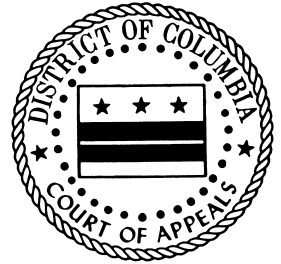


**DISTRICT OF COLUMBIA COURT OF APPEALS**



Clerk of the Court  
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No. 20-cv-0318

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MORGAN BANKS, et al.,  
*Plaintiffs–Appellants,*

v.

DAVID D. HOFFMAN, et al.,  
*Defendants–Appellees.*

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On Appeal from the Superior Court of the District of Columbia  
Civil Division, 2017 CA 005989 B  
Hon. Hiram E. Puig-Lugo, Associate Judge

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**BRIEF OF AMICI CURIAE NATIONAL WOMEN’S LAW CENTER,  
D.C. COALITION AGAINST DOMESTIC VIOLENCE, DV LEAP - A  
PROJECT OF NETWORK FOR VICTIM RECOVERY OF D.C., & TEN  
OTHER INDIVIDUAL & ORGANIZATIONAL SURVIVOR ADVOCATES  
IN D.C. IN SUPPORT OF APPELLEES AND AFFIRMANCE OF THE  
SUPERIOR COURT’S ORDER**

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## **CORPORATE DISCLOSURE STATEMENT**

Amici are individual and organizational survivor advocates. Amicus National Family Violence Law Center has a parent corporation: George Washington University School of Law. Otherwise, the amici certify that they have no parent corporations and have not issued any shares of stock to any publicly held corporation. No party's counsel authored the brief in whole or in part or contributed money intended to fund preparing or submitting the brief, and none other than amici contributed money to fund preparing or submitting the brief.

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## INTEREST OF AMICUS CURIAE<sup>1</sup>

Amici are individual and organizational advocates in D.C. who work to advance the rights of survivors<sup>2</sup> of sex harassment and other gender-based violence, including sexual assault and domestic violence. Amici’s work includes helping survivors report gender-based violence to schools, employers, and enforcement agencies and protecting survivors from retaliation, including retaliatory defamation lawsuits and other Strategic Litigation Against Public Participation (“SLAPPs”) filed by their harassers and abusers. In light of this work, amici submit this amicus brief to provide the Court with additional information about the broad and far-reaching consequences of weakening D.C.’s anti-SLAPP law for survivors of gender-based violence. A more detailed description of amici is included at Appendix A.

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<sup>1</sup> No party’s counsel authored this brief in whole or part or contributed money intended to fund preparing or submitting the brief, and none other than amici contributed money to fund preparing or submitting the brief. D.C. App. R. 29(a)(4)(A). Counsel for all parties have consented to the filing of this brief. D.C. App. R. 29(a)(2).

<sup>2</sup> The terms *victim* and *survivor* are used interchangeably in this brief, because many people who have experienced sex harassment and other gender-based violence feel that neither term alone, or even in combination, accurately captures the complexity of their identity or experience. See Kate Harding, *I’ve Been Told I’m a Survivor, Not a Victim. But What’s Wrong With Being a Victim?*, Time (Feb. 27, 2020, 8:20 AM), <https://bit.ly/3wZKeyv>; Parul Sehgal, *The Forced Heroism of the ‘Survivor’*, N.Y. Times Mag. (May 3, 2016), <https://bit.ly/3VoPJAU>.

## **SUMMARY OF ARGUMENT**

Sex harassment and other gender-based violence, including sexual assault and domestic violence, is widely prevalent yet vastly underreported. When survivors do come forward, they commonly face retaliation, whether at school, in the workplace, or in the broader community. In recent years, harassers and abusers are increasingly filing defamation suits and other SLAPPs to retaliate against their victims for speaking out or threatening to file such suits in order to prevent them from coming forward. For survivors, responding to such lawsuits and threats of litigation can be invasive, traumatic, and prohibitively expensive.

D.C.'s anti-SLAPP law—with its power to quickly, cost-effectively, and permanently halt abusers' meritless suits—is essential to protecting survivors' ability to report gender-based violence and shield them from further harm. It plays a critical role in advancing the District's ongoing efforts to encourage reports of, respond to, and ultimately prevent sex harassment and other gender-based violence. For these reasons, amici file this brief principally to explain the importance of D.C.'s anti-SLAPP law and the far-reaching consequences of this case. Amici urge this Court to affirm the Superior Court's order granting Appellees' special motions to dismiss and to otherwise preserve the protections for survivors offered by D.C.'s anti-SLAPP law.

## ARGUMENT

### **I. Sex Harassment and Other Gender-Based Violence Is Common Yet Underreported, and Survivors Often Face Retaliation When Speaking Out.**

Sexual assault, domestic violence, and other forms of gender-based violence are exceedingly commonplace. Every sixty-eight seconds, someone in the United States is sexually assaulted. *Scope of the Problem: Statistics, Rape, Abuse & Incest National Network*, <https://bit.ly/4ccm9EC> (last visited Apr. 14, 2024). Domestic violence, including beating, burning, and strangling, impacts more than ten million adults annually—about one person every three seconds. *Statistics, Nat’l Coalition Against Domestic Violence*, <https://bit.ly/3wTMMxU> (last visited Apr. 14, 2024). Tragically, such violence often turns lethal; one in two female murder victims are murdered by an intimate partner. *Domestic Violence, Nat’l Coalition Against Domestic Violence*, 2 (2020), <https://bit.ly/49VQntZ>.

Gender-based violence begins at a young age and continues into adulthood. For example, a study by amicus National Women’s Law Center found that in 2017 twenty-one percent of girls ages fourteen to eighteen had been kissed or touched without their consent. Kayla Patrick & Neena Chaudhry, *Let Her Learn: Stopping School Pushout for Girls Who Have Suffered Harassment and Sexual Violence*, Nat’l Women’s L. Ctr., 1 (2017), <https://bit.ly/3wD6Vs4> (hereinafter *Stopping School Pushout*). Among undergraduates, approximately one in four women, one in five

transgender and nonbinary students, and one in fifteen men have been sexually assaulted since enrolling. David Cantor *et al.*, *Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct*, Westat, ix, A7-5, A7-7, A7-9 (revised Jan. 17, 2020), <https://bit.ly/3TBtQwE> (hereinafter *AAU Survey*). It is no surprise that this harassment continues unabated in the workplace. As many as eighty-five percent of women have experienced sex harassment in the workplace, with Black women filing sex harassment charges with the Equal Employment Opportunity Commission (“EEOC”) at three times the rate of white women. Amanda Rossie *et al.*, *Out of the Shadows: An Analysis of Sexual Harassment Charges Filed by Working Women*, Nat’l Women’s L. Ctr., 5, 12 (Aug. 2018), <https://bit.ly/3UiS3YY>.

Rates of gender-based violence are similarly high in D.C. Within their lifetime, nearly half of both women and men in the District experience intimate partner violence, including sexual assault, non-sexual physical violence, and/or stalking. Sharon G. Smith *et al.*, *The National Intimate Partner and Sexual Violence Survey: 2016/2017 State Report*, CDC Nat’l Ctr. for Injury Prevention & Control, 74, 86 (Dec. 2023), <https://bit.ly/3TyRDgO>. Among D.C.’s unhoused families, more than half reported experiencing domestic violence, with nearly nine in ten of those families indicating that domestic violence was the cause of their homelessness. *Homelessness in D.C.: 2023 Point-in-Time Count: - Life Experiences*, The Community Partnership for the Prevention of Homelessness, <https://bit.ly/3IAX6h5>

(last visited Apr. 14, 2024). Between 2018 and 2022, domestic violence-related homicides accounted for approximately one in ten homicides of people fifteen years and older in the District each year. *Domestic Violence Homicide - 5-Year Trends: 2017–2021*, D.C. Off. of Victim Servs. & Just. Grants - D.C. Domestic Violence Fatality Review Board, 2 (2022), <https://bit.ly/3wVsYKz>.

Despite these extraordinarily high rates of victimization, most survivors do not come forward. Only about one in five sexual assaults and about half of domestic violence incidents are reported to the police. *Criminal Victimization, 2022*, Dep't of Justice - Bureau of Justice Statistics, 6 (Sept. 2023), <https://bit.ly/3TjPOmC>. Among girls ages fourteen to eighteen who are kissed or touched without their consent, just two percent report it to their schools. *Stopping School Pushout, supra*, at 2. Among college survivors of sexual assault, only about one in eight women, one in five transgender and nonbinary students, and one in ten men contacted a school program or resource. *AAU Survey, supra*, at A7-27, A7-30. In the workplace, only an estimated six to thirteen percent of sex harassment victims file a formal complaint with their employer. *Select Task Force on the Study of Harassment in the Workplace*, Equal Emp't Opportunity Comm'n, II.C (June 2016), <https://bit.ly/4cgDc8I>.

There are numerous reasons why survivors overwhelmingly do not feel safe coming forward. Many students do not inform their schools about sexual assault or dating violence because of shame and embarrassment, fear of not being believed,

and fear of retaliation. *AAU Survey, supra*, at A7-27–A7-33, A7-92–A7-93. Likewise, victims of workplace sex harassment under-report for many of the same reasons, including fear of retaliation. Jasmine Tucker & Jennifer Mondino, *Coming Forward: Key Trends and Data from the TIME’S UP Legal Defense Fund*, Nat’l Women’s L. Ctr., 11 (2020), <https://bit.ly/4abJog7> (hereinafter *Coming Forward*). Similarly, the number one reason sexual assault survivors do not go to the police is fear of reprisal. *Female Victims of Sexual Violence, 1994–2010*, Dep’t of Justice - Bureau of Justice Statistics, 7 (revised May 31, 2016), <https://bit.ly/3IRTyXV>.

Concerns about retaliation are well-founded. Students are frequently suspended or even expelled by their schools for physically defending themselves against a harasser, “acting out” (*i.e.*, expressing age-appropriate symptoms of trauma), telling other students about the harassment, or engaging in what the school determines to be “consensual” sexual activity with their assailant. *See, e.g.*, Sarah Nesbitt & Sage Carson, *The Cost of Reporting: Perpetrator Retaliation, Institutional Betrayal, and Student Survivor Pushout*, Know Your IX, 15–16, 24 (2021), <https://bit.ly/3TffNeY> (hereinafter *Cost of Reporting*). In the workplace, retaliation is by far the most common type of discrimination reported to the EEOC, comprising more than half of all EEOC charges in 2022. *Charge Statistics (Charges filed with EEOC) FY 1997 Through FY 2022*, Equal Emp’t Opportunity Comm’n, <https://bit.ly/3IA9r4T> (last visited Apr. 14, 2024). A report by amicus National

Women’s Law Center found that more than seven in ten of the thousands of workers requesting legal help from the TIME’S UP Legal Defense Fund were subjected to one or more forms of retaliation after reporting or trying to stop harassment. *Coming Forward, supra*, at 4. Relevant to this case, the third most common form of workplace retaliation these survivors reported was being sued for defamation. *Id.* at 13.

Retaliation frequently includes harassers’ weaponization of institutional and legal processes against their victims. For example, student survivors of sexual assault are often targeted by and disciplined for their abusers’ retaliatory, frivolous cross-complaints of “harassment.” *Cost of Reporting, supra*, at 18–19 (describing different survivors’ experiences of retaliatory cross-complaints, including an incident where a student, after being found responsible for rape and strangulation and losing his appeal, filed a cross-complaint against his victim, accusing her of raping him during the same encounter that he had previously claimed was consensual). In a disturbing number of cases, abusers have falsely reported their victims as actively suicidal and in need of a “wellness check” from police, causing their victims to be involuntarily committed to an inpatient facility. *Id.* at 20.

In short, despite the extreme prevalence of and harm caused by gender-based violence, *not* reporting remains the safest choice for many victims. If a survivor is courageous enough to come forward, they almost inevitably risk retaliation—not

only from their schools, workplaces, and communities but also from their abusers. And as outlined in the following section, abusers are increasingly filing or threatening to file SLAPPs, including defamation suits, as a tool for retaliation.

## **II. Harassers and Abusers Use Defamation Lawsuits and Other SLAPPs to Retaliate or to Prevent Victims from Coming Forward.**

Defamation suits and other SLAPPs are increasingly used by harassers and abusers to coerce their victims into withdrawing their claims or to deter them from reporting in the first place. By inflicting or threatening costly, invasive, and traumatic litigation, and by raising the specter of continued abuse through the litigation process itself, abusers can effectively silence and bar their victims from public participation, even when the abuser has filed or would file a legally insufficient claim.

### **A. Retaliatory defamation suits and other SLAPPs are increasingly being weaponized against survivors.**

Retaliatory defamation lawsuits against survivors of sex harassment and other gender-based violence have increased at alarming rates in the past decade, especially after #MeToo went viral in fall 2017 and inspired waves of survivors to come forward for the first time.<sup>3</sup> In December 2017, a lawyer for the Victim Rights Law

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<sup>3</sup> In response to an outpouring of requests from survivors who were targeted by retaliatory defamation suits and other SLAPPs, amicus National Women’s Law Center created a toolkit to help survivors, including students and workers, better understand these baseless lawsuits and how to defend against them. Elizabeth Tang *et al.*, *Survivors Speaking Out: A Toolkit About Defamation Lawsuits and Other*



Center remarked that threats of defamation lawsuits against sexual assault survivors had risen from five percent of her caseload a few years prior to over half of her caseload. Tyler Kingkade, *As More College Students Say “Me Too,” Accused Men Are Suing For Defamation*, BuzzFeed News (Dec. 5, 2017, 11:26 AM), <https://bit.ly/4acCs2p> (hereinafter *Accused Men Are Suing*). In 2020, another attorney reported that, prior to 2017, he had received inquiries twice a year from survivors who feared retaliatory defamation suits, but now he received such inquiries every two weeks. Madison Pauly, *She Said, He Sued*, Mother Jones (Mar./Apr. 2020), <https://bit.ly/49UzaBk> (hereinafter *She Said, He Sued*). In 2021, a study found that twenty-three percent of surveyed student survivors were threatened with a defamation suit by an abuser, and nineteen percent were warned by their school of the possibility of a defamation suit. *Cost of Reporting, supra*, at 21.

Defamation lawsuits have also been increasingly weaponized by a more diverse range of abusers. Before the #MeToo movement went viral in fall 2017, the majority of defamation lawsuits targeting survivors were campus based, with nearly three in four filed by male college students and faculty who had been reported for sex harassment or assault. *She Said, He Sued, supra*. Since then, defamation suits by

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*Retaliation By and For People Speaking Out About Sex-Based Harassment*, Nat’l Women’s L. Ctr., (Aug. 9, 2023), <https://bit.ly/3UUIO27>.

reported harassers have been filed at a faster rate, with three in four now filed by non-students, such as employees, politicians, professional athletes, and celebrities.

*Id.*

Abusers are filing other types of SLAPPs against their victims as well. For instance, in a high-profile incident, a California state lawmaker sued a state lobbyist for intentional infliction of emotional distress as well as defamation after the lobbyist reported the lawmaker's sexual misconduct. *Id.* Abusers who lose their jobs after being reported for sex harassment are also bringing claims such as tortious interference with contractual or business relations against their victims. *E.g., Accused Men Are Suing, supra.*

Harassers and abusers do not typically expect to win their SLAPPs. These suits are meritless, but the financial and practical costs of defending against them are used to suppress the survivor-defendant's ability to publicly speak out about harassment or to seek help from their school, employer, and other institutions, including the civil and criminal legal systems. Like others who file SLAPPs, harassers and abusers aim to devastate their victims financially, chill their right to public participation, and continue the cycle of abuse. *See, e.g., Alyssa R. Leader, A "SLAPP" in the Face of Free Speech: Protecting Survivors' Rights to Speak Up in the "Me Too" Era, 17 First Am. L. Rev. 441, 447–48 (2019) (hereinafter A "SLAPP" in the Face of Free Speech).* For serial harassers, pursuing a defamation suit or other

SLAPP against one victim also sends a clear, threatening message to the harasser's other victims that they will face the same retaliatory response if they come forward.

This alarming trend has captured the attention of state lawmakers across the country, who have introduced and passed a number of laws in the last few years to explicitly protect survivors from being targeted by defamation and other abusive lawsuits. *E.g.*, Cal. Civ. Code § 47.1 (2023) (creating a privilege for statements about “sexual assault, harassment, or discrimination”); R.I. Gen. Laws Ann. § 8-8.4-1 *et seq.* (2023) (allowing survivors to request a court order restricting abusive litigation); Vt. Stat. Ann. § 1181 *et seq.* (2023) (same); Wash. Rev. Code Ann. § 26.51.010 *et seq.* (2020) (same); N.Y. S.B. S52A (2020) (enacted) (extending protections against retaliatory lawsuits to include more people, including survivors); N.Y. Sen. Brad Hoylman (@bradhoylman), Twitter (July 22, 2020, 2:15 PM), <https://bit.ly/43hcyZ2> (“This bill [N.Y. S.B. S52A] is going to protect survivors.”); Tenn. Code Ann. § 29-41-101 *et seq.* (2018); Ill. H.B. 5452 (2024) (amending Illinois law to explicitly protect survivors from retaliatory school complaints and lawsuits alleging defamation).

**B. Defending against defamation lawsuits and other SLAPPs is prohibitively expensive, which can effectively silence many victims.**

Due to the significant financial costs of defending against a SLAPP, the baseless nature of these suits does not detract from their power to silence survivors or coerce them into withdrawing their claims. Even if a survivor-defendant can

eventually recover litigation costs at the end of a SLAPP, most do not have the resources to litigate cases to their conclusion, particularly against deep-pocketed plaintiffs. *See, e.g.,* David Keating, *Estimating the Cost of Fighting a SLAPP in a State with No Anti-SLAPP Law*, Inst. For Free Speech (June 16, 2022), <https://bit.ly/3IDCPqU> (noting a typical meritless defamation lawsuit costs \$21,000–\$55,000 to defeat, with the median at about \$39,000, but that “the cost of a legal defense can easily soar into the six figures, and we’ve seen legal bills run in the millions of dollars.”). Low-paid workers are doubly vulnerable to abusive lawsuits because they are both more likely to be harassed and less able to afford an attorney in order to defend against aggressive litigation. *See* Alieza Durana *et al.*, *Sexual Harassment: A Severe and Pervasive Problem - Making Ends Meet in the Margins: Female-Dominated, Low-Wage Sectors*, New America, <https://bit.ly/3TeUHNL> (last visited Apr. 14, 2024) (“[w]orkers in low-wage, female-dominated industries have the highest reported incidences of sexual harassment and assault by sector[,]” including from “customers, vendors, and clients”).

Survivors are also less able to shoulder the costs of defending against SLAPPs because they must contend with the often enormous economic costs of the underlying abuse. In 2017, the lifetime cost of rape—including medical care, lost work productivity, and other economic consequences—was estimated at \$122,461 per survivor, resulting in a lifetime economic burden of \$3.1 trillion for all rape

survivors. Cora Peterson *et al.*, *Lifetime Economic Burden of Rape Among U.S. Adults*, 52 *Am. J. Preventative Med.* 691, 697 (2017). In many cases, the financial toll can be much higher. Two workplace harassment victims who were profiled in a 2021 report suffered lifetime losses of \$605,995 and \$1.3 million, including lost wages, job benefits, pension value, and Social Security benefits. Ariane Hegewisch *et al.*, *Paying Today and Tomorrow: Charting the Financial Costs of Workplace Sexual Harassment*, Inst. for Women’s Policy Rsch. & TIME’S UP Found., 13–15 (2021), <https://bit.ly/48RWgHq>. Another victim who was forced to leave her skilled trades apprenticeship and was unemployed for over a year afterwards incurred a lifetime loss of \$230,864. *Id.* at 24.

When faced with the prospect of defending against an expensive defamation suit or other SLAPP, many survivors are effectively extorted into remaining silent or retracting their claims. This can include withdrawing their own litigation against their harasser or abuser—such as a petition for sole custody of shared children, claims to property in a divorce, or a lawsuit alleging sexual assault or domestic violence—simply because they cannot afford to both pursue and defend litigation in court. As a result, SLAPPs sharply undermine the effectiveness of legal protections against sex harassment and other forms of gender-based violence.

**C. The invasive and traumatic nature of SLAPPs harms survivors and deters them from speaking out.**

Another reason SLAPPs like defamation lawsuits are so effective at silencing survivors is that they force survivors to disclose intensely private details and to repeatedly relive their trauma through invasive discovery and other litigation demands. In these lawsuits, the abuser-plaintiff may be able to access a victim's medical records, student records, and even sexual history. Kylie Cheung, *Campus Sexual Assault Survivors Have Always Feared Defamation Lawsuits*, Jezebel (June 2, 2022, 7:55 PM), <https://bit.ly/49Jucal>.

In addition, repeated questioning through litigation can exacerbate trauma, inhibiting a survivor's healing process. See Gary Fulcher, *Litigation-Induced Trauma Sensitisation (LITS)—A Potential Negative Outcome of the Process of Litigation*, 11 *Psychiatry, Psych. & L.* 79, 82 (2004). On top of physical injuries, survivors often suffer from impaired psychological well-being stemming from the abuse, including anxiety, depression, and post-traumatic stress disorder. See, e.g., *Victims of Sexual Violence: Statistics*, Rape, Abuse & Incest National Network, <https://bit.ly/3TxEcxH> (last visited Apr. 14, 2024) (collecting studies showing that among women who are raped, ninety-four percent experience PTSD symptoms in the following two weeks; thirty percent report PTSD symptoms nine months afterwards; thirty-three percent contemplate suicide; and thirteen percent attempt suicide). When survivors must recount their experience of an assault over and over

in defending against a defamation suit or other SLAPP, they are forced to reopen those emotional wounds, compounding their underlying trauma.<sup>4</sup> *See, e.g., Bryce Covert, Years after #MeToo, Defamation Cases Increasingly Target Victims Who Can't Afford to Speak Out*, Intercept (July 22, 2023, 6:00 AM), <https://bit.ly/3TBqpWY> (hereinafter *Years after #MeToo*) (“It also meant she had to keep reliving what had happened to her, recounting the story over and over again to lawyers, after she had just started to get better at not thinking about it.”). That the litigation’s objective is to deny the survivor’s very experience of abuse can only deepen that trauma.

Perhaps most troubling of all, survivors must endure continued unwanted interaction with their abuser throughout the litigation process. This can include being forced to testify at a deposition or trial within feet of the person who harmed them. *A “SLAPP” in the Face of Free Speech, supra*, at 448. It is no surprise that some survivors have likened the experience of being subjected to such abusive litigation to “being tortured.” *Years after #MeToo, supra*.

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<sup>4</sup> Burnout from defending against a SLAPP can also negatively impact a survivor’s ability to testify in an underlying suit alleging sexual assault, domestic violence, or other sex-based harassment.

**D. Defamation suits and other SLAPPs are a form of abusive litigation.**

Domestic violence abusers have long weaponized the legal system to maintain power and control over their victims. David Ward, *In Her Words: Recognizing and Preventing Abusive Litig. Against Domestic Violence Survivors*, 14 Seattle J. For Soc. Just. 429, 430, 432 (2016) (explaining that domestic abusers commonly terrorize their victims by filing baseless petitions for sole custody of shared children, falsely reporting their victims to child protective services, threatening to report the victim to immigration officials, and more). *See also* D.C. Code § 4–551 (2013) (defining “domestic violence” as behavior “used by one partner to gain or maintain power and control over another”); R.I. H.B. 5883 (2023) (finding that domestic violence abusers “often misuse court proceedings ... to exert and reestablish power and control”). Abusers may even use frivolous legal proceedings to threaten and silence anyone who helps the survivor—including friends, family, advocates, and lawyers—in order to isolate a survivor from their support networks. *Domestic Violence Manual for Judges, Appendix H: Abusive Litigation and Domestic Violence Survivors*, Legal Voice Violence Against Women Workgroup, H-3 (2016), <https://bit.ly/3Vgt6OU>. This tactic is so common that it is known as “stalking by way of the courts.” *See* Jessica Klein, *How Domestic Abusers Weaponize the Courts*, Atlantic (July 18, 2019), <https://bit.ly/49Zivww> (hereinafter *How Domestic Abusers Weaponize the Courts*).



Post-separation, domestic violence survivors often experience an escalation of threats and abuse as the abuser attempts to maintain or regain control over the survivor. A survivor's risk can increase by seventy-five percent or more after separation from an abusive intimate partner and this continuing threat of abuse can last for years. See Jane K. Stoeber, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 Vand. L. Rev. 1015, 1025 (2014) (hereinafter *Enjoining Abuse*); T.K. Logan & Robert Walker, *Separation as a Risk Factor for Victims of Intimate Partner Violence - Beyond Lethality and Injury: A Response to Campbell*, 19 J. Interpersonal Violence 1478, 1480 (2004) (“One study found that 95% of women leaving violent relationships continued to experience psychological abuse and 39% experienced continued physical violence[.]”).

Retaliatory defamation suits and other SLAPPs are an effective tool of post-separation abuse, serving both to intimidate the victim and to force the victim to keep seeing the abuser. See *How Domestic Abusers Weaponize the Courts*, supra. These forced interactions centered around court proceedings can provide a “catalyst for contact” between an abuser and victim; indeed, on some occasions, these legal contacts have enabled an abuser to kill their victim. See *Georgia Domestic Violence Fatality Review Project, 2017 Annual Report*, Georgia Coalition Against Domestic Violence, 26 (2017), <https://bit.ly/3ICytjT> (describing a case in which an abuser killed a victim after convincing her to meet to discuss a pending court case);

*Enjoining Abuse, supra*, at 1027–28 (describing two cases where one abuser killed his victim just outside the courtroom during a protection order hearing and another killed his victim inside the courtroom during a divorce proceeding). By providing survivors a way to quickly dispose of abusive litigation, anti-SLAPP laws not only can protect survivors’ ability to speak freely about their abuse but also can protect their physical safety.

### **III. D.C.’s Anti-SLAPP Law Is Critical to Protecting Survivors’ Ability to Freely Report and Advocate Against Sex Harassment and Other Gender-Based Violence.**

The harm of SLAPP suits has been recognized and discussed for decades. *See* George W. Pring & Penelope Canan, *Strategic Lawsuits Against Public Participation (SLAPPs): An Introduction for Bench, Bar, And Bystanders*, 12 *Bridgeport L. Rev.* 937, 939–40 (1991) (coining the term “SLAPP” and noting that every year “thousands are being sued for their government advocacy”). The U.S. Supreme Court, too, has recognized the retaliatory and coercive power of SLAPPs:

A lawsuit no doubt may be used ... as a powerful instrument of coercion or retaliation. ... Regardless of how unmeritorious the [ ] suit is, the [defendant] will most likely have to retain counsel and incur substantial legal expenses to defend against it.

*Bill Johnson’s Restaurants, Inc. v. NLRB*, 461 U.S. 731, 740–41 (1983).

This is why in 2011, the D.C. Council enacted a robust anti-SLAPP law to protect people who advocate on an issue of public interest, including survivors speaking out about sex-based harassment and other forms of gender-based violence,

from being targeted with a retaliatory lawsuit. D.C. Code §§ 16–5501(1), (3) (2011); *see also Fells v. Serv. Emps. Int’l Union*, 281 A.3d 572, 582 (D.C. 2022) (holding that the “appropriate treatment of workers,” including “in the context of the #MeToo movement,” “is undoubtedly an issue of public concern”). When a survivor’s statements about harassment form the basis of a defamation lawsuit or other SLAPP, D.C.’s anti-SLAPP law allows the survivor-defendant to file a special motion to dismiss and stay discovery. D.C. Code §§ 16–5502(b)–(c) (2011). And, if the motion is granted, the survivor can have the case dismissed with prejudice and recover attorney fees and costs from their abuser. D.C. Code §§ 16–5502(d), 16–5504(a) (2011); *Doe v. Burke*, 133 A.3d 569, 571 (D.C. 2016) (holding that fee-shifting is presumed unless special circumstances would make a fee award unjust). Together, the discovery-limiting and fee-shifting provisions protect survivors from having to endure the prohibitive cost, invasiveness, and trauma of a retaliatory lawsuit, thereby strengthening their ability to report and seek help for the harassment and other forms of gender-based violence in their schools, workplaces, and communities, including through the legal system. This Court has deemed these protections so important that if a survivor’s special motion to dismiss is denied, they can immediately appeal the denial instead of enduring the rest of the litigation. *See Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1231 (D.C. 2016), *as amended* (Dec. 13, 2018).

For example, Jane Doe—a graduate student, resident of Ward 5, and former client of amicus Network for Victim Recovery of D.C.—successfully used D.C.’s anti-SLAPP statute to dismiss her stalker’s defamation case. Her case arose when she ended a dating relationship with a classmate and he began to terrorize her with his relentless stalking. He called her nonstop, left flowers and poems about his “undying love” on her car, and engaged in other intimidating behavior after tracking down a former employer in another state. Jane felt so increasingly fearful for her safety that she created an extensive safety plan with her attorney and sought therapy from a mental health specialist. She begged her stalker to stop, but he refused. When she finally filed for a civil protection order (“CPO”), he retaliated by suing her for defamation. Thankfully, using D.C.’s anti-SLAPP statute, Jane was able to avoid any invasive or traumatic discovery and have the defamation suit dismissed with prejudice. This allowed her to avoid years of baseless litigation, untold financial and emotional costs, and continued stalking. Moreover, after the SLAPP suit was dismissed, Jane’s stalker finally stopped stalking her.

As another example, Nina Doe, another District resident and former client of Network for Victim Recovery of D.C., used D.C.’s anti-SLAPP law to deter her assailant—a serial predator—from suing her for tortious interference. Nina was sitting at a bar when one of the bartenders introduced himself and, within seconds, reached down and grabbed her crotch with enough force to almost knock her off the

stool. She filed criminal charges and sought a CPO, which was granted, and her assailant was convicted. After learning that he had similarly assaulted several other women, Nina informed the bar where he worked (which fired him) and posted about her experience on social media. In retaliation, her assailant proceeded to engage in a campaign of abusive litigation. First, he accused her of stalking him and filed for an anti-stalking order. While his petition was baseless and ultimately denied, it nonetheless forced her to spend time and effort gathering evidence to defend against the allegations and remain physically and psychologically tethered to the person who had assaulted her. Undeterred, Nina's assailant then threatened to file a lawsuit for tortious interference against her based on her statements to his employer and on social media. However, when her attorney made clear that they would seek dismissal under D.C.'s anti-SLAPP statute and request attorney's fees and costs, he not only stopped threatening to sue her but also stopped harassing her altogether.

Nina's case illuminates several truths about the nature of SLAPPs. First, although her CPO and her assailant's criminal conviction provided a strong legal defense against any SLAPP he might bring, he was nonetheless determined to retaliate against her and did not withdraw his threat of suing her until he was confronted with D.C.'s anti-SLAPP statute (and its fee-shifting provisions). His sheer relentlessness reaffirms that reported harassers who file SLAPPs do not typically expect to win and seek instead to punish their victims, and that D.C.'s anti-

SLAPP statute is powerfully effective at preventing them from doing so. Second, although Nina could have mounted a strong defense, doing so would still have subjected her to all the accompanying harms of litigation, including the expense, invasiveness, and traumatic nature of a protracted discovery phase. D.C.’s anti-SLAPP statute shielded her from all of those harms. Finally, unlike Nina, most survivors in D.C. do not have a CPO or a criminal conviction against their abusers. This makes it harder for them both to dissuade their abusers from suing in the first place and, if they are sued, to mount a strong defense to quash a baseless suit. For them, D.C.’s anti-SLAPP statute is all the more critical to ensuring that when they speak out, they are not besieged with abusive litigation.

Finally, amici note that D.C.’s anti-SLAPP law advances the District’s ongoing efforts to prevent, respond to, and encourage reporting of gender-based violence, including harassment—efforts that have been bolstered by recent D.C. legislation and executive orders. *E.g.*, D.C. Code § 16–904 (2024) (eliminating waiting periods for divorce to prevent domestic violence abusers from perpetrating escalating, even fatal, abuse while their victims are required to live with them); D.C. Code §§ 1-546.01–1-546.03 (2022) (requiring D.C. agencies to track how many incidents of sex harassment are reported, investigated, resolved, etc.); D.C. Code § 2–1402.11(c-2)(3) (2022) (requiring employers to respond to complaints of sex harassment even when the incidents do not rise to the level of “severe or pervasive”

conduct); D.C. Code §§ 38–952.01–38-952.02 (2019) (requiring schools to prevent and respond to student-on-student sex harassment, sexual assault, and dating violence); D.C. Exec. Order No. 2023-131 (Oct. 31, 2023) (*inter alia*, encouraging all D.C. government employees to report workplace sex harassment and directing the Sexual Harassment Task Force to make policy recommendations to “further the goal of a harassment-free workplace”).

Ensuring that survivors in D.C. cannot be dragged through years of expensive, invasive, and psychologically devastating litigation for merely reporting gender-based violence is a critical part of the District’s ongoing efforts to counter gender-based violence. In order to meaningfully further these goals, it is imperative that the protections offered to survivors by D.C.’s anti-SLAPP law remain in place.

### **CONCLUSION**

For the above reasons, amici respectfully urge this Court to uphold D.C.’s Anti-SLAPP statute and to affirm the Superior Court’s order granting Appellees’ special motions to dismiss.

Dated: April 15, 2024

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Respectfully submitted,

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## **APPENDIX A**

### **National Women’s Law Center (“NWLC”)**

The **National Women’s Law Center** is a nonprofit organization that fights for gender justice in the courts, in public policy, and in our society, and works across issues that are central to the lives of women and girls, especially women of color, LGBTQI+ people, and low-income women. Since 1972, NWLC has worked to advance educational opportunities, workplace justice, health and reproductive rights, and income security. The NWLC Fund houses and administers the TIME’S UP Legal Defense Fund, which improves access to justice for those facing workplace sex harassment, including through grants to support legal representation. NWLC has participated as counsel or amicus curiae in a range of cases to secure the equal treatment of women and girls under the law. NWLC has also, in response to the wave of defamation lawsuits targeting victims of sex harassment, published a toolkit to help survivors understand their rights: *Survivors Speaking Out: A Toolkit About Defamation Lawsuits And Other Retaliation By And For People Speaking Out About Sex-Based Harassment*, (Aug. 9, 2023), <https://bit.ly/3UUIO27>.

### **D.C. Coalition Against Domestic Violence (“DCCADV”)**

The **D.C. Coalition Against Domestic Violence** is the federally recognized statewide coalition of domestic violence programs, organizations, and individuals dedicated to the elimination of domestic violence in the District of Columbia. The

member programs of DCCADV provide shelter, counseling, support, advocacy, and legal services for domestic violence survivors. With the mission to build a community where domestic violence is replaced with human dignity, DCCADV provides training and technical assistance, conducts outreach, and advocates for policies to end domestic violence in D.C.

### **DV LEAP - A Project of Network for Victim Recovery of D.C. (“NVRDC”)**

**DV LEAP** is a project of **Network for Victim Recovery of D.C.**, which provides free comprehensive services to crime victims in the District of Columbia, including acute crisis support for adult sexual assault survivors through its Sexual Assault Crisis Response Project, therapeutic services, advocacy, and legal representation. Adding to this broad spectrum of services, DV LEAP is the only national appellate program providing domestic violence and sexual assault survivors pro bono representation to protect their rights. Its amicus briefs in state and federal courts and the Supreme Court advance judicial understanding of issues fundamental to survivors’ safety and access to justice. Abusers’ misuse of the legal system against survivors is a pervasive form of abuse that often evades legal recourse despite its clear harm. Anti-SLAPP statutes such as D.C.’s are an effective and critical means to address these litigation tactics, protecting survivors’ rights to speak out and achieve safety.

## **Asian/Pacific Islander Domestic Violence Resource Project (“A/PI DVRP”)**

The **Asian/Pacific Islander Domestic Violence Resource Project** is a nonprofit organization in the District of Columbia that supports and mobilizes Asian/Pacific Islanders to build safer communities by responding to harm and striving to end gender and power-based violence. A/PI DVRP strongly supports survivors’ rights to seek support for themselves and their loved ones without fear of retribution. A/PI DVRP has seen firsthand the impact of SLAPP lawsuits against its clients, which lead them to financial ruin and adversely impact their mental health and capacity to heal.

### **D.C. SAFE**

**D.C. SAFE’s** mission is to ensure the safety and self-determination of domestic violence survivors through emergency services, court advocacy, and system reform. As the largest service provider for survivors of domestic violence in the District serving 12,000 survivors each year, D.C. SAFE sees the full array of abusive behaviors leveraged against victims of gender-based violence and harassment every day. Abusers who have the resources often bring their victims to court or file baseless cross-complaints simply to increase their leverage over the victim and stop the victim from holding the offender accountable. Therefore, D.C. SAFE strongly supports the position expressed in this brief and is proud to sign on.

### **D.C. Volunteer Lawyers Project (“DCVLP”)**

The **D.C. Volunteer Lawyers Project** is a nonprofit organization that provides comprehensive, pro bono legal assistance to survivors of domestic violence, including survivors of dating violence, sexual assault, stalking, and gender-based violence; to at-risk children living with abuse, neglect, domestic violence, and other dangerous circumstances; and to vulnerable immigrant populations seeking humanitarian forms of immigration relief. DCVLP provides legal representation to clients in civil protection order, family law, and immigration cases, as well as free legal advice and brief services to survivors through various legal clinics throughout the District of Columbia.

### **Kellibrew Survivors’ Network**

The **Kellibrew Survivors’ Network** is a nonprofit organization that was founded to honor William Kellibrew, a survivor of domestic violence and sexual assault who faced a SLAPP from his abuser. Kellibrew Survivors’ Network stands with victims and survivors of sex harassment and other gender-based violence and the spirit of the District of Columbia’s anti-SLAPP law to further protect victims and survivors.

### **Legal Aid D.C.**

**Legal Aid D.C.** works with domestic violence survivors by providing representation in civil protection order cases, as well as legal advice and

representation to survivors seeking support in family court matters. Through its work, Legal Aid D.C. bears witness to the added challenges that survivors experience when their abusers use the court processes to perpetrate ongoing abuse and assert control. Survivors are regularly juggling competing priorities. When they are sued by their abusers, the added stress and consequences create barriers to achieving stability and safety. Legal Aid D.C. supports this amicus brief to ensure survivors have legal protection from frivolous suits brought to perpetuate abuse.

### **National Family Violence Law Center**

The **National Family Violence Law Center** at George Washington University Law School is the preeminent home for national research and expert support for law and policies related to legal responses to domestic abuse. It provides pioneering quantitative and qualitative research, training and education, state and federal policy development, and selective litigation as a friend of the court.

### **Neighborhood Legal Services Program of the District of Columbia**

The **Neighborhood Legal Services Program of the District of Columbia** is a nonprofit legal services organization that provides free legal information, advice and representation to low-income District of Columbia residents on civil legal matters. The prevalence of relationship abuse and violence is astounding, yet the voices of the injured and abused are far too often unheard. The trauma that results has a lasting impact that often impedes healthy relationships. The Neighborhood

Legal Services Program is there to give voice to the voiceless. The Anti-SLAPP Act empowers victims and survivors to have the courage to let their voices be heard and to seek justice without fear of retaliation. Diminution of the tone and tenor of the Act will stifle all the progress made towards judicial relief.

### **The Safe Sisters Circle (“TSSC”)**

**The Safe Sisters Circle** was founded in 2018 to provide culturally specific, trauma-informed, and holistic legal services to Black women survivors of domestic violence and sexual assault primarily living in Wards 7 and 8. TSSC represents survivors in both the Domestic Violence Division and Domestic Relations Branch of D.C. Superior Court. TSSC’s mission is to give a voice to Black women in the District who are often overlooked and ignored by the systems because of both their race and their gender. TSSC has a vested interest in this appeal and the Court ensuring that survivors who choose to speak publicly about the abuse they have faced are not penalized with meritless lawsuits.

### **Tzedek D.C.**

**Tzedek D.C.** draws from the Jewish teachings of “Tzedek, tzedek tirdof,” or “Justice, justice you shall pursue,” to safeguard the legal rights and financial health of D.C. residents with low income dealing with the often devastating consequences of abusive debt collection practices and other consumer related issues. Tzedek D.C. regularly works with survivors of domestic violence through its Economic

Exploitation and Fraud Project and its Crime Victims Advocacy Program. Tzedek D.C. has an interest in preserving D.C.'s anti-SLAPP statute to protect those survivors from meritless and abusive lawsuits.

**Tianna Gibbs**

**Tianna Gibbs** is a Professor of Law at the University of the District of Columbia, David A. Clarke School of Law. Gibbs has represented survivors of intimate partner violence and domestic violence in family law and civil protection order matters in the District of Columbia for over 15 years as a legal services attorney and as the director of a law school clinic. After reporting intimate partner violence and domestic violence, several of Gibbs' clients have faced retaliation from the perpetrator of violence. The District's anti-SLAPP statute is a potential tool that Gibbs' clients can use to protect themselves from retaliation.

**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing Brief of Amici Curiae National Women’s Law Center, D.C. Coalition Against Domestic Violence, DV LEAP – A Project of Network for Victim Recovery of D.C., & Ten other Individual & Organizational Survivor Advocates in D.C. in Support of Appellees and Affirmance of the Superior Court’s Order to be electronically filed on this date with the Clerk of the Court for the District of Columbia Court of Appeals through the Court’s electronic filing system and served upon all registered participants.

Dated: April 15, 2024

*/s/ Landis Cox Best*  
Landis Cox Best



# District of Columbia Court of Appeals

## REDACTION CERTIFICATE DISCLOSURE FORM

**Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a “CV” docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.**

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

- An individual’s social-security number
- Taxpayer-identification number
- Driver’s license or non-driver’s’ license identification card number
- Birth date
- The name of an individual known to be a minor
- Financial account numbers, except that a party or nonparty making the filing may include the following:

- (1) the acronym “SS#” where the individual’s social-security number would have been included;
- (2) the acronym “TID#” where the individual’s taxpayer-identification number would have been included;
- (3) the acronym “DL#” or “NDL#” where the individual’s driver’s license or non-driver’s license identification card number would have been included;
- (4) the year of the individual’s birth;
- (5) the minor’s initials; and
- (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.
3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.
4. Information about protection orders, restraining orders, and injunctions that “would be likely to publicly reveal the identity or location of the protected party,” 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining “protection order” to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).
5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.
6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ Landis Cox Best  
Signature

20-cv-0318  
Case Number(s)

Landis Cox Best, Counsel of Record for Amici Curiae  
Name

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