

SUPREME COURT OF NORTH CAROLINA

James Edward Imes,)	
Plaintiff)	
)	
)	<u>From Buncombe County</u>
v.)	02CVS3372
)	COA03-218
City of Asheville,)	
CCL Management, Inc., and)	
Asheville City Coach Lines, Inc.,)	
Defendants.)	

BRIEF OF *AMICI CURIAE* LEGAL MOMENTUM, PEACE AT WORK, THE NORTH CAROLINA COALITION AGAINST DOMESTIC VIOLENCE, THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH PROJECT, THE DOMESTIC VIOLENCE ADVOCACY CENTER, LEGAL AID OF NORTH CAROLINA, INC., PROFESSOR DEBORAH M. WEISSMAN, THE FAMILY VIOLENCE PREVENTION CENTER OF ORANGE COUNTY, AND 20 OTHER NATIONAL, LOCAL, AND REGIONAL ORGANIZATIONS AND INDIVIDUALS SUPPORTING PLAINTIFF APPELLANT AND URGING REVERSAL

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Caudill v. Dellinger, 129 N.C. App. 649, 501
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Deerman v. Beverly California Corp., 135
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McLaughlin v. Barclays Am. Corp., 95 N.C.
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Vereen v. Holden, 121 N.C. App. 779, 468
S.E.2d 471 (1996) 12, 20

Williams v. Hillhaven Corp., 91 N.C. App.
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2004 N.C. Sess. Laws 165 4, 17, 18

2004 N.C. Sess. Laws 186 *passim*

MISCELLANEOUS

American Psychological Association, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family* (1996) *passim*

Centers for Disease Control and Prevention, Dep't of Health & Hum. Services, *Costs of Intimate Partner Violence Against Women in the United States* (2003) 23, 29, 30

Karen S. Collins et al., *Health Concerns Across A Woman's Lifespan: The Commonwealth Fund 1998 Survey of Women's Health* (1999) 7

Governor Awards Anti-Crime Grants, The [Raleigh] News & Observer, May 28, 2004, at B-3 28

J. Kolbo, E. Blakely, and D. Engelman, *Children Who Witness Domestic Violence: A Review of Empirical Literature*, 11 J. Interpersonal Violence 281 (1996) 24

K.E. Moracco et al., *Femicide in North Carolina, 1991-1993: A Statewide Study of Patterns and Precursors*, 4 Homicide Studies 422 (1998) 11

National Resource Center on Domestic Violence, *Children Exposed to Intimate Partner Violence* (March 2002) 22, 23, 24, 25

North Carolina Coalition Against Domestic Violence, *2004 Legislative Summary* 28

North Carolina Coalition Against Domestic Violence, *Common Myths and Why They are Wrong* 10

North Carolina Coalition Against Domestic Violence, *Domestic Violence Homicides In North Carolina from January 1-December 31, 2002* 11

North Carolina Coalition Against Domestic Violence, *Domestic Violence Homicides In North Carolina from January 1-December 31, 2003* 11

North Carolina Council for Women and Domestic Violence Commission, *Children and Domestic Violence: An Information Packet* 8-9

North Carolina Council for Women and Domestic Violence Commission, *Domestic Violence Statistical Report (2002-2003)* 9

North Carolina Office of State Personnel, *State Personnel Manual* 27

J. Raphael & R. Tolman, *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare* (1997) 24

M. Strauss & R. Gelles, *Societal Change and Change in Family Violence From 1975 to 1985 as Revealed by Two National Surveys*, 48 J. Marriage and the Family 465 (1987) 8

Patricia Tjaden & Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey* (2000) *passim*

Patricia Tjaden & Nancy Thoennes, *Stalking in America: Findings From the National Violence Against Women Survey* (Apr. 1998) 10

U.S. Department of Justice, Office of
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Statistics, *Special Report: Intimate
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U.S. Department of Justice, Office of
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U.S. Department of Justice, Office of
Justice Programs, Office of Juvenile
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Exposed to Violence* (2000) 23

Joan Zorza, *Women Battering: High Costs and
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QUESTION PRESENTED

Whether the firing of an at-will employee because the employee is a victim of domestic violence violates the public policy of the State of North Carolina.

INTEREST OF AMICI CURIAE

Amici are organizations and individuals who assist victims of domestic violence and who work to prevent such abuse. *Amici* include legal service, direct service, and advocacy and policy groups both in North Carolina and from around the United States that are committed to addressing the problem of domestic violence.

Amici include Legal Momentum and 20 other national, regional, and local organizations and individuals, as well as the following organizations and individuals from North Carolina: Peace at Work, the North Carolina Coalition Against Domestic Violence, the North Carolina Occupational Safety and Health Project, the Domestic Violence Advocacy Center, Legal Aid of North Carolina, Inc., Professor Deborah M. Weissman, and the Family Violence Prevention Center of Orange County. A full description of each of the *amici* is provided in Appendix A to this brief.

Because of their direct experience with the problem of domestic violence, *amici* are familiar with the predicament of those discharged from their jobs due to the fact that they are victims of domestic violence. *Amici* witness firsthand the adverse effects of such job termination on the victim's ability to earn a livelihood and on attempts by victims to establish independence from their abusers. *Amici* share their views with

this Court in the hope that those views will assist in understanding the legal issues presented by this case and the potential effect of the Court's ruling.

SUMMARY OF ARGUMENT

Over the years, the State has enacted a myriad of statutory and regulatory measures to combat domestic violence, including laws and policies designed to protect a victim's ability to maintain a job. These public policy mandates will be vitiated if employers are allowed to fire employees simply because they are victims of domestic violence, as alleged in this case.

A. The incidence of domestic violence in the State of North Carolina and nationwide is appallingly high. Domestic violence, whether manifested as rape or repeated assaults, threats of injury or death, enforced isolation, or emotional abuse, has a pervasive and devastating effect on victims.

B. 1. An employer in the State cannot fire an at-will employee in violation of public policy. Public policy is violated when an employee is fired in contravention of express policy declarations contained in the North Carolina General Statutes. It also violates the State's public policy to fire an at-will employee when the firing would endanger public health or safety, or would interfere with the integrity of the judicial

process or law enforcement. The termination in this case violates each of these tenets, and is therefore unlawful.

2. North Carolina has enacted several statutes designed to protect the ability of victims of domestic violence to work and maintain their economic independence. Among other things, these statutes prohibit employers from discriminating, retaliating, or taking adverse job actions against employees who seek to exercise their rights under Chapter 50B of the General Statutes (which permits victims of domestic violence to obtain protective orders against abusers), or who take time off from work to exercise those rights. N.C. Gen. Stat. §§ 50B-5.5(a), 95-241(a)(5) (as amended by 2004 N.C. Sess. Laws 186 §§ 18.1, 18.2) (effective Oct. 1, 2004). Because firing an employee who exercises her right to protect herself against abuse would violate express state statutory law, it cannot be consistent with the public policy of the State to fire the same employee simply because she is a victim of domestic violence.

Another recently enacted statute authorizes an employer to obtain a judicial order barring an abuser from visiting or contacting a victim's workplace, and at the same time prohibits the employer from taking disciplinary action against the employee based on her level of participation or cooperation in the employer's efforts. N.C. Gen. Stat. §§ 95-260, 95-261 (as amended by 2004 N.C. Sess. Law 165 § 1 (effective Dec. 1, 2004)).

Allowing employees to be fired because they are domestic violence victims is incompatible with this law and would discourage victims from telling their employers about their abuse -- an essential step if employees and employers are to take advantage of the legal remedies the State has provided.

3. Permitting employers to discharge employees because they are victims of domestic violence would also undermine the State's substantial efforts to protect public health and safety. Domestic violence often results in significant physical and psychological injuries to victims and their children. Because of this, the State has created specific civil legal remedies under Chapter 50B that victims can use to stop and prevent domestic violence. North Carolina also funds programs providing counseling, shelter, and education for domestic violence victims and their children throughout the State. Allowing employers to fire employees because they are domestic violence victims would defeat these State-sponsored measures to protect the public health, and would compromise the health and safety of domestic violence victims whose ability to remove themselves and their children from abusive households would be put in jeopardy.

4. The North Carolina legislature has enacted special provisions in its criminal code regarding domestic violence. Vigorous and effective enforcement of these laws depends, in great measure, upon the willingness of victims to report the

crime to law enforcement. If state law allows employees to be fired when their employers learn that they are victims of domestic violence, that will act as a significant disincentive for victims to report such crimes out of fear that their employers will fire them. Thwarting the State's criminal law enforcement in this manner runs directly contrary to the public policy at the heart of North Carolina law.

ARGUMENT

FIRING AN AT-WILL EMPLOYEE BECAUSE THE EMPLOYEE IS A VICTIM OF DOMESTIC VIOLENCE IS AN UNLAWFUL VIOLATION OF THE PUBLIC POLICY OF THE STATE OF NORTH CAROLINA BECAUSE IT IS CONTRARY TO STATUTORY LAW, JEOPARDIZES PUBLIC HEALTH AND SAFETY, AND OBSTRUCTS STATE LAW ENFORCEMENT

ASSIGNMENT OF ERROR NO. 1, R p. 13

The effects of domestic violence are devastating to those who suffer from it and to their children. A victim's ability to break free of violence depends on achieving and maintaining economic independence. Over the years, the State has enacted a myriad of statutory and regulatory measures to stop and prevent domestic violence, including various laws and policies designed to protect an abused employee's ability to maintain a job.

The State's public policy embodied in those measures will be undermined if employers are permitted to fire victims of abuse *simply because they are victims of such violence*, as alleged in this case. This case does not challenge an

employer's ability to discharge an employee who is a victim of domestic violence for some lawful or neutral reason. Rather, the complaint charges that the plaintiff was fired from his job "due to the Plaintiff being a victim of domestic violence." (R p. 6 ¶ 13). As we discuss below, that allegation plainly states a claim for unlawful termination under state law.

A. Domestic Violence Is A Pervasive Problem In The State

The incidence of domestic abuse both in the State of North Carolina and nationwide is appallingly high. The outcome of this case is of vital importance to domestic violence victims throughout the State, most of whom are women.¹

Between one-quarter and one-third of all women nationwide suffer from abuse by intimate partners -- current or former husbands, boyfriends, or dating partners -- at some time in their lives.² A national survey sponsored by the U.S. Department

¹ Patricia Tjaden & Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey* 9-11, 17 (2000) (hereinafter "Extent, Nature, and Consequences of Intimate Partner Violence") (available at <http://www.ncjrs.org/pdffiles1/nij/181867.pdf>).

² *Id.* at 9 (24.5% of women are raped or physically assaulted sometime in their lives); Karen S. Collins et al., *Health Concerns Across A Woman's Lifespan: The Commonwealth Fund 1998 Survey of Women's Health* 8 (1999) (31% of women report experiencing domestic abuse by a husband or boyfriend sometime in their lives) (available at http://www.cmf.org/programs/women/ksc_whsurvey_332.pdf); American Psychological Association, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family*

of Justice suggests that every year, at least 1.5 million women are raped or physically assaulted by intimate partners.³ Because domestic violence victims are often unwilling to report the abuse, that number may be far higher.⁴ The U.S. Department of Justice estimates that one in five violent crimes against women are committed by intimate partners.⁵

In the State of North Carolina, for the year ending June 30, 2003, domestic violence programs funded by the State received more than 90,000 inquiries, and provided services to nearly 40,000 women, including shelter for more than 6,000 women and 6,000 children.⁶ No one knows how many more victims who need assistance are unable or unwilling to come forward.

10 (1996) (hereinafter "Violence and the Family") (nearly one in three adult women experiences physical assault by a partner).

³ *Extent, Nature, and Consequences of Intimate Partner Violence, supra*, at 9.

⁴ Compare findings from *id. with Violence and the Family, supra*, at 10 (an estimated 4 million women experience serious assault by an intimate partner during a 12-month period); see also M. Strauss & R. Gelles, *Societal Change and Change in Family Violence From 1975 to 1985 as Revealed by Two National Surveys*, 48 *J. Marriage and the Family* 465-479 (1987) (11 to 12% of married or cohabiting women are physically assaulted by an intimate partner annually).

⁵ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends* 4 (March 1998, revised May 1998) (hereinafter "Violence by Intimates") (available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/vi.pdf>).

⁶ North Carolina Council for Women and Domestic Violence Commission, *Children and Domestic Violence: An Information*

Domestic violence has a pervasive and devastating effect on victims. The types of assault reported range from pushing and shoving to slapping, hitting, kicking, biting, beating, strangulation, drowning, threatening with a deadly weapon, or, as happened in this case, using a deadly weapon. Such intimate partner violence perpetrated against women is often part of a "systematic pattern of dominance and control."⁷ More than half of the women who are raped or physically assaulted by an intimate partner are repeatedly victimized, often over several years.⁸ Taking account of repeat attacks, the National Violence Against Women Survey estimates that approximately 4.8 million rapes and physical assaults are perpetrated against women by intimate partners annually.⁹

Victims suffer from other forms of abuse as well -- verbal abuse, threats of injury or death, and denial of access to friends, family, and finances.¹⁰ Abusers may stalk their victims, following them, spying on them, showing up at the

Packet (available at <http://www.doa.state.nc.us/doa/cfw/docs/child&dv.pdf>); North Carolina Council for Women and Domestic Violence Commission, *Domestic Violence Statistical Report* (2002-2003) (available at <http://www.nccadv.org/pdf/DV%20stats%2002-03.pdf>).

⁷ *Extent, Nature, and Consequences of Intimate Partner Violence*, *supra*, at iv, 34.

⁸ *Id.* at 39.

⁹ *Id.* at iii, 10-11.

¹⁰ *Id.* at 33-36.

victim's work or school, repeatedly calling or writing, and vandalizing their property.¹¹ Even if the abuser only occasionally resorts to serious violence, he can maintain control through "ongoing isolation, threats or implied threats of abuse, intimidation, and emotional abuse."¹² Abusers may threaten to kidnap or injure children to keep a woman from leaving an abusive relationship.¹³

Domestic violence may continue even after a woman ends a personal relationship with an abuser. Divorced or separated women experience more intimate partner violence than married women living with their husbands; married women living apart from their husbands are four times more likely to be raped, assaulted, or stalked than women living with an abusive spouse.¹⁴ Indeed, domestic violence counselors believe that an abused woman is in the *greatest* danger at the point when she tries to leave the abusive relationship.¹⁵

¹¹ Patricia Tjaden & Nancy Thoennes, *Stalking in America: Findings From the National Violence Against Women Survey 1*, 7 (Apr. 1998) (available at <http://www.ncjrs.org/pdffiles/169592.pdf>).

¹² *Violence and the Family, supra*, at 33.

¹³ *Id.* at 41.

¹⁴ *Extent, Nature, and Consequences of Intimate Partner Violence, supra*, at 37.

¹⁵ *Violence and the Family, supra*, at 39; North Carolina Coalition Against Domestic Violence, *Common Myths and Why They are Wrong* (available at <http://www.nccadv.org/pdf/Common%20Myths%20and%20Why%20They%20Are%20Wrong.pdf>).

Domestic violence can be a life or death issue. Nationally, at least one in three female murder victims is killed by an intimate partner, substantially higher than the rate of intimate partner homicides of male victims.¹⁶ In North Carolina, the rate of female homicide victims killed by an intimate partner may be significantly higher.¹⁷ The North Carolina Coalition Against Domestic Violence identified 74 women victims of domestic violence homicide in 2002, and another 71 women in 2003.¹⁸

B. Termination Of At-Will Employment Because An Employee Is A Victim Of Domestic Violence Violates The State's Public Policy And Is Therefore Unlawful

1. At-Will Employment Cannot Be Terminated Contrary To The State's Public Policy

An employer in North Carolina cannot fire an at-will employee if the termination "contravenes public policy." *Coman v. Thomas Mfg. Co.*, 385 N.C. 172, 175, 381 S.E.2d 445, 447 (1989) (internal quotation marks omitted). Public policy is

¹⁶ *Violence by Intimates, supra*, at 5.

¹⁷ K.E. Moracco et al., *Femicide in North Carolina, 1991-1993: A Statewide Study of Patterns and Precursors*, 4 *Homicide Studies* 422, 432-433 (1998) (in a three-year study of female homicides in North Carolina, half were committed by current or former intimate partners).

¹⁸ North Carolina Coalition Against Domestic Violence, *Domestic Violence Homicides In North Carolina from January 1-December 31, 2002* (available at http://www.nccadv.org/homicides_2002.htm); North Carolina Coalition Against Domestic Violence, *Domestic Violence Homicides In North Carolina from January 1-December 31, 2003* (available at http://www.nccadv.org/homicides_2003.htm).

"the principle of law which holds that no citizen can lawfully do that which has a tendency to be injurious to the public or against the public good." *Id.* at 175 n.2, 381 S.E.2d at 447 n.2.

"[A]t the very least, public policy is violated when an employee is fired in contravention of express policy declarations contained in the North Carolina General Statutes." *Amos v. Oakdale Knitting Co.*, 331 N.C. 348, 352, 416 S.E.2d 166 169 (1992). For example, when a state statutory provision contemplates that employees may engage in certain behavior or apply for certain benefits, it violates public policy and is, therefore, unlawful for an employer to fire employees for exercising such a right. *See, e.g., Tarrant v. Freeway Foods of Greensboro, Inc.*, 593 S.E.2d 808, 811-812 (N.C. App. 2004) (holding that discharge of an employee for asserting statutory rights under the Workers' Compensation Act is unlawful because it violates public policy reflected in that statute); *Brackett v. SGL Carbon Corp.*, 158 N.C. App. 252, 259, 580 S.E.2d 757, 762 (2003) (same); *Vereen v. Holden*, 121 N.C. App. 779, 784, 468 S.E.2d 471 (1996) (holding that discharge of an employee for political activities is unlawful because it violates public policy reflected in Constitution), *disc. review denied*, 347 N.C. 410, 494 S.E.2d 600 (1997); *Lenzer v. Flaherty*, 106 N.C. App. 496, 418 S.E.2d 276 (1992) (holding that discharge of an

employee for exercising free speech rights is unlawful because it violates public policy reflected in Constitution), *disc. review denied*, 332 N.C. 345, 421 S.E.2d 348 (1992).

In addition, the courts have held that it violates North Carolina's public policy to fire an at-will employee when the firing would endanger public health or safety in various ways. This Court has held that the discharge of an employee for refusing to violate regulations on excessive work hours and record keeping is unlawful as a violation of public policy because allowing such termination would endanger public safety on the State's highways. *Coman*, 325 N.C. at 176, 381 S.E.2d at 447.

The Court of Appeals has held that it would be unlawful to discharge an employee for complying with nursing practice requirements because allowing such terminations would violate public policy safeguarding the welfare of patients under a nurse's care. *Deerman v. Beverly California Corp.*, 135 N.C. App. 1, 6, 518 S.E.2d 804, 807 (1999), *disc. review denied*, 351 N.C. 353, 542 S.E.2d 208 (2000). The Court of Appeals also has held that it would be unlawful to discharge an employee for giving truthful testimony regarding dangerous conditions at a housing complex that led to the death of two residents because such a discharge would violate the public policy of protecting health and safety. *Lorbacher v. Housing Auth. of City of*

Raleigh, 127 N.C. App. 663, 672, 493 S.E.2d 74, 80 (1997). See also *McLaughlin v. Barclays Am. Corp.*, 95 N.C. App. 301, 306, 382 S.E.2d 836, 840 (1989) (in determining whether the termination of an at-will employee is unlawful because it violates public policy, a court must "focus[] on the potential harm to the public at large"). Injury to public health or safety is sufficient to show a violation of public policy, but it is not necessary. See *Amos*, 331 N.C. at 352, 416 S.E.2d at 169 (rejecting argument that "in order to state a valid claim for wrongful discharge in violation of public policy . . . the employer's conduct must threaten public safety").

North Carolina law also prohibits employers from firing employees when the termination would interfere with "the integrity of the judicial process or the enforcement of the law." *Kurtzman v. Applied Analytical Indus., Inc.*, 347 N.C. 329, 331, 493 S.E.2d 420, 423 (1997). In particular, "[i]t is the public policy of [North Carolina] that citizens cooperate with law enforcement officials in the investigation of crimes." *Caudill v. Dellinger*, 129 N.C. App. 649, 657, 501 S.E.2d 99, 104 (1998) (holding that the discharge of an employee because of "whistleblower" activities that assisted law enforcement would violate the State's public policy), *aff'd in part and dismissed in part*, 350 N.C. 89, 511 S.E.2d 304 (1999). Aiding in a law enforcement investigation is a "clearly protected activity which

further[s] the public policy of this state." *Id.*; see *Lenzer v. Flaherty*, 106 N.C. App. at 514-515, 418 S.E.2d at 287 (holding that discharge of an employee for reporting patient abuse to public authorities is unlawful because it violates public policy).

2. Interpreting State Law To Allow Job Termination Because An Employee Is A Domestic Violence Victim Would Violate The State's Public Policy Reflected In Statutory Law Protecting Employment Of Domestic Violence Victims

A victim of domestic abuse often cannot leave an abusive relationship if she does not have a job to support herself and her children. In addition, employment income may help a victim reduce the dangers of leaving an abusive situation by enabling her to afford an automobile, safe shelter, or transportation to a safer locale. Thus, the possibility that an employer will fire an employee because she is a victim of domestic violence can discourage women, out of fear of losing their jobs, from making the abusive situation public by moving or taking other necessary steps to avoid contact by her abuser. North Carolina has adopted several recent measures regulating employers that are designed specifically to protect the ability of victims of domestic violence to work and maintain their economic independence. These statutes reflect the State's public policy that employees should not lose their jobs just because they are victims of domestic violence. That public policy would be

defeated if this Court holds that employers are free to fire employees because they are victims of domestic violence.

First, the Legislature has prohibited an employer from "discriminat[ing] or tak[ing] any retaliatory action against an employee because the employee in good faith does or threatens to . . . [e]xercise rights under Chapter 50B" of the General Statutes. N.C. Gen. Stat. § 95-241(a)(5) (as amended by 2004 N.C. Sess. Laws 186 § 18.2) (effective Oct. 1, 2004).¹⁹ The rights under Chapter 50B include the right of a domestic violence victim to institute a civil action against her abuser, to seek an *ex parte* protective order (including to prevent an abuser from contacting the victim at the workplace), and to seek to enforce such an order. N.C. Gen. Stat. §§ 50B-2, 50B-3, 50B-4.

This statutory prohibition against employer discrimination and retaliation would be meaningless if an employer could fire an employee on the ground that she is a domestic violence victim. Because firing an employee who exercises rights to protect herself against future domestic abuse violates an express statutory provision, it cannot be consistent with the public policy of the State to fire the same employee simply because she is a victim of past or current abuse.

¹⁹ For the convenience of the Court, we have reprinted the relevant statutory texts we cite, as amended, in Appendix B to this brief.

Second, the Legislature has enacted a statute that expressly prohibits employers from taking adverse employment action against a domestic violence victim who takes time off to exercise her rights under Chapter 50B. The Legislature specified that employers cannot "discharge, demote, deny a promotion, or discipline an employee because the employee took reasonable time off from work to obtain or attempt to obtain relief under [Chapter 50B]." N.C. Gen. Stat. § 50B-5.5(a) (as amended by 2004 N.C. Sess. Laws 186 § 18.1) (effective Oct. 1, 2004); *accord* N.C. Gen. Stat. § 95-270(a) (as amended by 2004 N.C. Sess. Law 165 § 1) (effective Dec. 1, 2004). The absent employee must "follow the employer's usual time-off policy or procedure, including advance notice to the employer, when required by the employer's usual procedures," unless "an emergency prevents the employee from doing so," in which case an employer may require "documentation of any emergency." *Id.*

That prohibition against discharge or other adverse employment action for taking time off to get a protective order against a domestic violence abuser would be meaningless if state law were to allow an employer to discharge an employee from her job simply because she is a domestic violence victim. The statutes' protections for victims who take time off to protect themselves from future domestic violence would provide no practical protection if the employer could fire them for being

victims in the first place. It would make no public policy sense to prohibit firing of a domestic violence victim because she has to take time off related to her abuse situation, but to permit the firing of a different employee because she is similarly a domestic violence victim and has not had to take any time off.

Third, the Legislature has enacted a statute authorizing employers to seek a "no-contact" order when one of their employees is being harassed or threatened at the workplace. N.C. Gen. Stat. §§ 95-260(1) & (3), 95-261 (as amended by 2004 N.C. Sess. Laws 165 § 1) (effective Dec. 1, 2004). A "no-contact" order is akin to a protective order under Chapter 50B, but is not limited to abusers or stalkers with whom the victim has a personal relationship. Thus, an employer can obtain an order prohibiting someone from abusing, injuring, or even contacting the employer or employee at the workplace. N.C. Gen. Stat. § 95-264(b)(4) & (5) (as amended by 2004 N.C. Sess. Laws 165 § 1) (effective Dec. 1, 2004). The law also prohibits the employer from taking any "disciplinary action" against the employee who is the "target[] of the unlawful conduct" based on her "level of participation or cooperation" in the employer's efforts to obtain the "no-contact" order. N.C. Gen. Stat. § 95-261 (as amended by 2004 N.C. Sess. Laws 165 § 1) (effective Dec. 1, 2004).

If the Legislature viewed the State's public policy as allowing discharges because an employee is a domestic violence victim, as the Court of Appeals below viewed it, there would have been little reason for the Legislature to enact a statutory prohibition against disciplining domestic violence victims who are unwilling to participate in the process of obtaining a no-contact order for their employer -- rather, the employer could simply fire the employee. Also, if state law allowed firing of employees because they are domestic violence victims, that would serve as a disincentive for victims to disclose to their employers their abuse or stalking situation -- an essential step if the employees are to take advantage of the legal remedies the State has provided, such as a protective order against the abuser contacting them at work. That would also prevent employers from being able to take action under the statute to get no-contact orders because the employers would not know about whatever workplace safety threat might exist. By contrast, a holding by this Court that firing an individual because she is a victim of domestic violence is illegal would allow employees to work with their employers to take any necessary steps to safeguard the workplace, including the employers seeking a no-contact order, without fear of being fired instead.

Thus, the General Statutes of North Carolina expressly anticipate that domestic violence victims will be able to retain

their employment while they seek to ensure the safety of themselves, their families, and their workplaces. The statutes also contemplate a role for employers in keeping the workplace environment safe. The public policy embodied in all these statutes would be undermined if state law were interpreted to permit employers to fire an employee simply because she is a victim of domestic violence. These recent statutory enactments reflect a public policy determination by the State that domestic violence is contrary to the health and safety needs of its citizens, as long reflected in numerous other civil and criminal laws discussed below. See *Vereen*, 121 N.C. App. at 784, 468 S.E.2d at 475 (intervening legislative enactment can constitute evidence of relevant public policy); *Williams v. Hillhaven Corp.*, 91 N.C. App. 35, 41, 370 S.E. 2d 423, 426 (1988) (same).²⁰

²⁰ The lack of an explicit statutory prohibition on firing an employee because she is a victim of domestic violence does not mean that such a firing is allowed by public policy. Public policy restrictions on at-will employment are independent of other legal prohibitions on termination and the activity of the Legislature in protecting victims of domestic violence against adverse employment action informs the Court in determining the public policies of North Carolina. See *Amos*, 331 N.C. at 357, 416 S.E.2d at 171 ("The availability of alternative common law and statutory remedies, we believe, supplements rather than hinders the ultimate goal of protecting employees who have been fired in violation of public policy."); see also *Coman*, 325 N.C. at 177 n.3, 381 S.E.2d at 448 n.3 ("This Court, not the legislature, adopted the employee-at-will doctrine in the first instance, [and thus] it is entirely appropriate for this Court to further interpret the rule.").

3. Authorizing The Firing Of An Employee Because She Is A Domestic Violence Victim Would Jeopardize The State's Comprehensive Legal Framework For Protecting The Health And Safety Of Such Victims And Their Children

To break free of the violence that threatens their health and safety, domestic violence victims must not only take steps to end the abuse or separate from the abuser, but also to protect their children, rebuild a household free from violence, and become economically independent so that they are not forced back into an abusive home. Victims of domestic violence face special burdens in their efforts that other crime victims typically do not because the abuser is a person with whom the victim, at one time, had a personal relationship and frequently is a person who lives in the same household as the victim and her children.

The State has directly addressed these multiple, interlocking vulnerabilities that domestic violence victims experience. These substantial efforts by the State to protect the health and safety of its citizens would be significantly undermined if employers could fire an employee on the ground that she is a victim of domestic violence.

a. Domestic violence threatens the health and safety of victims and their children

The typical pattern of domestic violence proceeds from verbal abuse to mild -- and then serious -- physical

aggression.²¹ More than a third of women raped by intimate partners suffer injury -- apart from the rape itself -- as a result of the attack.²² Half of the women assaulted by an intimate partner suffer physical injury.²³ Abusers leave their victims with scratches, bruises, welts, black eyes, cuts, lacerations, broken teeth, broken bones, burn wounds, sprains, internal injuries, injuries to the head or spinal cord, and gun and knife wounds. Abusers who threaten bodily injury are far more likely than others actually to inflict it.²⁴

Adults are not the only victims of domestic abuse. Children of abusers and of victims are at grave risk as well. More than forty percent of women victims of intimate partner violence live with children under the age of 12, and domestic violence is disproportionately high in households with children under age 5.²⁵ Every year an estimated 3.3 million children are

²¹ *Violence and the Family, supra*, at 19.

²² *Extent, Nature, and Consequences of Intimate Partner Violence, supra*, at 41.

²³ *Violence by Intimates, supra*, at 21.

²⁴ *Extent, Nature, and Consequences of Intimate Partner Violence, supra*, at 42-43 (strong statistical link between threats of bodily injury and actual occurrences of injury).

²⁵ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Special Report: Intimate Partner Violence* 6 (May 2000)(available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv.pdf>); National Resource Center on Domestic Violence, *Children Exposed to Intimate Partner Violence* 15 (March 2002) (hereinafter "Children Exposed") (available at http://www.vawnet.org/NRCDVPublications/TAPE/Packets/NRC_Children.php).

exposed to intimate partner violence.²⁶ In many instances, children, like their mothers, are direct targets of an abuser's violence.²⁷ In other cases, children simply find themselves in harm's way, taking a blow meant for the mother, or being injured by a thrown object.²⁸

The State recognizes that domestic violence is not limited to specific acts of physical or sexual aggression, but often includes a pattern of conduct that places victims and their children in fear of imminent injury, or continual harassment that inflicts substantial emotional distress. See N.C. Gen. Stat. § 50B-1(a)(2). The injuries caused by domestic violence extend to severe and debilitating psychological injury as well. Domestic violence is associated with high rates of depression, dissociative disorders, anxiety, mood disorders, and impaired self-esteem and competence among adult victims of domestic violence.²⁹ Victims of intimate partner violence are more likely

²⁶ *Violence and the Family, supra*, at 11.

²⁷ U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Safe from the Start - Taking Action on Children Exposed to Violence* xiii (2000) (available at <http://www.ncjrs.org/pdffiles1/ojjdp/182789.pdf>) (there is a 30 to 60 percent overlap between violence against women and violence against children in the same family).

²⁸ *Children Exposed, supra*, at 4.

²⁹ Centers for Disease Control and Prevention, Dep't of Health & Hum. Services, *Costs of Intimate Partner Violence Against Women in the United States* 3 (2003) (hereinafter "Costs of Intimate Partner Violence") (available at

than the general population to suffer Post-Traumatic Stress Disorder, characterized by vivid recollections and reliving of past trauma, inability to concentrate, and sleep disturbances.³⁰ Domestic violence may lead to suicidal thoughts and attempted suicide.³¹

Exposure to intimate partner violence may lead to significant psychological and developmental problems for children as well. Abusers rely on isolation and verbal abuse to maintain control, and this often affects children as well as their mothers. Children who are raised in tense, threatening households frequently lack opportunities for normal social and intellectual development. Children exposed to violence are more likely than other children to fall back in school, have poor social and conflict resolution skills, and resort to violence. Children of abusive households may also be more likely to suffer from anxiety, depression, stress-related physical ailments, and even Post-Traumatic Stress Disorder.³²

res/ipv_cost/IPVBook-Final-Feb18.pdf); *Violence and the Family*, *supra*, at 9; J. Raphael & R. Tolman, *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare* 17 (1997) (available at http://www.ssw.umich.edu/trapped/conf99_sched4-10.pdf).

³⁰ *Violence and the Family*, *supra*, at 9; *Trapped by Poverty, Trapped by Abuse*, *supra*, at 21.

³¹ *Violence and the Family*, *supra*, at 9.

³² *Children Exposed*, *supra*, at 5-6; J. Kolbo, E. Blakely, and D. Engelman, *Children Who Witness Domestic Violence: A Review of Empirical Literature*, 11 *J. Interpersonal Violence* 281 (1996).

Youths who witness domestic violence are more likely to exhibit delinquency problems, including drug and alcohol abuse, running away, prostitution, and attempted suicide.³³ Worse still, childhood exposure to intimate partner violence sets the stage for a continuing cycle of violence: boys exposed to violence at home are at major risk for becoming intimate partner abusers as adults.³⁴

b. Interpreting state law to allow job termination because an employee is a domestic violence victim would be contrary to state programs intended to safeguard the health and safety of such victims and their families

Because of these significant adverse effects on the public health and safety caused by domestic violence, the State of North Carolina has enacted an array of laws and established numerous programs aimed at protecting the health and safety of domestic violence victims and their children that together establish a strong public policy. The State has created almost *sui generis* civil legal remedies under Chapter 50B that victims can use to prevent intimate partner violence, and has removed obstacles that could otherwise prevent women from taking advantage of their legal remedies under state law.

Expressly recognizing the significance of the economic needs of domestic violence victims, Chapter 50B permits such

³³ *Children Exposed, supra*, at 7, 18, 20.

³⁴ *Violence and the Family, supra*, at 37.

victims to seek relief without having to hire attorneys, without costs, and requires court personnel to assist women who do so. See N.C. Gen. Stat. § 50B-2(a), (d). Moreover, the Legislature has authorized legal services programs to represent domestic violence victims in civil actions under Chapter 50B, and has established funding mechanisms to support such programs. See N.C. Gen. Stat. § 7A-474.6 to 474.10 (as amended by 2004 N.C. Sess. Laws 186 § 4.1).

This scheme illustrates the State's strong public policy of providing domestic violence victims the resources necessary to ensure their safety. For example, under Chapter 50B, domestic violence victims can bring civil actions to obtain protective orders against their abusers -- on an emergency or *ex parte* basis, if necessary. State law authorizes the courts to enter comprehensive orders addressing control of the household, protection and custody of children, rights to household personal property, and freedom from harassment in the workplace. Violations of those orders are subject to mandatory arrests. A law enforcement officer "shall arrest and take a person in custody without a warrant or other process if the officer has probable cause to believe that the person knowingly has violated a valid protective order." N.C. Gen. Stat. § 50B-4.1(c).

It is clear that the State's public policy of protecting the health and safety of domestic violence victims has been

fully embraced by the Executive as well as the Legislative Branch. In 2003, the North Carolina Attorney General, the Council for Women/Domestic Violence Commission, and the Coalition Against Domestic Violence convened a statewide Domestic Violence in the Workplace Summit. The Attorney General stated that his goal was "to help make every workplace safe for employees including those who are the victims of domestic violence." The Attorney General currently distributes materials to employers to assist "in developing programs for your workplace . . . [to] protect[] the victims of domestic violence," as well as "technical assistance in making the[] workplace safe for victims of domestic violence."³⁵ Likewise, the State Personnel Commission has provided that the State "is expected to offer support" to its employees that are victims of domestic violence, including "encouragement of the victim to use the services of the State Employees' Assistance Program" and "grant[ing] a victim leave time for medical, court, or counseling appointments related to trauma and/or victimization."³⁶

³⁵ Message from the Attorney General at the Domestic Violence in the Workplace Summit (available at <http://www.doa.state.nc.us/doa/dvio/index.html>).

³⁶ North Carolina Office of State Personnel, *State Personnel Manual* § 8, at 32 (available at <http://www.osp.state.nc.us/manuals/manual99/workplvi.pdf>). In 2003, in a proclamation of Domestic Violence Awareness Month and National Unity Day, the Governor stated that "domestic violence includes not only

North Carolina provides funding for programs serving domestic violence victims in every county in the State -- programs that counsel women about their options and provide temporary emergency shelter to protect the health and safety of women and children who flee abusive households. In the 2004 legislative session, the State allocated \$4.7 million in grants to local domestic violence programs and an additional \$1.2 million "to provide domestic violence counseling, support, and other direct services" to WorkFirst participants.³⁷ Recently, the Governor's Crime Commission announced that, from a total a \$26 million in federal funds for anti-crime assistance to local agencies, the Crime Commission was devoting \$10 million to support programs to prevent domestic violence and help its victims. *See Governor Awards Anti-Crime Grants*, The [Raleigh] News & Observer, May 28, 2004, at B-3. These programs reinforce law enforcement efforts, and state law expressly encourages law enforcement to advise victims of "sources of shelter, medical care, counseling and other services" and to transport the victim

physical abuse, but also mental abuse, emotional abuse, financial abuse, isolation, and sexual violence" and urged "our citizens to become aware of this destructive force in our society and to become part of the efforts to stop violence in families." Governor's Proclamation (available among the proclamations for October 2003 at <http://www.governor.state.nc.us/News/Proclamations>).

³⁷ North Carolina Coalition Against Domestic Violence, *2004 Legislative Summary* (available at <http://www.ncwu.org/2004/LegisSummaries/NCCADV.PDF>); 2004 N.C. Sess. Laws 124 § 5.1(p).

to "public or private facilities for shelter" when feasible. N.C. Gen. Stat. § 50B-5(a).

This investment of state funds in preventing domestic violence reaps an abundant return in light of the economic costs that arise from the domestic violence that is not stopped. The economic costs of the injuries from domestic violence are staggering. Close to one-third of women who are injured by intimate partners need medical care.³⁸ Of those, nearly 80 percent receive hospital care, and most of those are treated in emergency rooms. Thirty to forty percent require admission for one or more nights. Approximately twenty percent of rape victims and ten percent of assault victims require dental care. One-quarter to one-third of assault or rape victims seek mental health services. More than 40 percent of stalking victims require mental health counseling. The Centers for Disease Control and Prevention estimate that the total health care costs associated with intimate partner violence are in excess of \$4 billion annually;³⁹ other studies suggest that this cost is far

³⁸ All information regarding the costs of health services in this paragraph are from Centers for Disease Control and Prevention's *Costs of Intimate Partner Violence*, *supra*, at 15-18.

³⁹ *Id.* at 30.

higher.⁴⁰ Nearly twenty percent of the medical costs of intimate partner violence are paid for with public funds.⁴¹

Allowing employers to take away the jobs of employees who are domestic violence victims would compound all of these health and safety problems and costs. Without economic resources, victims will be less likely to be able to remove themselves and their children from abusive households. Without steady employment, victims may also be unable to sustain a long-term separation and may ultimately be forced to return to an abusive situation. The State has recognized the critical role that employment plays in such situations and public policy cannot be squared with permitting termination of employees simply because they are domestic violence victims.

4. The Effective Criminal Prosecution Of Domestic Violence Offenders As Demanded By The State's Public Policy Requires That Employees Not Be Fired For Being Victims Of Domestic Violence

a. North Carolina's criminal code embodies the State's public policy against domestic violence and of protecting domestic violence victims

Interpreting state law to allow employers to fire an employee because the employee is the victim of domestic violence is contrary to public policy because fear of job loss would lead

⁴⁰ Joan Zorza, *Women Battering: High Costs and the State of the Law*, 28 Clearinghouse Review 383, 383 (1994) (annual medical and other costs of domestic violence estimated at \$31 billion).

⁴¹ Figure extrapolated from *Costs of Intimate Partner Violence*, *supra*, at 39 (Table 11), by combining cost figures for Medicaid, free or low income clinics, and other public sources.

to less reporting and prosecution of such crimes under the State's Criminal Code.

Domestic violence often consists of a constellation of crimes involving bodily injury, stalking, and rape or sexual assault. See N.C. Gen. Stat. § 50B-1(a) (incorporating N.C. Gen. Stat. §§ 14-277.3, 14-27.2 to 27.7). The North Carolina Legislature has enacted special provisions in its criminal code regarding domestic violence crimes and defendants convicted of such crimes.

The fact that a criminal defendant was in a domestic relationship with the victim is an aggravating factor in determining a defendant's sentence. N.C. Gen. Stat. § 15A-1340.16(d)(15) (as amended by 2004 N.C. Sess. Laws 186 § 8.1) (effective Dec. 1, 2004). Also, after conviction, a court must determine whether a defendant who committed an assault or communicated a threat was engaged in domestic violence, and if so, must require the convicted defendant to attend and complete an abuser treatment program as a condition of his sentence or probation. N.C. Gen. Stat. §§ 15A-1382.1(a), 15A-1343(b)(12), 143B-262(e) (as amended by 2004 N.C. Sess. Laws 186 §§ 11.1, 1.1, 1.2) (effective Dec. 1, 2004).

State law imposes criminal penalties on those persons who violate a domestic violence protective order issued under Chapter 50B. Knowing violation of a protective order is a class

A1 misdemeanor. See N.C. Gen. Stat. § 50B-4.1(a). After three convictions, such a violation becomes a class H felony. See *id.* § 50B-4.1(f).

The Legislature also has enacted enhanced penalties for offenses typically committed by domestic violence abusers, including enhanced penalties for assaults in the presence of a minor child, for repeated stalkings or misdemeanor assaults, and for committing a felony while subject to a protective order. See N.C. Gen. Stat. §§ 14-33(d), 14-277.3(b), 14-33.2 (as amended by 2004 N.C. Sess. Laws 186 § 10.1) (effective Dec. 1, 2004), 50B-4.1(c). A recent amendment to the Criminal Code enacted as part of a legislative package to address domestic violence increased the penalties for assaults committed by strangulation because it is a crime most often committed during the course of domestic violence. See N.C. Gen. Stat. § 14-32.4(b) (as amended by 2004 N.C. Sess. Laws 186 § 9.1) (effective Dec. 1, 2004).

b. Interpreting state law to allow employees to be discharged from their jobs because they are domestic violence victims would hinder state criminal law enforcement

Interpreting state law to allow employers to fire employees because they are victims of domestic violence would interfere with the clear public policy of the State to prosecute domestic violence offenders through significant criminal sanctions. It

necessarily would discourage the reporting of crime by victims who fear making their situation even worse by losing their jobs. Employees needing to hide their victimization from their employers will be less able to participate in the criminal process which often requires attendance at various pretrial court proceedings, meeting with law enforcement officers, and testifying at trial. See also N.C. Const. art I, § 37(1)(a), (h) (guaranteeing victims of crime the right to confer with the prosecution and to be present at court proceedings).

Placing such an obstacle in the way of the State's prosecutions of violent offenders is directly contrary to well-recognized public policy. Indeed, there is a long tradition in this country of encouraging individuals to report crimes to the appropriate officials. See *In re Quarles*, 158 U.S. 532, 535-536 (1895). In particular, "[i]t is the public policy of [North Carolina] that citizens cooperate with law enforcement officials in the investigation of crimes." *Caudill v. Dellinger*, 129 N.C. App. 649, 657, 501 S.E.2d 99, 104 (1998), *aff'd in part and dismissed in part*, 350 N.C. 89, 511 S.E.2d 304 (1999).

Vigorous and effective enforcement of domestic violence laws in particular depends, in great measure, upon the willingness of victims to report the crime to law enforcement. Domestic violence is most often committed behind closed doors, with no witnesses other than the victim. In the absence of a

victim's complaint to the police, there may not be sufficient basis for an investigation, much less a prosecution, of the attacker.

At the same time, reporting domestic violence is often much more complicated than reporting other crimes because of the personal relationship between the victim and the person being charged as the criminal defendant and the fact that they often share the same home. Many victims do not report rape or physical assault by domestic partners in part out of fear that the abuser will retaliate if the victim calls the police.⁴² In other instances, women do not report because they think the police would not believe them or could not do anything about the problem.⁴³ Slightly more than seven percent of intimate partner rapes and physical assaults are prosecuted.⁴⁴

Thus, criminal prosecution of domestic violence offenders in the State depends upon victims believing that it is safe to report the crime to law enforcement and to carry through as witnesses for the prosecution. If state law is interpreted to allow employees to be fired when their employers learn that they are victims of domestic violence, that will act as a significant

⁴² *Extent, Nature, and Consequences of Intimate Partner Violence, supra*, at 49, 51. By contrast, more than half of female stalking victims report the event to police. *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 52.

additional disincentive for victims to report such crimes out of fear that their employers will learn of the situation and will fire them. Thwarting the State's criminal law enforcement in this manner runs directly contrary to the public policy at the heart of North Carolina law.

CONCLUSION

For the reasons set forth above, this Court should reverse the judgment below.

Respectfully submitted, this 20th day of August, 2004.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the foregoing brief on counsel for the appellant and appellee by depositing a copy, contained in a first-class-postage-paid wrapper, into a depository under the exclusive care and custody of the United States Postal Service, addressed as follows, this 20th day of August, 2004.

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APPENDIX A: Individual Statements of Interest of Amici Curiae

Lead amici

Legal Momentum is the new name of NOW Legal Defense and Education Fund. Legal Momentum is a leading national non-profit civil rights organization that for over thirty years has used the power of the law to define and defend women's rights. Legal Momentum is dedicated to working to end violence against women. Legal Momentum is a national leader in seeking to ensure that victims of domestic violence do not lose their jobs because of the violence.

Peace at Work is a North Carolina-based organization that seeks to protect workers from being victims of any form of violence. Peace at Work offers services and training to employers, supervisors, and employees on best practices for addressing violence in the workplace. Peace at Work recognizes the importance and value of employment to victims of domestic abuse. Firing a victim of domestic violence is a wrongful discharge in violation of public policy because it is fundamentally wrong and it may potentially bring future risk to the workplace as it discourages disclosure from other employees.

Other North Carolina-based amici

The **Domestic Violence Advocacy Center (DVAC)** is a project of the Legal Aid Society of Northwest North Carolina. DVAC represents low-income victims of domestic violence in civil protective order hearings and other family law proceedings. DVAC is interested in this issue because economic stability is such an important factor for our clients in determining whether or not they can "afford" to leave a violent relationship and because for many of our client who are employed, their batterer uses their fear of losing their job to continue to control them. Often they are threatened or harassed at work, or their employer is threatened or harassed at work.

The **Family Violence Prevention Center of Orange County** is the sole provider of ongoing domestic violence services to victims in Orange County, North Carolina. Frequently victims are afraid to tell their employers that they are victims of violence for fear that they will lose their jobs. This means that many will not seek assistance, do not follow through during court proceedings or stay in dangerous situations, fearing their

abuser may cause trouble for them at work. Victims need stable employment in order to establish homes away from their abuser. Being free of the concern that they could lose their job strictly because of being a victim could have far reaching positive implications.

Legal Aid of North Carolina, Inc. is a statewide, nonprofit law firm that provides free legal services in civil matters to low-income people in order to ensure equal access to justice and to remove legal barriers to economic opportunity. Its domestic violence initiative is a statewide project that provides legal assistance to victims of domestic violence.

The **North Carolina Coalition Against Domestic Violence (NCCADV)** is a statewide membership organization made up of individuals, organizations, and domestic violence service providers that are working together to end domestic violence in our state. NCCADV's public policy initiative works to ensure that statewide policies and legislation positively impact the lives of victims of domestic violence and their children. Protecting the employment rights of victims of domestic violence is an important issue on NCCADV's legislative agenda.

The **North Carolina Occupational Safety and Health Project** is a private, nonprofit membership organization of workers, union locals, and health and legal professionals. Its mission is to organize workers around issues of job safety. It is a natural extension of its work to not only call for healthy and safe places to work, but also to fight for job security. It is against North Carolina policies that work to end domestic violence to permit victims to be fired solely because they are victims or because of a concern that employing a victim of domestic violence can reflect "poorly" on a business.

Deborah M. Weissman, participating here in her individual capacity, is Professor of Law and Director of Clinical Programs at the University of North Carolina at Chapel Hill. She teaches domestic violence law, civil lawyering process, the civil clinic, and the Gender and Human Rights Policy Clinic, which addresses issues related to gender-based violence in the local and international realm. She is a former Executive Director of Legal Services of North Carolina and is currently the chair of the North Carolina Commission on Domestic Violence.

Other national amici

Domestic Violence Legal Empowerment and Appeals Project (DV LEAP) is a national organization based in Washington D.C. which is dedicated to furthering legal advocacy for battered women and their children. Through pro bono and low fee representation for victims, DV LEAP empowers victims to appeal unjust trial court decisions to a higher court. It also provides domestic violence and appellate litigation training to lawyers and judges around the country.

The **National Association of Women Lawyers (NAWL)**, headquartered in Chicago, is the oldest women's bar association in North America. Founded in 1899, the association promotes the interests of women and families, as well as women in the profession. NAWL has a strong interest in protecting legal rights in the workplace environment for all victims of violence.

The **National Coalition Against Domestic Violence (NCADV)** includes programs from across the country that address the needs of battered women and their families. Created in 1978, its work includes coalition building at the local, state, regional and national levels; support for the provision of community-based services for battered women and their children; public education and technical assistance; and policy development and innovative legislation. NCADV's members see too many victims of domestic violence that are harassed at work not only by their abuser but also their employer. If victims cannot obtain and maintain employment they cannot escape the violence.

The National Organization for Women Foundation is a 501(c)(3) organization devoted to furthering women's rights through education and litigation. Created in 1986, NOW Foundation is affiliated with the National Organization for Women, the largest feminist organization in the United States, with over 500,000 contributing members in more than 450 chapters in all 50 states and the District of Columbia. Since its inception, NOW Foundation's goals have included ending violence against women and supporting policies that protect victims of intimate partner abuse, including ending employment discrimination against victims of domestic violence.

The National Center for Victims of Crime is the nation's leading resource and advocacy organization for victims of crime. Its members include domestic violence shelters, rape crisis centers, victim/witness coordinators, and others serving crime victims.

The mission of the National Center is to forge a national commitment to help victims of crime rebuild their lives. Because victims' ability to recover from crime is significantly affected by their access to employment, the National Center has a strong interest in this case.

The **Sargent Shriver National Center on Poverty Law's** mission is to achieve social and economic justice for low-income people. The Shriver Center strives to build a positive, proactive agenda addressing the web of causes that hold people in poverty. This includes domestic violence. The negative impact of domestic violence on its victims, particularly as it relates to the ability to obtain and maintain employment and economic self-sufficiency, is of vital concern to the Shriver Center's clients. The Shriver Center is responsible for the drafting and passage of the Victim's Economic Security and Safety Act, a new law in Illinois that provides unpaid leave and prohibits discrimination against victims of domestic and sexual violence in employment solely because they are victims or because of a concern that employing a victim can reflect "poorly" on a business.

Regional and local amici from outside North Carolina

The **D.C. Employment Justice Center** is a private, non-profit organization that advocates for the rights of low-income workers in the metropolitan Washington, D.C., area by combining legal services, community education, community organizing, and advocacy work. One of its areas of concern is the impact of domestic violence on employment. To that end, it has been actively involved in legislation in D.C. that allows domestic violence victims to access the unemployment compensation system when they lose or quit their jobs as a result of the violence.

DV Initiative is an organization based in Texas that provides training and consulting services to corporations on workplace domestic violence. DV Initiative helps corporations address workplace domestic violence from a legal liability perspective. Its services include human resources; management and security training; policy or guideline development; company audits; and crisis management.

Domestic Violence Victim's Assistance Project (DVVAP) is a small private 501(c)(3) organization operating out of Carson City, Nevada. The Project was developed by Volunteer Attorneys for Rural Nevadans and provides free legal services to victims of

domestic violence in 12 of Nevada's 15 rural counties, and several American Indian Tribes.

Family Violence Prevention Services, Inc. is the umbrella corporation under which many agencies operate including the Battered Women's Shelter of San Antonio. Since the program is funded by H.U.D., we provide bilingual legal representation to indigent persons of Bexar County, Texas who reside in a shelter, are part of a transitional living program or live on the street. In the area of family law our emphasis is on issues regarding family violence.

Jodi Finkelstein has been a victim advocate in the field for almost ten years. She served as the Director of Maryland's Attorney General's and Lt. Governor's Family Violence Council for four years and served as a program manager with the Maryland Network Against Domestic Violence for three. Some people work to live, others live to work. Victims of domestic violence often do both in order to survive. Firing a person because of being a victim of domestic violence is a terrible business practice. Businesses should support employees in their time of need, not re-victimize them.

The **Hawaii State Coalition Against Domestic Violence (HSCADV)** is a private, not-for-profit organization. As a statewide coalition of domestic violence programs, our mission is to ensure the safety and protection of victims in intimate relationships by coordinating domestic violence prevention and intervention services, affecting public policy, and establishing coordinated and consistent procedures and actions by the civil and criminal justice systems in Hawaii. Advocates know that victims often lose their jobs as a result of the violence perpetrated against them and that it only serves to re-victimize and harm that individual. It is important to send the message that as a community, state, county or government that we will hold abusers accountable, not punish victims.

New Hampshire Coalition Against Domestic and Sexual Violence is a statewide coalition of domestic violence and sexual assault programs. It sponsors the Domestic Violence in the Workplace Initiative which works to strengthen links between employers, advocates and other community leaders with the goal of creating new pathways of support for victims of domestic violence and their families.

The **Northwest Women's Law Center (NWLC)** is a regional nonprofit public interest organization that works to advance the legal rights of all women through litigation, legislation, education and the provision of legal information and referral services. Since its founding in 1978, the NWLC has been dedicated to working to improve and promote laws that protect women against domestic and sexual violence. Toward that end, the NWLC recently drafted and helped pass legislation in Washington state that ensures that people who must leave their jobs due to domestic violence remain eligible for unemployment compensation, and is currently involved in litigation seeking to recognize the employment rights of domestic violence victims.

Southeast Tennessee Legal Services in Chattanooga is funded under both the VAWA and STOP grant for the Chattanooga area, and it assists victims of domestic violence in the ten surrounding counties as well as offers divorces services in Hamilton County, Tennessee. The organization is currently representing a victim who was fired because of violence against her.

The **University of Southern California Law School Domestic Violence Clinic** is a domestic violence clinic in Southern California. It provides direct representation to victims of domestic violence with contested custody issues in restraining order hearings and other family law matters.

Merle H. Weiner is Associate Professor of Law at the University of Oregon School of Law. Professor Weiner teaches a course on Domestic Violence law and has published numerous articles about the legal issues confronting victims of domestic abuse.

Kelly Weisberg, Professor of Law at the Hastings College of the Law, is the author of several articles and books on family law and children and the law.

The **Women's Law Center of Maryland, Inc. (WLC-MD)**, established in 1971, is a non-profit, public interest, membership organization of attorneys and community members. The Women's Law Center works to protect and preserve the rights of women by educating the public and the judiciary on the effects of legal decisions affecting women, by monitoring compliance with the law, by seeking to change unjust laws, and by implementing innovative programs to pave the way for systemic change. The Women's Law Center of Maryland operates courthouse-based legal clinics for victims of domestic violence and is participating as an *amicus* in *Imes v. City of Asheville* because it understands

that economic stability is critical to enabling victims to leave their abusers and move forward with their lives.

The **Women's Law Project** is a non-profit public interest legal center with offices in Philadelphia and Pittsburgh, Pennsylvania, which is dedicated to improving the legal and economic status of women and their families through litigation, public policy development, public education and individual counseling. Assisting women who are victims of domestic violence, in particular, has been a major focus of both the Law Project's litigation efforts, which include both original litigation and participation as *amicus curiae*, and the telephone counseling service, which handles more than 7,000 inquiries a year.

APPENDIX B: Relevant Statutory Provisions

N.C. Gen. Stat. chap. 50B, as amended by 2004 N.C. Sess. Laws 186, §§ 18.1, 18.2 (signed by Governor Aug. 12, 2004, effective Oct. 1, 2004), 19.1 (signed by the Governor Aug. 12, 2004, effective when it becomes law) (material added by recent amendments is underlined; material deleted by recent amendments is struckthrough) provides, in relevant part:

§ 50B-1. Domestic violence; definition

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3, that rises to such a level as to inflict substantial emotional distress; or

(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

(b) For purposes of this section, the term "personal relationship" means a relationship wherein the parties involved:

(1) Are current or former spouses;

(2) Are persons of opposite sex who live together or have lived together;

(3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain

an order of protection against a child or grandchild under the age of 16;

(4) Have a child in common;

(5) Are current or former household members;

(6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

(c) As used in this Chapter, the term "protective order" includes any order entered pursuant to this Chapter upon hearing by the court or consent of the parties.

§ 50B-2. Institution of civil action; motion for emergency relief; temporary orders; temporary custody

(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. No court costs shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg-5.

(b) Emergency Relief. A party may move the court for emergency relief if he or she believes there is a danger of serious and immediate injury to

himself or herself or a minor child. A hearing on a motion for emergency relief, where no ex parte order is entered, shall be held after five days' notice of the hearing to the other party or after five days from the date of service of process on the other party, whichever occurs first, provided, however, that no hearing shall be required if the service of process is not completed on the other party. If the party is proceeding pro se and does not request an ex parte hearing, the clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served.

(c) Ex Parte Orders. - Prior to the hearing, if it clearly appears to the court from specific facts shown, that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the court may enter ~~such~~ orders as it deems necessary to protect the aggrieved party or minor children from ~~such~~ those acts provided, however, that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the court finds that the child is exposed to a substantial risk of ~~bodily~~ physical or emotional injury or sexual abuse. If the court finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the court shall consider and may order the other party to stay away from a minor child, or to return a minor child to, or not remove a minor child from, the physical care of a parent or person in loco parentis, if the court finds that the order is in the best interest of the minor child and is necessary for the safety of the minor child. If the court determines that it is in the best interest of the minor child for the other party to have contact with the minor child or children, the court shall issue an order designed to protect the safety and well-being of the minor child and the aggrieved party. The order shall specify the terms of

contact between the other party and the minor child and may include a specific schedule of time and location of exchange of the minor child, supervision by a third party or supervised visitation center, and any other conditions that will ensure both the well-being of the minor child and the aggrieved party. Upon the issuance of an ex parte order under this subsection, a hearing shall be held within 10 days from the date of issuance of the order or within seven days from the date of service of process on the other party, whichever occurs later. If an aggrieved party acting pro se requests ex parte relief, the clerk of superior court shall schedule an ex parte hearing with the district court division of the General Court of Justice within 72 hours of the filing for said relief, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever shall first occur. If the district court is not in session in said county, the aggrieved party may contact the clerk of superior court in any other county within the same judicial district who shall schedule an ex parte hearing with the district court division of the General Court of Justice by the end of the next day on which said court division is in session in that county. Upon the issuance of an ex parte order under this subsection, if the party is proceeding pro se, the Clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, order and other papers through the appropriate law enforcement agency where the defendant is to be served.

(c1) Ex Parte Orders by Authorized Magistrate. - The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex parte the district court is not in session and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate.

If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter ~~such~~ orders as it deems necessary to protect the aggrieved party or minor children from ~~such~~ those acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of ~~bodily~~ physical or emotional injury or sexual abuse. If the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the magistrate shall consider and may order the other party to stay away from a minor child, or to return a minor child to, or not remove a minor child from, the physical care of a parent or person in loco parentis, if the magistrate finds that the order is in the best interest of the minor child and is necessary for the safety of the minor child. If the magistrate determines that it is in the best interest of the minor child for the other party to have contact with the minor child or children, the magistrate shall issue an order designed to protect the safety and well-being of the minor child and the aggrieved party. The order shall specify the terms of contact between the other party and the minor child and may include a specific schedule of time and location of exchange of the minor child, supervision by a third party or supervised visitation center, and any other conditions that will ensure both the well-being of the minor child and the aggrieved party. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge by the end of the next day on which the district court is in session in the county in which the action was filed. Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section.

(c2) The authority granted to authorized magistrates to award temporary child custody ~~to~~ pursuant to subsection (c1) of this section and pursuant to G.S. 50B-3(a)(4) is granted subject to custody rules to be established by the supervising chief district judge of each judicial district.

(d) Pro Se Forms. -- The clerk of superior court of each county shall provide to pro se complainants all forms ~~which~~ that are necessary or appropriate to enable them to proceed pro se pursuant to this section. The clerk shall, whenever feasible, provide a private area for complainants to fill out forms and make inquiries. ~~The clerk~~ clerk shall provide a supply of pro se forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section.

§ 50B-3. Relief

(a) The court, including magistrates as authorized under G.S. 50B-2(c1), may grant any protective order to bring about a cessation of acts of domestic violence. The orders may:

- (1) Direct a party to refrain from such acts;
- (2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;
- (3) Require a party to provide a spouse and his or her children suitable alternate housing;
- (4) Award temporary custody of minor children and establish temporary visitation ~~rights;~~ rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of process;
- (5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;

(6) Order either party to make payments for the support of a minor child as required by law;

(7) Order either party to make payments for the support of a spouse as required by law;

(8) Provide for possession of personal property of the parties;

(9) Order a party to refrain from doing any or all of the following:

a. Threatening, abusing, or following the other party,

b. Harassing the other party, including by telephone, visiting the home or workplace, or other means, or

c. Otherwise interfering with the other party;

(10) Award attorney's fees to either party;

(11) Prohibit a party from purchasing a firearm for a time fixed in the order;

(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission; and

(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(a) Upon the request of either party at a hearing after notice or service of process, the court shall consider and may award temporary custody of minor children and establish temporary visitation rights as follows:

(1) In awarding custody or visitation rights, the court shall base its decision on the best interest of the minor child with particular

consideration given to the safety of the minor child.

(2) For purposes of determining custody and visitation issues, the court shall consider:

a. Whether the minor child was exposed to a substantial risk of physical or emotional injury or sexual abuse.

b. Whether the minor child was present during acts of domestic violence.

c. Whether a weapon was used or threatened to be used during any act of domestic violence.

d. Whether a party caused or attempted to cause serious bodily injury to the aggrieved party or the minor child.

e. Whether a party placed the aggrieved party or the minor child in reasonable fear of imminent serious bodily injury.

f. Whether a party caused an aggrieved party to engage involuntarily in sexual relations by force, threat, or duress.

g. Whether there is a pattern of abuse against an aggrieved party or the minor child.

h. Whether a party has abused or endangered the minor child during visitation.

i. Whether a party has used visitation as an opportunity to abuse or harass the aggrieved party.

j. Whether a party has improperly concealed or detained the minor child.

k. Whether a party has otherwise acted in a manner that is not in the best interest of the minor child.

(3) If the court awards custody, the court shall also consider whether visitation is in the best interest of the minor child. If ordering visitation, the court shall provide for the safety and well-being of the minor child and the safety of the aggrieved party. The court may consider any of the following:

a. Ordering an exchange of the minor child to occur in a protected setting or in the presence of an appropriate third party.

b. Ordering visitation supervised by an appropriate third party, or at a supervised visitation center or other approved agency.

c. Ordering the noncustodial parent to attend and complete, to the satisfaction of the court, an abuser treatment program as a condition of visitation.

d. Ordering either or both parents to abstain from possession or consumption of alcohol or controlled substances during the visitation or for 24 hours preceding an exchange of the minor child.

e. Ordering the noncustodial parent to pay the costs of supervised visitation.

f. Prohibiting overnight visitation.

g. Requiring a bond from the noncustodial parent for the return and safety of the minor child.

h. Ordering an investigation or appointment of a guardian ad litem or attorney for the minor child.

i. Imposing any other condition that is deemed necessary to provide for the safety and well-being of the minor child and the safety of the aggrieved party.

If the court grants visitation, the order shall specify dates and times for the visitation to

take place or other specific parameters or conditions that are appropriate. A person, supervised visitation center, or other agency may be approved to supervise visitation after appearing in court or filing an affidavit accepting that responsibility and acknowledging accountability to the court.

(4) A temporary custody order entered pursuant to this Chapter shall be without prejudice and shall be for a fixed period of time not to exceed one year. Nothing in this section shall be construed to affect the right of the parties to a de novo hearing under Chapter 50 of the General Statutes. Any subsequent custody order entered under Chapter 50 of the General Statutes supersedes a temporary order issued pursuant to this Chapter.

(b) Protective orders entered pursuant to this Chapter shall be for a fixed period of time not to exceed one year. The court may renew a protective order for a fixed period of time not to exceed one year, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current ~~order.~~ order; provided, however, that a temporary award of custody entered as part of a protective order may not be renewed to extend a temporary award of custody beyond the maximum one-year period. The court may renew a protective order for good cause. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the current order is not required for an order to be renewed. Protective orders entered, including consent orders, shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be issued promptly to and retained by the police department

of the city of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued promptly to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides.

(d) The sheriff of the county where a domestic violence order is entered shall provide for prompt entry of the order into the National Crime Information Center registry and shall provide for access of such orders to magistrates on a 24-hour-a-day basis. Modifications, terminations, and dismissals of the order shall also be promptly entered.

* * *

§ 50B-4. Enforcement of orders

(a) A party may file a motion for contempt for violation of any order entered pursuant to this Chapter. This party may file and proceed with that motion pro se, using forms provided by the clerk of superior court or a magistrate authorized under G.S. 50B-2(c1). Upon the filing pro se of a motion for contempt under this subsection, the clerk, or the authorized magistrate, if the facts show clearly that there is danger of acts of domestic violence against the aggrieved party or a minor child and the motion is made at a time when the clerk is not available, shall schedule and issue notice of a show cause hearing with the district court division of the General Court of Justice at the earliest possible date pursuant to G.S. 5A-23. The Clerk, or the magistrate in the case of notice issued by the magistrate pursuant to this subsection, shall effect service of the motion, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served.

(b) Repealed by Session Laws 1999-23, s. 2, effective February 1, 2000.

(c) A valid protective order entered pursuant to this Chapter shall be enforced by all North Carolina law enforcement agencies without further order of the court.

(d) A valid protective order entered by the courts of another state or the courts of an Indian tribe shall be accorded full faith and credit by the courts of North Carolina whether or not the order has been registered and shall be enforced by the courts and the law enforcement agencies of North Carolina as if it were an order issued by a North Carolina court. In determining the validity of an out-of-state order for purposes of enforcement, a law enforcement officer may rely upon a copy of the protective order issued by another state or the courts of an Indian tribe that is provided to the officer and on the statement of a person protected by the order that the order remains in effect. Even though registration is not required, a copy of a protective order may be registered in North Carolina by filing with the clerk of superior court in any county a copy of the order and an affidavit by a person protected by the order that to the best of that person's knowledge the order is presently in effect as written. Notice of the registration shall not be given to the defendant. Upon registration of the order, the clerk shall promptly forward a copy to the sheriff of that county. Unless the issuing state has already entered the order, the sheriff shall provide for prompt entry of the order into the National Crime Information Center registry pursuant to G.S. 50B-3(d).

(e) Upon application or motion by a party to the court, the court shall determine whether an out-of-state order remains in full force and effect.

§ 50B-4.1. Violation of valid protective order

(a) Except as otherwise provided by law, a person who knowingly violates a valid protective order entered pursuant to this Chapter or who knowingly violates a valid protective order entered by the courts of another state or the courts of an

Indian tribe shall be guilty of a Class A1 misdemeanor.

(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9).

(c) When a law enforcement officer makes an arrest under this section without a warrant, and the party arrested contests that the out-of-state order or the order issued by an Indian court remains in full force and effect, the party arrested shall be promptly provided with a copy of the information applicable to the party which appears on the National Crime Information Center registry by the sheriff of the county in which the arrest occurs.

(d) Unless covered under some other provision of law providing greater punishment, a person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order as provided in subsection (a) of this section shall be guilty of a felony one class higher than the principal felony described in the charging document. This subsection shall not apply to a person who is charged with or convicted of a Class A or B1 felony or to a person charged under subsection (f) of this section.

(e) An indictment or information that charges a person with committing felonious conduct as described in subsection (d) of this section shall also allege that the person knowingly violated a valid protective order as described in subsection (a) of this section in the course of the conduct constituting the underlying felony. In order for a person to be punished as described in subsection (d) of this section, a finding shall be made that the person knowingly violated the

protective order in the course of conduct constituting the underlying felony.

(f) Unless covered under some other provision of law providing greater punishment, any person who knowingly violates a valid protective order as provided in subsection (a) of this section, after having been previously convicted of three offenses under this Chapter, shall be guilty of a Class H felony.

* * *

§ 50B-5. Emergency assistance

(a) A person who alleges that he or she or a minor child has been the victim of domestic violence may request the assistance of a local law enforcement agency. The local law enforcement agency shall respond to the request for assistance as soon as practicable. The local law enforcement officer responding to the request for assistance may take whatever steps are reasonably necessary to protect the complainant from harm and may advise the complainant of sources of shelter, medical care, counseling and other services. Upon request by the complainant and where feasible, the law enforcement officer may transport the complainant to appropriate facilities such as hospitals, magistrates' offices, or public or private facilities for shelter and accompany the complainant to his or her residence, within the jurisdiction in which the request for assistance was made, so that the complainant may remove food, clothing, medication and such other personal property as is reasonably necessary to enable the complainant and any minor children who are presently in the care of the complainant to remain elsewhere pending further proceedings.

(b) In providing the assistance authorized by subsection (a), no officer may be held criminally or civilly liable on account of reasonable measures taken under authority of subsection (a).

§ 50B-5.5. Employment discrimination unlawful

(a) No employer shall discharge, demote, deny a promotion, or discipline an employee because the employee took reasonable time off from work to obtain or attempt to obtain relief under this Chapter. An employee who is absent from the workplace shall follow the employer's usual time-off policy or procedure, including advance notice to the employer, when required by the employer's usual procedures, unless an emergency prevents the employee from doing so. An employer may require documentation of any emergency that prevented the employee from complying in advance with the employer's usual time-off policy or procedure, or any other information available to the employee which supports the employee's reason for being absent from the workplace.

(b) The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to the Article.

* * *

§ 50B-9. Domestic Violence Center Fund

The Domestic Violence Center Fund is established within the State Treasury. The fund shall be administered by the Department of Administration, North Carolina Council for Women, and shall be used to make grants to centers for victims of domestic violence and to The North Carolina Coalition Against Domestic Violence, Inc. This fund shall be administered in accordance with the provisions of the Executive Budget Act. The Department of Administration shall make quarterly grants to each eligible domestic violence center and to The North Carolina Coalition Against Domestic Violence, Inc. Each grant recipient shall receive the same amount. To be eligible to receive funds under this section, a domestic violence center must meet the following requirements:

(1) It shall have been in operation on the preceding July 1 and shall continue to be in operation.

(2) It shall offer all of the following services: a hotline, transportation services, community education programs, daytime services, and call forwarding during the night and it shall fulfill other criteria established by the Department of Administration.

(3) It shall be a nonprofit corporation or a local governmental entity.

N.C. Gen. Stat. § 95-241(a), as amended by 2004 N.C. Sess. Laws 186, § 18.2 (signed by Governor Aug. 12, 2004, effective Oct. 1, 2004) (material added by recent amendment is underlined) provides, in relevant part:

§ 95-241. Discrimination prohibited

(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

* * *

(5) Exercise rights under Chapter 50B. Actions brought under this subdivision shall be in accordance with the provisions of G.S. 50B-5.5

N.C. Gen. Stat. § 95-260(1) & (3), as amended by 2004 N.C. Sess. Laws 165, § 1 (signed by Governor Aug. 2, 2004; effective Dec. 1, 2004) (material added by recent amendment is underlined) provides, in relevant part:

Article 23. Workplace Violence Prevention

§ 95-260. Definitions

The following definitions apply in this Article:

(1) Civil no-contact order. - An order granted under this Article, which includes a remedy authorized by G.S. 95-264.

* * *

(3) Unlawful conduct. - Unlawful conduct means the commission of one or more of the following acts upon an employee, but does not include acts of self-defense or defense of others:

a. Attempting to cause bodily injury or intentionally causing bodily injury.

b. Willfully, and on more than one occasion, following, being in the presence of, or otherwise harassing, as defined in G.S. 14-277.3, without legal purpose and with the intent to place the employee in reasonable fear for the employee's safety.

c. Willfully threatening, orally, in writing, or by any other means, to physically injure the employee in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out and that actually causes the employee to believe that the threat will be carried out.

N.C. Gen. Stat. § 95-261, as amended by 2004 N.C. Sess. Laws 165, § 1 (signed by Governor Aug. 2, 2004; effective Dec. 1, 2004) (material added by recent amendment is underlined) provides, in relevant part:

§ 95-261. Civil no-contact orders; persons protected

An action for a civil no-contact order may be filed as a civil action in district court by an employer on behalf of an employee who has suffered unlawful conduct from any individual that can reasonably be construed to be carried out, or to have been carried out, at the employee's workplace. The employee that is the subject of unlawful conduct shall be consulted

prior to seeking an injunction under this Article in order to determine whether any safety concerns exist in relation to the employee's participation in the process. Employees who are targets of unlawful conduct who are unwilling to participate in the process under this Article shall not face disciplinary action based on their level of participation or cooperation.

N.C. Gen. Stat. § 95-264, as amended by 2004 N.C. Sess. Laws 165, § 1 (signed by Governor Aug. 2, 2004; effective Dec. 1, 2004) (material added by recent amendment is underlined) provides, in relevant part:

§ 95-264. Civil non-contact order; remedy

(a) Upon a finding that the employee has suffered unlawful conduct committed by the respondent, the court may issue a temporary or permanent civil no-contact order. In determining whether or not to issue a civil no-contact order, the court shall not require physical injury to the employee or injury to the employer's property.

(b) The court may grant one or more of the following forms of relief in its orders under this Article:

(1) Order the respondent not to visit, assault, molest, or otherwise interfere with the employer or the employer's employee at the employer's workplace, or otherwise interfere with the employer's operations.

(2) Order the respondent to cease stalking the employer's employee at the employer's workplace.

(3) Order the respondent to cease harassment of the employer or the employer's employee at the employer's workplace.

(4) Order the respondent not to abuse or injure the employer, including the employer's property, or the employer's employee at the employer's workplace.

(5) Order the respondent not to contact by telephone, written communication, or electronic means the employer or the employer's employee at the employer's workplace.

(6) Order other relief deemed necessary and appropriate by the court.

(c) A civil no-contact order shall include the following notice, printed in conspicuous type: 'A knowing violation of a civil no-contact order shall be punishable as contempt of court which may result in a fine or imprisonment.'

N.C. Gen. Stat. 95-270(a), as amended by 2004 N.C. Sess. Laws 165, § 1 (signed by Governor Aug. 2, 2004; effective Dec. 1, 2004) (material added by recent amendment is underlined) provides, in relevant part:

§ 95-270. Employment discrimination unlawful

(a) No employer shall discharge, demote, deny a promotion, or discipline an employee because the employee took reasonable time off from work to obtain or attempt to obtain relief under Chapter 50B or Chapter 50C. An employee who is absent from the workplace shall follow the employer's usual time-off policy or procedure, including advance notice to the employer, when required by the employer's usual procedures, unless an emergency prevents the employee from doing so. An employer may require documentation of any emergency that prevented the employee from complying in advance with the employer's usual time-off policy or procedure, or any other information available to the employee which supports the employee's reason for being absent from the workplace.

(b) The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to the Article.