel brought to the court's attention, before re-cross-examination of the victim commenced, the issue regarding defendant's proposed line of questioning. Trans. July 9, 2013, 35:24-36:15. As the trial court recognized, the victim's statement regarding her virginity was not offered for its truth and questions about the victim's sexual experience were squarely within the court's pretrial ruling on rape shield. Trans. July 9, 2013, 36:15-41:10.

accordance with the role the trial court explicitly ordered standby counsel to take. As the judge had advised the defendant before cross-examination, “[Y]ou will be afforded an opportunity to prepare questions, give them to standby counsel, *standby then using his legal experience and training in the law will then ask the questions that are permissible under the rule of evidence.*” Trans. July 8, 2013, 158:22-159:3. (Emphasis added.)²² Counsel acknowledged advising defendant that it would be improper to present the victim with the phone records that had not yet been authenticated.²³ Trans. July 10, 2013, 113:19-114:9. Although the trial court then stated that it would have permitted such questioning out of order, *id.* at 108:1-4, counsel’s decision was clearly based upon the rules of evidence rather than tactical considerations. In any event, the court ultimately permitted defendant to recall the victim in his own case for the purpose of confronting her with the records—an exercise that standby counsel believed was unnecessary, but one that the court permitted defendant to undertake. *Id.* at 113:19-136:16; 226:17-240:18.

The second prong of the *Wiggins* test requires consideration of whether cross-examination conducted by standby counsel destroyed the jury’s perception

²² Placing the questions in proper form is the kind of routine trial task that the *Wiggins* Court approved for standby counsel to assist with, even in the absence of a request from the defendant. *See* 465 U.S. at 183-84.

²³ Standby counsel did ask the victim, during initial cross-examination, explicit questions about the unexplained phone calls, including one that asked whether her answer (that she had made no such calls) would stand “if the jury was to be shown phone records” reflecting those calls. Trans. July 9, 2013, 25:19-26:5.

that defendant was representing himself. The trial court here carefully instructed the jury, prior to opening statements, that defendant would be representing himself, that he had standby counsel at the defense table with him, and that at some points during the trial, standby counsel might or might not “take a more active role” in the proceedings. Trans. July 8, 2013, 94:24-5. The court explained: “If this happens, you should not draw your attention to it, nor should you be distracted by it, nor should you hold it in any way against Mr. Tighe. It is simply a procedural matter *involving Mr. Tighe’s right to represent himself.*” *Id.* at 94:7-95:6. (Emphasis added.). In addition, at the beginning of cross-examination, standby counsel advised the victim, “I’m going to ask you some questions *on behalf of Mr. Tighe.*” Trans. July 9, 2013, 17:20-21. (Emphasis added.) The jury thus was explicitly informed that any action taken by standby counsel during cross-examination or otherwise was part and parcel of defendant’s exercise of his right to self-representation.

Given the combination of the court’s instructions, the remarks of standby counsel, and the active and exclusive role defendant took in every other aspect of the trial, the trial court’s *de minimis* limitation on the defendant’s exercise of his right of self-representation at trial did not undermine the jury’s perception of his self-representation, much less “destroy” it. He presented his own case in his own

way, and the jury could plainly observe that he was the one in control of his defense at trial.

c. The Trial Court Made Sufficient Findings to Support the Necessity of Requiring Standby Counsel to State the Questions Posed to the Child Victim on Cross-examination.

Both the trial court and the Superior Court below relied heavily upon the reasoning followed by the Fourth Circuit in *Fields, supra*. See Opinion Pursuant to Pa.R.A.P. 1925(a), No. 2012 CR 1297, at 17-27; *Tighe, supra*, at 10-12. *Fields* upheld the decision of a Virginia trial court to deny a defendant's request to personally cross-examine the child victims he was charged with sexually assaulting. In the absence of precedent on the extent to which the right of self-representation can be limited in the interest of protecting the well-being of child witnesses, the *Fields* court turned to *Maryland v. Craig, supra*, the leading case addressing limitation on the right of confrontation when a child victim would be traumatized by testifying in the presence of the defendant.

In *Craig*, the Supreme Court approved the practice of allowing a child victim of sexual abuse to testify via one-way closed-circuit television, provided the trial court found it necessary in order to spare the child from distress resulting from testifying in the same room with the defendant. To establish such necessity, the trial court must make case-specific findings that the child victim would likely experience distress, which must be more than *de minimis* nervousness or

excitement about testifying and must be related to testifying with the defendant in the same room rather than to the prospect of testifying in the courtroom setting. *Craig*, 497 U.S. at 855-56. Under such circumstances, the Court held that the face-to-face element of confrontation could be dispensed with, provided that the procedure preserved the other elements of confrontation: a competent witness, testimony under oath, cross-examination, and the opportunity for the defendant and the factfinder to observe the witness while testifying. *Id.* at 851-52. As the Fourth Circuit reasoned in *Fields*, the Sixth Amendment's explicit right of confrontation is more stringently protected than the implied right of self-representation; thus, if preventing the emotional distress of a child can be grounds for imposing limitations on the manner of confrontation, it should, *a fortiori*, provide grounds for similarly minor limitations on the right of self-representation. *Fields*, 49 F.3d at 1035.

In the present case, the trial court found it necessary to preclude personal cross-examination of the child victim because it would likely result in emotional distress to the victim. That finding was based on the victim's age, the nature of the charges, defendant's exploitation of his position of trust as a close family friend, whom the victim referred to as "Uncle Pat;" and defendant's violation of a no-contact bail condition by telephoning the victim and asking her not to "send him to jail for life," an encounter that left her "shocked" and "scared" and feeling that she

was “in danger.” Trans. June 4, 2013, 42:3-47:17; Trans. July 8, 2013, 20:24-23:12; Opinion Pursuant to Pa.R.A.P. 1925(a) at 25-27. All of those findings, which were based on the record before the court at the time of its ruling, support the trial court’s legitimate concerns about the likely impact of the defendant’s personal cross-examination of this victim. Defendant had already exhibited his willingness to exploit his personal relationship with this child, first to victimize her and then to make her feel guilty and fearful for participating in the court proceedings; he purposely ignored a court order protecting the victim by contacting her; and the victim had expressed to the court her fear of the defendant.

Moreover, there is evidence in the record to show that the trial court’s concerns about permitting this defendant to personally question the victim were far from illusory. Prior to trial, the court had ruled that the rape shield statute would prohibit any lines of questioning about the victim’s personal sexual history. Trans. July 8, 2013, 63:14-70:1. During the course of argument, defendant continued to debate with the court about whether he could question the victim about such matters and went on to insist that he should, at least, be able to tell the jury *why* he could not ask those questions. This demand required the court to explain why that, too, would be prohibited. Despite this discussion, when the time came for re-cross-examination of the victim, standby counsel reported to the court that defendant continued to insist on questioning the victim about her sexual history. The trial

court confirmed its ruling on rape shield and precluded such questioning. Trans. July 9, 2013, 35:24-41:10.

The rape shield statute was enacted to spare victims the humiliation of being asked irrelevant questions about their sexual history.²⁴ Defendant's standby counsel understood this and brought the issue to the court's attention *before* the questions were asked. Had defendant *personally* conducted the cross-examination, there is little doubt he would have asked about the victim's sexual history, resulting in embarrassment to the victim, a prompt objection from the prosecution, and possibly further objectionable comments from the defendant before the jury could be excused. Although the objection would likely have been sustained, the harm would have been done.

IV. A TRIAL COURT'S DISCRETION TO PRECLUDE PERSONAL CROSS-EXAMINATION OF THE VICTIM AT TRIAL SHOULD NOT BE LIMITED TO CASES INVOLVING SEXUAL ABUSE OF A CHILD.

Although this Court is obliged to render an opinion based solely upon the facts in the record and the law necessary to decide the case as presented by the

²⁴ See, e.g., *Commonwealth v. Majorana*, 503 Pa. 602, 608 & n.6 (1983) (referencing the "sad history of our criminal justice system's treatment of complaining rape victims" and citing J. Tanford, *Rape Victim Shield Laws and the Sixth Amendment*, 128 U.Pa.L.Rev. 544, 546-551 (1980) (noting that a purpose of rape shield statutes is to "shelter[] the victim from humiliation and psychological damage, and encourag[e] the reporting and prosecution of rape." *Id.* at 566-67)). See also, *Strube*, *supra*; 5 Summ. Pa. Jur. 2d Criminal Law § 15:22 (2d ed.).

parties, *Amici* urge this Court to bear in mind other similarly compelling reasons to prohibit a *pro se* defendant from personally conducting cross-examination of the victim in any case involving violent crime or intimidation.

In the trial setting, it is not only the defendant's dignity that the trial court must protect. Innumerable circumstances arise in which a trial court is obliged to make rulings on the mode and manner of proceedings so as to protect the safety and dignity of all who appear before it, including witnesses, jurors, counsel, court staff, and members of the public who may be present. Rule 611(a)(3) of the Pennsylvania Rules of Evidence specifically directs the trial court to "exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to...protect witnesses from harassment or undue embarrassment." Other measures involving courtroom procedure may be appropriate in response to specific concerns about the safety and security of those in the courtroom, provided that the court make appropriate findings of necessity for such measures.

Child victims of sexual abuse are certainly among the most vulnerable to the traumatic effects of personal interrogation by the alleged abuser. *See* Section I, *supra*. However, emotional distress as a result of such questioning is not limited to child victims of abuse or to victims of sexual violence; nor is it limited to the very young or the emotionally fragile. Crimes of domestic violence, stalking, and human trafficking, for example, are often marked by patterns of threats,

intimidation, and coercion intended to keep the victim in a constant state of fear.²⁵

It is not difficult to imagine the distress and humiliation of adult victims of such crimes when subjected to *court-sanctioned* personal interrogation by the very abuser who has already destroyed their sense of personal safety.²⁶ A *pro se* defendant who is aware of the victim's fears and vulnerabilities can easily exploit them during cross-examination, with such intimidation being virtually undetectable to outside observers, making it impossible for the prosecutor or the court to timely intervene in such attempts.²⁷ And even adult victims of such terrorizing crimes as kidnapping or home invasion, who could readily tolerate the vigorous and probing cross-examination of a defense attorney, might be emotionally undone if subjected to personal questioning by their attacker.

The importance of protecting victims of domestic violence, sexual violence, and stalking from personal contact with their abusers has been consistently

²⁵ See, e.g., Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 Albany L. Rev. 973, 975 (1995) (describing battering as “typically ongoing” and eliciting “hostage-like levels of fear, isolation, [and] entrapment”); Elizabeth Hopper, *Invisible Chains: Psychological Coercion of Human Trafficking Victims*, 1 Intercultural Hum. Rts. L. Rev. 185 (2006); Paul Mullen, *Stalking*, 29 Crime & Just. 273, 296-98 (2002).

²⁶ See Mary Fan, *Adversarial Justice's Casualties: Defending Victim-Witness Protection*, 55 B.C. L. Rev. 775 (2014) (examining harm to victims of violent crime as a result of the adversarial process in the hands of a *pro se* defendant and proposing protective measures, including use of standby counsel to conduct cross-examination of victims).

²⁷ See, e.g., Teresa Garvey, *Witness Intimidation: Meeting the Challenge* (AEquitas 2013) at 11, 27, 47-48 & n.9, <http://www.aequitasresource.org/Witness-Intimidation-Meeting-the-Challenge.pdf> (describing subtle forms of intimidation and how they may manifest in the courtroom).

recognized by this Commonwealth. Victims of domestic violence have long had available to them orders protecting them from contact with their abusers. *See* 23 Pa. Cons. Stat. Ann. § 6101 *et seq.* More recently, the Pennsylvania General Assembly has authorized orders to afford similar protection to victims of sexual violence, stalking, and intimidation. *See* 42 Pa. Cons. Stat. Ann. § 62A01 *et seq.* In its findings supporting the need for such orders, the General Assembly declared: “Sexual violence and intimidation can inflict humiliation, degradation and terror on the victim,” and “Victims of sexual violence and intimidation desire safety and protection from future interactions with their offender, regardless of whether they seek criminal prosecution.” 42 Pa. Cons. Stat. Ann. § 62A02 (2), (5). In addition, defendants in cases of violent crime are routinely subject to bail conditions prohibiting contact with their victims.

It would be odd, indeed, if the same judicial system empowered to afford such victims judicial protection from direct contact with their victimizers were helpless to protect them from such intimate contact in the courtroom over which it presides. It is one thing for a victim to be cross-examined, even vigorously, by an attorney who is subject to rules of professional conduct that bar trial tactics intended to harass, abuse, or embarrass the witness. While the victim might find such an experience unpleasant, it is a far cry from being subjected to personal interrogation by the *pro se* defendant who has already inflicted serious harm and

may have little to lose by exploiting the opportunity to further torment the victim at trial.

While the trial court may not bar personal cross-examination by a *pro se* defendant without some finding of “necessity,” the threshold for such a finding should not be high. The trial court should be permitted to consider, as it did in this case, the factual allegations the prosecution expects to prove at trial, its own observations and experience with the defendant in the courtroom, and any additional information provided by the victim or anyone else with knowledge of the likely emotional impact on the victim as a result of personal questioning by the defendant. *See, e.g., Partin v. Commonwealth*, 168 S.W.3d 23 (Ky. 2005) (upholding refusal to permit personal cross-examination of domestic violence victims, based on allegations in case and letter from advocate reporting victims’ fear arising from the defendant’s prior threats).

Nor should “necessity” be limited solely to a finding of likely emotional distress on the part of the testifying victim. The trial court itself has a strong interest in preserving the dignity and integrity of the trial proceedings. Trials should not only be fair, they should *appear* to be fair to all who observe them. *Wheat v. United States*, 486 U.S. 153, 160 (1988) (holding that trial court was justified in denying defendant his choice of counsel based on potential for serious conflict of interest, despite proffered waivers of conflict). The trial court may

legitimately determine that, given the allegations in the case, the prospect of a *pro se* defendant conducting personal cross-examination of the victim he is charged with brutalizing is so unseemly as to undermine the dignity of the court.²⁸

CONCLUSION

Trial courts must have the discretion to prohibit a *pro se* defendant from personally conducting the cross-examination of the victim of a crime with which they are charged, when necessary to protect the victim's emotional well-being or to protect the dignity and integrity of the trial proceedings, so long as the defendant's dignity and autonomy to present their own defense in the manner they see fit are otherwise preserved, as it was in the present case. The defendant's interest in self-representation can be adequately protected by affording ample time before, during, and after cross-examination for consultation with standby counsel, who can pose

²⁸ See, e.g., Eugene Cerruti, *Self-Representation in the International Arena: Removing a False Right of Spectacle*, 40 Geo. J. Int'l L. 919, 956-59 (2009) (describing two trials in which *pro se* defendants personally cross-examined victims and family-member witnesses: first, a defendant charged with sexual abuse who cross-examined juvenile victims and victims who were now adults in "excruciating detail," causing visible distress not only to the victims but also to jurors forced to witness it; second, a defendant charged with fatally stabbing her husband, who cross-examined one of her sons for four days about irrelevant family history and "minutiae"); Tom Lininger, *Bearing the Cross*, 74 Fordham L. Rev. 1353, 1412 (2005) (describing Colin Ferguson's *pro se* cross-examination of the 19 surviving victims of the 25 people he shot on the Long Island Rail Road commuter train as a "circus"); Marie Williams, *The Pro Se Criminal Defendant, Standby Counsel, and the Judge: A Proposal for Better-Defined Roles*, 71 U. Colo. L. Rev. 789, 811-12 (2000) ("The sight of Colin Ferguson parading up and down the courtroom and cross-examining the nineteen survivors of his shooting rampage outraged observers.").

the legally permissible questions the defendant wishes to ask. In addition, carefully crafted jury instructions can reinforce the jury's understanding that the cross-examination is the defendant's own and that standby counsel's participation is merely a procedural formality. In making its determination of the necessity to limit the exercise of self-representation, the court should consider the allegations in the case, its own observations and experience with the defendant in the courtroom, and any additional relevant information provided by the prosecution, the victim, or others with knowledge of the likely effect of personal cross-examination in the case. *Amici* join the Commonwealth in urging that this Court affirm the decision of the Superior Court affirming the defendant's conviction.

Respectfully submitted,

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to Sexual Violence*

Date: February 25, 2019

APPENDIX

STATEMENTS OF *AMICI CURIAE*

AEquitas

AEquitas is a technical assistance provider for prosecutors, law enforcement, advocates, and allied professionals who are called upon to respond to crimes of domestic violence, sexual violence, stalking, human trafficking, and related offenses. AEquitas provides training, research assistance, consultation services, and other resources in an effort to improve the investigation and prosecution of these offenses by incorporating best practices based upon the most current research in the disciplines of law, social science, medicine, forensic sciences, police science, and related fields. As part of its commitment to improving the justice system's response to these traumatizing crimes, AEquitas has implemented two separate initiatives focusing on witness intimidation—a pervasive problem that not only threatens the safety of victims and witnesses but undermines the integrity of the justice system by discouraging victims from reporting crimes and participating in the criminal justice process. AEquitas strongly believes that defendants exercising their right of self-representation should not be permitted to personally conduct the cross-examination of victims who have experienced violence and/or

intimidation at their hands. Such questioning re-traumatizes victims and places the court in the position of sanctioning inappropriate personal contact between victims and their assailants, with no benefit whatsoever to the truth-finding process or to the defendant's personal dignity and autonomy.

Atlanta Women for Equality

Atlanta Women for Equality, Inc. is a nonprofit legal organization dedicated to shaping schools according to true standards of equality and empowering women and girls to assert their rights to equal treatment. To accomplish these goals, Atlanta Women for Equality provides free legal advocacy for women and girls facing gender discrimination including sexual harassment and assault at school and advocates for protecting and expanding educational opportunities through policy advocacy. It is important that women and girls who face sexual harassment and assault are able to receive fair treatment from every system in which they may be involved, from school proceedings to the criminal justice system, that does not expose them to increased trauma.

California Women's Law Center

The California Women's Law Center is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls. CWLC works to break down barriers and advance the potential of women and girls through

transformative litigation, policy advocacy, and education. For 30 years, CWLC has placed an emphasis on eradicating all forms of discrimination and violence against women and girls. Part of CWLC's mission is to ensure that women and children have access to resources to protect against and overcome violence, including creating innovative programs to raise awareness, while bringing expanded services to victims of domestic violence.

Chicago Alliance Against Sexual Exploitation

The Chicago Alliance Against Sexual Exploitation (CAASE) is an Illinois-based not-for-profit that opposes sexual harm by directly addressing the culture, institutions and individuals that perpetrate, profit from, or support such harms. CAASE engages in direct legal services, prevention education, community engagement, and policy reform. CAASE's legal department provides direct legal services to survivors of sexual exploitation, including sexual assault and prostitution. On behalf of its individual clients and in support of its overall mission, CAASE is interested in seeing that federal and state laws and precedent related to sexual assault and prostitution are appropriately interpreted and applied so as to further—and not undermine—efforts to hold perpetrators of sexual assault and trafficking appropriately accountable for their actions.

Connecticut Women's Education and Legal Fund

CWEALF signed on to this brief because it is committed to eliminating gender discrimination of all forms, including the further victimization of survivors of sexual assault. It believes that all crime victims, including survivors of sexual assault, deserve respect and dignity, and should be protected against further trauma in the criminal justice and judicial systems. This case will have a significant impact on the willingness of future victims to report and testify in sexual violence cases.

End Rape On Campus

End Rape on Campus (EROC) is a national 501(c)(3) nonprofit organization that works to end campus sexual violence through direct support for survivors and their communities; prevention through education; and policy reform at the campus, local, state, and federal levels. This case addresses many barriers that survivors face when coming forward in hopes of accessing justice and healing. Survivors who disclose violence need and deserve to go through a process that is trauma-informed without fear of retraumatization or retaliation. We seek to change culture in order to create a world free from sexual violence, and work to end gender-based discrimination and all forms of violence in educational settings, for students, faculty, and all members of a university community.

Equal Rights Advocates

Equal Rights Advocates (ERA) is a national civil rights advocacy organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. Since its founding in 1974, ERA has led efforts to combat sex discrimination and advance gender equality and equity by litigating high-impact cases, engaging in policy reform and legislative advocacy campaigns, conducting community education and outreach, and providing free legal assistance to individuals experiencing unfair treatment at work and in school through our national Advice & Counseling program. ERA provides legal representation to employees and students who have endured sex discrimination, including harassment and violence, at work and/or at school and advocates for trauma-informed investigative and fact-finding processes. ERA recognizes that due process is a right that belongs to both parties in a dispute and requires that victims of sexual violence, the overwhelming majority of whom are women and girls, receive protection against further traumatization in their effort to seek justice. ERA has filed hundreds of suits and appeared as *amicus curiae* in numerous cases to defend and enforce the civil rights of victims of sexual harassment and sexual violence in state and federal courts, including before the United States Supreme Court.

Freedom Network USA

Freedom Network USA (FNUSA) is the largest alliance of anti-trafficking advocates in the United States. Our 68 members include survivors of human trafficking, as well as individuals and organizations who provide legal and social services to trafficking survivors in over 30 cities. In total, our members serve over 2,000 trafficking survivors per year, including adults and minors, survivors of both sex and labor trafficking. Our members provide representation and advocacy to trafficking survivors in criminal and civil actions, and work to support the adoption of victim-centered approaches by law enforcement, courts, and service providers. Trafficking survivors have experienced a range of force, fraud, and coercion at the hands of traffickers. Some have been physically or sexually assaulted, others have witnessed the trafficker committing violence, others have been threatened with violence to themselves or their family members. All trafficking survivors have been subject to the power and control of the trafficker, and deserve protection from future threats and intimidation. FNUSA has an interest in ensuring that the US legal system implements policies and procedures that reduce retraumatization of human trafficking survivors, and thus improve their access to justice.

Futures Without Violence

Futures Without Violence (FUTURES) is a national nonprofit organization that has worked for over thirty years to prevent and end violence against women and children around the world. FUTURES mobilizes concerned individuals; children's, women's, and civil rights groups; allied professionals; and other social justice organizations to end violence through public education and prevention campaigns, public policy reform, training and technical assistance, and programming designed to support better outcomes and system responses for women and children experiencing or exposed to violence

Gender Justice

Gender Justice is a nonprofit legal and policy advocacy organization based in the Midwest that is committed to the eradication of gender barriers through impact litigation, policy advocacy, and education. As part of its litigation program, Gender Justice represents individuals and provides legal advocacy as *amicus curiae* in cases involving issues of gender discrimination. Gender Justice has an interest in ensuring that courtroom policies and procedures are survivor-centered so as to minimize the risk of further traumatization of survivors.

Harvard Law School Gender Violence Legal Policy Workshop

The Gender Violence Legal Policy Workshop consists of law and graduate students at Harvard Law School engaged in the development of legal policy to address and prevent gender-based violence. We are signing on as *amici* because of the importance of the issues raised in the case. The justice system must account for the trauma of sexual violence as an important evidentiary factor in its decisions. It is essential that the justice system prevent retraumatizing a sexual abuse victim in its practices and policies. The trial court's recognition of this through placing a reasonable restriction of the defendant's right to cross examine himself, rather than through standby counsel, is fully justified and supported across jurisdictions throughout the country.

Legal Momentum, the Women's Legal Defense and Education Fund

Legal Momentum, the Women's Legal Defense and Education Fund, is the nation's oldest legal advocacy organization dedicated to advancing the rights of women and girls through litigation, legislative policy and education. As one of the leading advocates for the 1994 Violence Against Women Act and each of its subsequent reauthorizations, Legal Momentum has long sought to redress the historical inadequacy of the justice system's response to gender-based violence. One of the organization's key programs, the National Judicial Education Program (NJEP), has played an instrumental role in eradicating gender bias from the courts

since 1980. Through NJEP, Legal Momentum has fostered the formation of state Supreme Court task forces on gender bias in the courts, conducted numerous judicial trainings and created countless publications, curricula and training on issues related to the adjudication of cases involving domestic and sexual violence

Legal Voice

Legal Voice is a nonprofit public interest organization based in Seattle that works to advance the legal rights of women and girls through litigation, legislative advocacy, and education about legal rights. Legal Voice has participated as counsel and as *amicus curiae* in cases throughout the Northwest and the country, and is a regional leader in working to improve legal protections for survivors of sexual violence. Legal Voice has a strong interest in this case because it raises important questions about protecting survivors of sexual violence in court proceedings.

National Crime Victim Law Institute

The National Crime Victim Law Institute (NCVLI) is a nonprofit educational and advocacy organization located at Lewis & Clark Law School in Portland, Oregon. NCVLI's mission is to actively promote balance and fairness in the justice system through crime victim-centered legal advocacy, education, and resource sharing. NCVLI accomplishes its mission through education and training; technical assistance to attorneys; promotion of the National Alliance of Victims' Rights

Attorneys; research and analysis of developments in crime victim law; and provision of information on crime victim law to crime victims and other members of the public. In addition, NCVLI routinely participates as *amicus curiae* in state and federal cases involving crime victims' rights nationwide.

National Crittenton

National Crittenton catalyzes social and systems change for girls, young women and gender non-conforming young people impacted by chronic adversity, violence, discrimination, and injustice. We serve as the umbrella for the 26 members of the Crittenton family of agencies providing direct services in 31 states and the District of Columbia. Like the young woman in the case at bar, many of the young people we support show courage and resilience in the face of the violence and discrimination they have endured. To support their journey, National Crittenton stands firmly opposed to any laws, regulations or policies, and interpretations thereof, that use basic constitutional protections such as the Sixth Amendment right to self-representation as a weapon to exacerbate the violence and trauma victims have already suffered. In this case, the perpetrator was well-represented by and given a full opportunity to cross-examine the victim through standby counsel. The Sixth Amendment is meant secure fundamental protections for the accused but was never intended as a Constitutional "blank check" to further traumatize the victim, especially when the victim is a minor child. Like all the institutions of

government that are intended to carry forth our democratic goals and protect our fundamental rights, the courts can be both fair and trauma-informed in their interactions with all parties who come before them. Based on this principle, the Superior Court's decision equitably balanced both justice for the defendant and compassion for the victim and must be upheld.

National Organization for Women Foundation

The National Organization for Women Foundation (“NOW Foundation”) is a 501(c)(3) entity affiliated with the National Organization for Women, the largest grassroots feminist activist organization in the United States with chapters in every state and the District of Columbia. NOW Foundation is committed to advancing equal opportunity for women and girls, by ending sexual and domestic violence, and by assuring that survivors of violence are afforded effective legal representation in court that respects their emotional well-being.

National Women’s Law Center

The National Women’s Law Center (NWLC) is a nonprofit legal advocacy organization dedicated to the advancement and protection of the legal rights of women and girls and the rights of all people to be free from sex discrimination. Since its founding in 1972, NWLC has focused on issues of key importance to women and girls, including economic security, employment, education, and health,

with special attention to the needs of low-income women and those who face multiple and intersecting forms of discrimination. NWLC has participated as counsel or *amicus curiae* in a range of cases before the Supreme Court, federal Courts of Appeals and state courts to secure equal treatment and opportunity in all aspects of society through enforcement of the Constitution and other laws prohibiting sex discrimination

Pennsylvania Coalition Against Domestic Violence

PCADV is a private nonprofit organization working at the state and national levels to eliminate domestic violence, secure justice for victims, enhance safety for families and communities, and create lasting systems and social change. PCADV was established in 1976 as the nation's first domestic violence coalition, and is now comprised of 59 funded community-based domestic violence programs across Pennsylvania, providing a range of life-saving services, including shelters, hotlines, counseling programs, safe home networks, medical advocacy projects, transitional housing and civil legal services for victims of abuse and their children. Current PCADV initiatives provide training and support to further advocacy on behalf of victims of domestic violence and their children.

Southwest Women's Law Center

The Southwest Women's Law Center is a nonprofit women's legal advocacy organization based in Albuquerque, New Mexico. Its mission is to create the opportunity for women to realize their full economic and personal potential by eliminating gender discrimination, helping to lift women and their families out of poverty, and ensuring that women have control over their reproductive lives. The Southwest Women's Law Center is committed to eliminating gender discrimination in all of its forms and ensuring meaningful enforcement of laws against sexual assault.

SurvJustice

SurvJustice is a legal nonprofit organization dedicated to providing justice to survivors of sexual violence. Direct cross-examination of a survivor of sexual violence by the alleged perpetrator can re-traumatize and re-victimize the survivor. In order to avoid even more lasting consequences to the survivor in this case, SurvJustice has a vested interest in the outcome of this decision.

Victim Rights Law Center

The Victim Rights Law Center ("VRLC") is a nonprofit organization dedicated to serving the legal needs of sexual assault victims, particularly adolescents and young adults. VRLC represents over 1,000 sexual assault survivors each year in

the areas of education, immigration, privacy, employment, housing and helping victims of sexual assault obtain protection orders to stabilize their lives and create a safe and healthy environment in which to live, study and work. The VRLC understand the importance of helping survivors find their own justice, while at the same time ensuring their own dignity, privacy and safety. As such, the VRLC offers a uniquely well-informed perspective on the importance of victim concerns about testifying in a criminal justice context.

Women's Law Center of Maryland, Inc.

The Women's Law Center of Maryland, Inc. is a nonprofit, membership organization with a mission of improving and protecting the legal rights of women, particularly regarding domestic violence, sexual assault, family law and employment law. Through its direct services and advocacy, the Women's Law Center seeks to promote the legal rights of women and girls and to protect their safety by assisting them to access the remedies and protections available through the civil and criminal legal system.

Women's Law Project

The Women's Law Project (WLP) is a non-profit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP's mission is to create a more just and equitable society by advancing the rights and status of all

women throughout their lives. To this end, WLP engages in high-impact litigation, advocacy, and education. The core values of the WLP are a belief in the right of all women to bodily integrity and personal autonomy; dedication to listening to women and being guided by their experiences; and commitment to fairness, equality, and justice. WLP is committed to ending violence against women and children and to safeguarding the legal rights of women and children who experience sexual abuse. To that end, WLP provides representation and counseling to victims of violence, participates in *amicus curiae* briefs challenging bias against victims of abuse in the legal system, and engages in public policy advocacy work to improve the response of the criminal justice system to sexual assault.

CERTIFICATE OF WORD COUNT

I hereby certify that this Brief contains 6,992 words, counted by Microsoft Word for Word Professional Plus 2013, and is in compliance with the word limitation established by Pa.R.A.P 531, exclusive of captions, cover, tables, signatures, and certifications.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 127

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P.121:

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