No. 87906-1

SUPREME COURT
OF THE STATE OF WASHINGTON

CAROLA WASHBURN and JANET LOH, individually and on behalf of the ESTATE OF BAERBEL K. ROZNOWSKI, a deceased person,

Respondents,

v.

CITY OF FEDERAL WAY, a Washington municipal corporation,

Petitioner.

BRIEF OF AMICI CURIAE LEGAL VOICE, THE NORTHWEST JUSTICE PROJECT, THE WASHINGTON STATE COALITION AGAINST DOMESTIC VIOLENCE, AND WASHINGTON WOMEN LAWYERS

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I. INTRODUCTION

The Court of Appeals properly affirmed the jury's verdict. If the Court reaches the merits here, Amici urge it to confirm that law enforcement officers in this state have a duty of reasonable care in serving *any* kind of civil protection order when it is apparent that the protected party is separating from an intimate partner who is likely to react violently. Anything less will subject domestic violence survivors to unacceptable risks when they turn to the legal system for safety. A basic duty of reasonable care in the protection order context is consistent with this Court's prior cases and the public policy of the state of Washington.

Service of any type of civil protection order is an affirmative act that may expose a domestic violence survivor to a significant—and potentially lethal—risk of separation assault. Consequently, when it is apparent from the order of protection and accompanying documents such as the Law Enforcement Information Sheet ("LEIS") that such a risk is present, an officer must take reasonable care to serve the order in a manner that mitigates the risk of further violence.

In the case before the Court, a police officer went to Baerbel Roznowski's home to serve a protection order that she had obtained against her partner, Paul Kim. The officer failed to read the order or the accompanying LEIS, either of which would have put him on clear notice

that he was serving an order on an intimate partner who was likely to react violently. The officer failed to take any of the obvious steps to protect Ms. Roznowski from that risk, instead walking away and leaving Mr. Kim at the residence in direct violation of the order. The tragic and preventable murder of Ms. Roznowski that followed underscores the need for this Court to clarify an officer's duty of care in this context.

II. IDENTITY AND INTEREST OF AMICI

The identities and interests of amici Legal Voice, the Northwest Justice Project, the Washington State Coalition Against Domestic Violence, and Washington Women Lawyers are set forth in the Amici's Motion for Leave to File Amici Curiae Brief.

III. STATEMENT OF THE CASE

Amici adopt Respondents' statement of the case.

IV. DISCUSSION

A. Civil Protection Orders are Critical to Domestic Violence Survivor Safety, But May Increase the Risk of Separation Assault

Civil protection orders play a vital role in protecting survivors of domestic violence, sexual assault, stalking, and harassment.[1] In

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[1] *See* Washington State Administrative Office of the Courts, *Domestic Violence Manual for Judges*, 8-1 (2006), *available at http://www.courts.wa.gov/content/manuals/domViol/chapter8.pdf* (noting that "[s]tudies show that protection orders are associated with a significant decrease in risk of violence against women by their

Washington, civil protection orders take myriad forms, but each of these orders is intended to protect the petitioner from harm.[2]

"Women are most at risk after ending, or while trying to end, an abusive relationship."[3] Because of this, civil protection orders frequently coincide with increased danger to the very individuals they are designed to protect. In particular, because obtaining a protection order is often a first step in extricating oneself from an abusive relationship, service of the order may give rise to separation assault—increased violence in the wake of attempted separation.[4] Research indicates that more than 70 percent of all domestic violence injuries or homicides occur after some type of attempt to separate from an abusive partner.[5] Other studies have found that separation creates a "sixfold increase in homicide risk for women."[6] In Washington State, fatality reviews indicate that at least 46 percent of

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male intimate partners") (citing Victoria L. Holt et al., *Civil Protection Orders and Risk of Subsequent Police-Reported Violence*, 288 J. Am. Med. Ass'n, no. 5, Aug. 7, 2002, at 589-94).

[2] *See, e.g.*, RCW 26.50 (domestic violence protection orders); RCW 10.14 (anti-harassment orders); RCW 7.90 (sexual assault protection orders); RCW 74.34 (vulnerable adult protection orders); Laws of 2013, ch. 84, § 1 (stalking protection orders).

[3] Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1520 (2008).

[4] Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 65 (1991).

[5] Patricia Sully, *Taking It Seriously: Repairing Domestic Violence Sentencing in Washington State*, 34 SEATTLE U. L. REV. 963, 985 (2011).

[6] Walter S. DeKeseredy et al., *Separation/Divorce Sexual Assault: The Current State of Social Scientific Knowledge*, Aggression and Violent Behavior 9, 675-91, 676 (2004).

domestic violence homicides involved a victim who left, divorced, or separated from her abuser or was attempting to do so.[7]

Domestic violence is generally understood as "a pattern of systematic abuse by which the abuser seeks to dominate his partner through the use of power and control tactics including emotional, sexual, and physical violence."[8] Domestic violence is, at its core, the exertion of power and control over another. Accordingly, when that control is threatened, an abuser may escalate the intensity, frequency, and lethality of violence.[9] One commentator has noted that virtually any threat to an abuser's authority is likely to be met with violence.[10] Violence in response to separation is an attack on a survivor's attempt to regain her autonomy, and in many cases, a civil protection order embodies a survivor's effort to regain control.[11]

The dangers of separation also help explain why many domestic violence survivors remain trapped in abusive relationships or downplay

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[7] Jake Fawcett for the Washington State Coalition Against Domestic Violence, *Up to Us: Lessons Learned and Goals for Change After Thirteen Years of the Washington State Domestic Violence Fatality Review*, at 17 (Dec. 2010), *available at http://www.wscadv.org/docs/FR-2010-Report.pdf.*

[8] Marisa Silenzi Cianciarulo & Claudia David, *Pulling the Trigger: Separation Violence as a Basis for Refugee Protection for Battered Women*, 59 AM. U. L. REV. 337, 350-51 (2009).

[9] *Id.* at 351.

[10] Judith E. Koons, *Gunsmoke and Legal Mirrors: Women Surviving Intimate Battery and Deadly Legal Doctrines*, 14 J. L. & POL'Y 617, 658-59 (2006).

[11] *See id.*

the severity of violence. In these circumstances, Washington's protection order statutes not only advance the state's clear public policy of protecting domestic violence survivors, but also address a significant public health crisis by providing survivors with assistance in separating.

While separation assault is an inherent risk in any abusive relationship, some batterers have a particular propensity for committing it. Scholars have found that abusers generally can be categorized into one of three different typologies: the jealous type, the substance abusing type, and the homicidal/suicidal type. Report of Proceedings ("RP") (Ganley): 23. Most relevant here,[12] a homicidal/suicidal batterer may not engage in any physical violence before the homicidal act. *Id.* at 24. The homicidal/suicidal batterer is very likely, however, to respond at the point of separation with physical violence. *Id.* at 41. Accordingly, leaving a homicidal/suicidal type batterer alone with the victim during the separation process is particularly dangerous. *Id.* As domestic violence expert Dr. Anne Ganley[13] explained,

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[12]Mr. Kim was best classified as a homicidal/suicidal type batterer. RP (Ganley): 23-24.

[13] Dr. Anne Ganley served as an expert witness at trial. She is an expert in the area of domestic violence, with particular expertise in identifying domestic violence, assessing the lethality and dangerousness of domestic violence, and intervening effectively for domestic violence victims against perpetrators. In 2006, she co-authored the Washington State Domestic Violence Manual for Judges. RP (Ganley): 2-5.

> It is important, there is a critical, volatile time for – with this particular profile of a batterer, in that when they explode, get upset, it is important to get physically separated. And that did not occur while the police were present. And what happened is, then, that attempt, that critical point of trying to get apart and physically separated occurred after the police officer left, and what she was left with was to try to manage that very volatile situation on her own without any assistance.

RP (Ganley): 41-42.[14]

At the same time, the presence of law enforcement can significantly reduce the risks arising from service of a protection order. Ironically, the homicidal/suicidal type batterer typically is highly compliant with governmental authority. *Id.* at 44. In fact, research indicates that the batterers who are most likely to kill are, paradoxically, very likely to comply with a protection order. RP (Ganley): 43-44. If an officer serves a homicidal/suicidal type batterer with a protection order, and informs him that he must vacate the premises, is restrained from contacting the petitioner, or is restrained from the petitioner's residence, he is unlikely to risk arrest for violating the order. *Id.* at 44.[15] It is essential, however, that the batterer be accompanied by law enforcement

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[14] Coupled with Dr. Ganley's opinion that Mr. Kim would have complied with the order had he understood it, this testimony provided a sufficient basis for a finding of causation to support a negligence verdict. *See id.* at 119.

[15] In Dr. Ganley's expert opinion, based on a behavioral analysis of Mr. Kim, Mr. Kim would not have returned to commit murder "had the police done their job properly and separated them at the point that the protection order was served[.]" *Id.* at 57.

during the separation process to protect the victim from his propensity for violence at the point of separation. *Id.* at 42-43.[16] Once officially separated from his victim, the batterer is unlikely to return later to commit violence. *Id.* at 43.

Civil protection orders are essential to combating domestic violence, but they have attendant risk. Law enforcement officers must be responsive to these well-documented and well-recognized risks to ensure that protection orders operate to protect—not imperil—survivors.

B. The Distinctions Between Types of Civil Protection Orders Provide no Basis for Varying Duties of Care Where Service of the Order Creates a Risk of Separation Violence.

The City attempts to downplay the danger Officer Hensing created by emphasizing Ms. Roznowski's choice to seek an "*ex parte* antiharassment order." *See* Pet'r's Supp. Br. at 19. Yet, when a protected party separates from an intimate partner, there is no meaningful distinction between antiharassment orders ("AHOs") and other civil protection orders in terms of the risk the protected party faces when the order is served.

Washington has several different types of civil protection orders. Domestic violence survivors who choose to seek AHOs rather than domestic violence protection orders ("DVPOs") "have good reason for

[16] *See also* Cianciarulo & David, *supra* note 8, at 350-51 (2009) ("Because this irrevocable break with the abuser creates, in many cases, a risk of increased harm or death for the woman, she must seek protection from the state.")

choosing" them. RP (Ganley): 92. Alternatively, for some the choice may not be deliberate: unrepresented petitioners may not understand their eligibility for a DVPO.[17] More importantly, the type of protection order a survivor seeks is not necessarily indicative of the level of risk she faces, particularly in light of the tendency of survivors to under-report violence. *See* RP (Ganley): 78, 90-92. Thus, law enforcement cannot make assumptions about the risk of violence based on the type of order a petitioner requests. *Id.* Ms. Roznowski is a case in point. Her decision, on a *pro se* basis, to pursue an AHO rather than a DVPO certainly did not reflect an absence of fear or a lesser risk of violence. She was aware of Mr. Kim's violent tendencies and made the danger clear to the court and to law enforcement.

Moreover, the temporary AHO Ms. Roznowski obtained required a showing similar to that of other types of civil protection orders available to domestic violence survivors. AHOs are only available where a party can show that she has been subjected to a "knowing and willful course of conduct directed at [her] ... which seriously alarms, annoys, harasses, or is detrimental ... and which serves no legitimate or lawful purpose" and where the conduct has caused "substantial emotional distress" from both a

[17] Indeed, the Legislature recently requested that this Court's Gender and Justice Commission work to develop ways to reduce confusion among petitioners about which type of protection order to seek. *See* Laws of 2013, ch. 84 § 21(2).

subjective and objective perspective. RCW 10.14.020. To obtain an *ex parte* AHO, a petitioner must establish "that great or irreparable harm will result ... if the temporary antiharassment protection order is not granted." RCW 10.14.080(1). Recognizing the risks inherent in service, the Legislature provided that unless the petitioner elects otherwise, an AHO must be served by a sheriff or peace officer. RCW 10.14.100.[18]

The criteria for an AHO substantially overlap with the showing required to obtain a DVPO. *See* RCW 26.50.010(1) (defining domestic violence as "(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.").[19] Notably, the definition of stalking under RCW 9A.46.110, which includes

[18] In enacting the statutes providing for AHOs, the legislature was aware of the serious and potentially life-threatening risks of harassment. *See Hearing on SSB 5142 Before the Senate Judiciary Committee on Civil Harassment RCW 10.31.100*, Jan. 13, 1987 (testimony of Karil Klingbeil, Assoc. Prof. at the Univ. of Wash. and Dir. of Social Work at Harborview Med. Ctr.) (indicating that "harassing behavior . . . can lead to overt violence ending in murder").

[19] The statutory definition of "family or household member" includes both adult cohabitants and intimate partners. RCW 26.50.010(2).

"intentionally and repeatedly harass[ing] or repeatedly follow[ing] another person," mirrors the definition of harassment in RCW 10.14.040.[20]

Indeed, the record shows that Ms. Roznowski was likely eligible for a DVPO. Her anti-harassment petition stated that Mr. Kim was Ms. Roznowski's intimate partner; that she had been "physically or sexually assaulted, threatened with physical harm, or stalked" by Mr. Kim; and that given Mr. Kim's "present state of mind," he could "easily retaliate." CP 886-88; *see* RCW 26.50.010(1). The fact that Ms. Roznowski chose, on a *pro se* basis, to seek an AHO rather than a DVPO should be immaterial to the question of whether Officer Hensing had a duty to exercise reasonable care in serving the order.

C. Law Enforcement Officers Must Exercise Reasonable Care When Serving Civil Protection Orders in Cases Presenting a Risk of Separation Assault.

Amici urge the Court to confirm that law enforcement officers in this state have a duty of reasonable care in serving any kind of civil protection order when it is apparent from the order and accompanying documents that the protected party is separating from an intimate partner

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[20] Furthermore, in waiving fees for "petitioners seeking relief under [chapter 10.14 RCW] . . . from a person who is a family or household member as defined in RCW 26.50.010(2) who has engaged in conduct that would constitute domestic violence as defined in RCW 26.50.010(1)[,]" the legislature has recognized that domestic violence survivors may choose to avail themselves of AHOs. *See* RCW 10.14.055.

who is likely to respond violently to service. Specifically, because service under such circumstances is an affirmative act subjecting the victim to the distinct and well-recognized risk of separation assault, a law enforcement officer charged with serving an order of protection has a duty to exercise reasonable care to "anticipate and guard against" foreseeable criminal conduct on the part of the perpetrator.[21] *See Robb v. City of Seattle*, 176 Wn.2d 427, 434, 295 P.3d 212 (2013).

1. A Duty to Guard Against the Criminal Conduct of Others Arises When an Actor's Affirmative Conduct Creates a Significant and Recognizable Risk of Harm

Because this case turns on the duty to mitigate the misconduct of others, it fits neatly within the framework this Court recently articulated in *Robb*. There, the Court recognized that under the *Restatement (Second) of Torts* § 302B ("Section 302B") "the actor, as a reasonable man, is required to anticipate and guard against the intentional, or even criminal, misconduct of others . . . where the actor's own affirmative act has created or exposed the [victim] to a recognizable high degree of risk of harm through such misconduct, which a reasonable man would take into

[21] As Respondents have noted, the public duty doctrine does not apply in such circumstances. However, even if it did, several exceptions to the public duty doctrine would apply in this case for the reasons set forth in Respondents' briefing and the amicus brief filed by Legal Voice and Washington Women Lawyers in the Court of Appeals.

account." *Robb*, 176 Wn.2d at 434 (quoting Section 302B cmt. e).[22] Notably, the affirmative conduct giving rise to such a duty need not be tortious. *See Robb*, 176 Wn.2d at 436 (citing *Restatement (Second) of Torts* § 314).

Robb further recognized that in the absence of a special relationship, liability under Section 302B arises only when the actor undertakes an affirmative act, *i.e.*, misfeasance. 176 Wn.2d at 439. "Misfeasance," the Court explained, "necessarily entails the creation of a new risk of harm to the plaintiff," whereas "through nonfeasance, the risk is merely made no worse." *Id.* at 437. In addition, once an actor undertakes an affirmative act, the actor's subsequent failure to undertake mitigating measures may constitute an affirmative act. *See id.* (failing to brake for a pedestrian is an affirmative act where it creates a new risk).

In *Robb*, police officers failed to remove shotgun shells they observed lying at the feet of Samson Berhe, who had been stopped on suspicion of burglary. *Id.* at 430. Finding no probable cause to arrest Berhe, the officers released him. Minutes later, Berhe returned to the scene, picked up an object from the ground—presumably the shotgun

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[22] Section 302B follows from the bedrock principle of tort law that an actor must exercise reasonable care to protect others against foreseeable risks of harm arising from his or her actions. Section 302B cmt. a; *Parilla v. King County*, 138 Wn. App. 427, 437, 157 P.2d 879 (2007) (recognizing "the general rule that an individual has a duty to avoid reasonably foreseeable risks").

shells—and proceeded to shoot and kill a man. *Id.* This Court held that the officers' actions constituted nonfeasance, not misfeasance.

> Simply put, the situation of peril in this case existed before law enforcement stopped Berhe, and *the danger was unchanged by the officers' actions*. Because they did not make the risk any worse, their failure to pick up the shells was an omission, not an affirmative act, i.e., this is a case of nonfeasance.

Id. at 438 (emphasis added).

In contrast, in *Parilla v. King County*, the Court of Appeals held that a bus driver who left a mentally disturbed individual alone on a 14-ton bus with the engine running committed an affirmative act, *i.e.*, misfeasance, within the meaning of Section 302B. 138 Wn. App. 427, 440-41, 157 P.3d 879 (2007). As the *Robb* Court explained, "the bus driver *affirmatively created a new risk* by disembarking from a bus, leaving keys in the ignition with the engine running and an erratic passenger onboard, providing the instrumentality and opportunity to cause harm." 176 Wn.2d at 437 (emphasis added).

Under the *Robb* analysis, Officer Hensing's service of the AHO falls squarely within the category of misfeasance, because it exposed Ms. Roznowski to a serious and recognizable risk of separation assault—a risk that did not exist, at least to the same extent, prior to service. *See id.* at 437-38. By the same token, just as a driver commits an affirmative act

when he speeds through an intersection but fails to brake for a pedestrian, Officer Hensing committed an affirmative act when he served a protection order on Mr. Kim but failed to protect Ms. Roznowki from the potentially lethal circumstances his actions had created. *See id.* at 437. *Robb* confirms that Officer Hensing had a duty to "anticipate and guard against" Mr. Kim's lethal actions. *See id.* at 434.

2. The Danger to Ms. Roznowski was Reasonably Foreseeable to Officer Hensing.

Officer Hensing knew or should have known that service of a protection order could place Ms. Roznowski in danger. First, his statutory obligation to serve the AHO should have signified to the officer that service was inherently dangerous. *See* RCW 10.14.100(2) (providing for service of AHOs by peace officers, unless the petitioner elects otherwise).[23] Moreover, because the public has entrusted law enforcement officers with the service of civil protection orders and the maintenance of public safety, it is not unreasonable to expect law enforcement officers to recognize the well-documented risks associated with protection orders that separate intimate partners. *See generally* RCW 10.99.030 (requiring law enforcement officers to receive training on domestic violence, including techniques to ensure officer and victim safety). Ms. Roznowski's petition

[23] The fact that the majority of petitioners opt for service by law enforcement officers further underscores the dangerousness of these situations. RP (Klingbeil 12/9/10): 14-15.

and LEIS contained easily recognizable indicators that the restrained party was an intimate partner with a propensity for violence, signifying to Officer Hensing that service of the protection order was likely to significantly increase her risk of injury or death.[24]

Furthermore, Officer Hensing had abundant information about the risk Mr. Kim posed to Ms. Roznowski at his fingertips. The scientific community has developed risk assessment tools to predict the risk that a particular domestic violence perpetrator will inflict physical, or even fatal, harm under certain circumstances. RP (Ganley): 71-72. Much of the content of an LEIS draws upon risk assessment methodology, and as such, it allows law enforcement to predict, with some degree of confidence, the level of risk involved in service of a civil protection order. *Id.* at 71. Because research demonstrates that a domestic violence survivor is the most reliable judge of the level of danger she faces but is likely to under-estimate rather than over-estimate risk, the questions on the LEIS that require the petitioner to gauge the risk of assault are particularly instructive. *See id.* at 74-75 (indicating that professionals are trained to "heed and give weight and value to that information because it is coming from the person who has the most history with the perpetrator").

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[24] In completing the LEIS, Ms. Roznowski checked the boxes indicating that Mr. Kim was a "current or former cohabitant as an intimate partner" and that he had a history of assault. Ex. 1. When asked whether the restrained party was "likely to react violently when served," Ms. Roznowski circled "yes." *Id.*

Furthermore, it was apparent from the face of the LEIS that service of the order would expose Ms. Roznowski to danger. As noted, the LEIS and antiharassment petition contained several easily recognizable indicators of peril. *See* RP (Ganley): 76 (opining that the combination of factors Ms. Roznowski reported in the LEIS would indicate to a trained professional that it was "highly likely that something bad or violence is going to occur, that could be very dangerous for all parties, including the law enforcement officer but also for the victim or who ever else is present[]"). [25] Thus, Officer Hensing knew or should have known that serving the civil protection order would expose Ms. Roznowski to a high risk of separation assault. Accordingly, under Section 302B, he had a duty to exercise reasonable care to mitigate the foreseeable risks associated with service.

Depending on the circumstances and the information available to law enforcement, the duty of reasonable care may entail enforcing an order, staying present until the victim and abuser are separated, and/or

[25] In particular, Ms. Roznowski indicated in the LEIS that Mr. Kim had a history of physical assault, that he was living in her home, that he was not aware that Ms. Roznowski was planning to force him out of the home, that he was likely to react violently to service, and that a Korean interpreter was necessary to effectuate service properly. Ex. 1. Ms. Roznowski's antiharassment petition also indicated that Mr. Kim had a propensity for violence. *See* CP 888 (indicating that "[i]n his present state of mind, he can easily retaliate with me"); CP 886 (indicating that she had been "physically or sexually assaulted, threatened with physical harm, or stalked" by Mr. Kim).

taking obvious steps to ensure that a restrained party understands and complies with an order. On this record, Officer Hensing failed on at least three counts to exercise reasonable care. He failed to read the LEIS and thereby inform himself of the specific risks his actions would create. Consequently, he was unprepared to "anticipate and guard against" the foreseeable risks of harm to Ms. Roznowski. *See* Section 302B. Then he left Mr. Kim in Ms. Roznowski's home, in plain violation of the order. By taking no action to enforce the order and walking away before the separation process was complete, Officer Hensing failed to "guard against" the new risk he had created. *See Robb*, 176 Wn.2d at 437-38; Section 302B. Officer Hensing also neglected to address the language barriers involved here, which may have prevented Mr. Kim from comprehending—and thereby complying with—the requirements of the AHO. Instead, Ms. Roznowski was left to explain the contents of the order to Mr. Kim herself, to negotiate with him the removal of himself and his property from her home, and to figure out how to enforce the order without police assistance. In effect, Ms. Roznowski was forced to serve the order on Mr. Kim herself, with deadly consequences.

Whatever reasonable care may require in a given situation, an officer breaches that duty by serving a protection order and walking away—leaving a victim alone with the restrained party at a potentially

lethal juncture. Any one of Officer Hensing's lapses may have been sufficient to breach his duty of reasonable care; collectively, they created a fatal result.

D. Holding Law Enforcement Officers to a Reasonable Care Standard in Serving Civil Protection Orders Separating Intimate Partners Would Not Create an Infinite Duty.

Holding officers to a reasonable care standard in serving civil protection orders in this context will mitigate the dangers associated with separation, provide domestic violence survivors and other protected parties with the protection they need to safely extricate themselves from abusive relationships, uphold Washington's public policy in favor of enforcement of laws designed to protect domestic violence survivors, and reduce preventable domestic violence injuries and deaths in Washington State.[26] *See Danny v. Laidlaw*, 165 Wn.2d 200, 213, 183 P.2d 128 (2008). What it will not do is impose an infinite or nebulous duty on law enforcement officers or "require law enforcement officers to foresee and eliminate dangers everywhere they go." *See Robb*, 172 Wn.2d 438.

[26] *See* Sully, *supra* note 5 at 966 (reporting that in Washington state, ten to twenty percent of emergency room visits by women in relationships are due to domestic violence incidents; twenty percent of women in Washington report receiving a domestic violence injury during their lifetime; women file more than 50,000 domestic violence reports each year in Washington; and domestic violence calls comprise the largest category of calls received by law enforcement.)

To the contrary, and consistent with Section 302B, this standard merely requires law enforcement officers to mitigate the *recognizable risks* associated with their own actions. The risks inherent in serving protection orders in cases where the protected party is separating from an intimate partner are extremely well-documented, and law enforcement officers have readily accessible training and information to gauge risk levels and respond accordingly.

Indeed, requiring anything less of law enforcement officers would be contrary to public policy. In particular, allowing law enforcement officers to serve protection orders without even reading the order and accompanying LEIS or separating the parties would defeat the very purpose of such orders. *Cf. Roy v. City of Everett*, 118 Wn.2d 352, 358, 823 P.2d 1084 (1992) ("To enact a statute with the stated intent of ensuring enforcement of laws prohibiting domestic violence but to include within it a blanket grant of immunity for peace officers as to any action or inaction relating to a domestic violence situation . . . would be absurd in every sense of the term."); *see also* RCW 10.99.010 ("It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim[.]"). The failure to enforce an order at the time of service does not merely deprive the

protected party of the safety she needs, rather it places her in further jeopardy.

V. CONCLUSION

For all these reasons, Amici urge the Court to hold that a law enforcement officer has a duty to exercise reasonable care in serving civil protection orders when it is apparent that the restrained party is an intimate partner who is likely to react violently to service.

DATED this 23rd day of May, 2013.

Respectfully submitted,

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DECLARATION OF SERVICE

On the day stated below, I caused a true and correct copy of the foregoing document to be delivered in the manner indicated below to the following counsel of record:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Dated May 23, 2013, at Seattle, Washington.

Kathy Jacobson