No. 4-20-0509

IN THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, *Plaintiff-Appellee*, v. LAURA BOWERS, *Defendant-Appellant*.	Appeal from the Circuit Court of the Sixth Judicial Circuit, Macon County Case No. 90-CF-227 Hon. Karle Kortiz, Judge Presiding

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS, ET AL. IN SUPPORT OF DEFENDANT-APPELLANT

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INTEREST OF AMICI CURIAE

The American Civil Liberties Union of Illinois ("ACLU of Illinois") is a statewide, nonprofit, nonpartisan organization with more than 60,000 members dedicated to the protection and defense of the civil rights and civil liberties of all Illinoisans. The ACLU of Illinois is committed to ensuring that all people are treated with fairness and dignity. The ACLU of Illinois works to reform the state's criminal legal system by reducing the number of people in Illinois prisons, challenging dangerous detention conditions, focusing on rehabilitation, removing barriers to employment and education, treating substance abuse and mental illness as public health issues, eliminating racial bias, and rolling back excessive fines and fees. The ACLU of Illinois also challenges policies and practices that undermine safety and opportunity for women, including those that facilitate or perpetuate gender-based violence and harassment. In furtherance of these commitments, the ACLU of Illinois was a proponent of the bill in the Illinois General Assembly that became Public Act 099-0384 (2015) and its resulting amendments to the Illinois Code of Civil Procedure § 2-1401(b-5) ("Section (b-5)"), the law at issue in this case.

Ascend Justice is a non-profit organization based in Chicago, IL whose mission is to empower individuals and families impacted by gender-based violence or the child welfare system to achieve safety and stability through legal advocacy and system reform. Formerly known as the Domestic Violence Legal Clinic, Ascend Justice has served survivors of gender-based violence with free legal services for more than forty years. Since 2005, Ascend Justice

attorneys and volunteers have worked from offices inside the Cook County Domestic Violence Courthouse, providing onsite legal assistance to tens of thousands of survivors seeking Orders of Protection. Ascend Justice also offers the holistic legal advocacy necessary for survivors of gender-based violence to become safer and more independent, ranging from representation in child custody and support cases, immigration, housing, employment and consumer matters, and family defense issues. In recognition of the criminalization of survivors of gender-based violence, as well as the high proportion of incarcerated women who are survivors of gender-based violence, Ascend Justice launched a project to serve incarcerated survivors in 2021.

The Illinois Coalition Against Domestic Violence (ICADV) is a not-for-profit organization founded in 1978 by twelve local domestic violence programs with the vision to eliminate violence against women and children, and to promote the eradication of domestic violence across the state of Illinois. ICADV is a membership organization representing the interests of over fifty domestic violence service provider agencies and community partners that provide direct services to domestic violence survivors. Last year ICADV member service providers collectively served 42,866 adult survivors of domestic violence and 8,055 child witnesses. ICADV's mission is to build networks of support for and with survivors, and advance statewide policies and practices that transform societal attitudes and institutions to eliminate and prevent domestic abuse. ICADV leads on legislative issues affecting domestic victims and agencies in

Illinois and worked to pass the Illinois Domestic Violence Act in 1982. ICADV has an interest in preserving the intent of state statutes designed to support all survivors of domestic violence.

Legal Action Chicago is a not-for-profit law and policy organization with a mission to promote justice and opportunity for people living in poverty. Legal Action Chicago is a subsidiary of Legal Aid Chicago, which, for 50 years, has provided high quality civil legal services to Cook County residents living in poverty, serving about 35,000 people each year in a range of areas of law. Legal Aid Chicago has been committed to domestic violence advocacy for survivors since the 1970's. In addition to providing community education and advice, Legal Aid Chicago represents survivors of domestic violence in divorce, parentage, allocation of parental responsibilities, immigration, housing, and public benefits cases. Legal Action Chicago represents the interests of the same clientele and deploys the same expertise and experience in complex litigation and policy advocacy. In addition, and more generally, Legal Action Chicago and Legal Aid Chicago have thousands of clients and community partners deeply and negatively affected by mass incarceration, particularly people of color. They have seen the impact of mass and prolonged incarceration on individuals, families and communities as it perpetuates poverty, blocks opportunity, disrupts relationships, and exacerbates disparate racial outcomes. Legal Action Chicago works for reasonable alternatives to incarceration, sentencing reforms, and early release policies.

The Legal Aid Society of Metropolitan Family Services (LAS) has offered free legal assistance to under-resourced populations for over 130 years. LAS is part of Metropolitan Family Services (MFS), a non-profit agency that delivers services related to education, economic stability, and emotional wellness; together, LAS and MFS offer comprehensive support to clients throughout Cook and DuPage Counties. LAS currently provides a variety of legal services, including representation of survivors of domestic violence in divorce and parentage cases and in requests to obtain orders of protection in both civil and criminal courts. In addition, LAS regularly advocates for policy and legislation that addresses domestic violence and related issues. Through direct services and systemic advocacy, LAS works to improve the legal system's response to domestic violence and supports the expansion of remedies available to survivors of abuse.

Life Span was established more than 40 years ago to provide comprehensive services to victims of domestic and sexual violence in Cook County, Illinois. Life Span's core services include criminal court advocacy, counseling, and legal representation in protective order, family law, and immigration cases. Life Span has supported thousands of victims navigating the criminal legal system as both complaining witnesses and as defendants. Life Span uses the experience and knowledge gained from working with individual clients to inform our systemic advocacy, providing the criminal court with education about the dynamics of domestic violence, the effects of trauma,

and the often problematic response of police, prosecutors, defense counsel, and judges. Life Span has seen that victims who are charged with crimes against the person who has abused them often face tremendous barriers to justice in the criminal system. Many times, the complexities of their circumstances are not understood and inaccurate assumptions are made by criminal courts, resulting in unjust outcomes. Based on decades of work to positively impact the treatment of victims in the criminal legal system, Life Span has a strong interest in this case.

The Network: Advocating Against Domestic Violence is a collaborative membership organization of over 30 service providers dedicated to improving the lives of those impacted by domestic violence through education, public policy and advocacy, and the connection of community members to direct service providers. As an organization working in this field for over 30 years, The Network has worked with the community and legal systems to shift the understanding of domestic violence and its impact on survivors. The Network strongly supports survivors being given the opportunity to present the evidence of the impact of their experiences with domestic violence as part of a criminal case. Due to the lack of historical understanding of these issues, those who were not given the opportunity to present that evidence before should be given that opportunity now.

The Shriver Center on Poverty Law (Shriver Center) has a vision of a nation free from poverty with justice, equity and opportunity for all. The

Shriver Center provides national leadership to promote justice and improve the lives and opportunities of people with low income, by advancing laws and policies, through litigation, and legislative and administrative advocacy. The Shriver Center is committed to economic and racial justice, which includes a history of pursuing economic and racial justice for domestic violence survivors and criminal justice-involved individuals.

The Women's Justice Institute (WJI) is an organization centered around reforming criminal justice policies and procedures for women. Founded in 2014, WJI advocates for laws, policies, and procedures that are gender-based and trauma-informed. The WJI is currently researching ways in which the women's prison population could be reduced by at least 50% in the next ten years, starting with community-based solutions. Through this work, the WJI has discovered that there are five main pathways which lead to incarceration of women; these pathways include lack of housing, unsupported families, insufficient economic and educational opportunity, poor healthcare, and gender-based violence. In light of the role of gender-based violence in the incarceration of women, the WJI advocates for laws that recognize that women are often incarcerated for their acts of surviving domestic abuse. Members of the WJI previously worked to draft and pass Public Act 099-0384. At the time that legislation was under consideration, statements from women in prison who had survived gender-based violence were collected and given to lawmakers as examples of the types of cases which might be impacted by this law. Among

those testimonials was one written by the Appellant Laura Bowers. Given the WJI's interest in promoting trauma-informed laws that recognize the criminalization of survivors of gender-based violence, the WJI has a strong interest in this case.

SUMMARY OF THE ARGUMENT

When Laura Bowers was sentenced to life in prison in 1990 in connection with the death of her abusive husband, neither society nor the legal system understood the ramifications of surviving domestic violence. If she had tried to flee her abusive marriage, she would be perceived as irrational. If she had fought back against the abuse, she would be considered unstable and deserving of punishment. And if she stayed with her abuser, she would be deemed not credible if she later reported the abuse. Ms. Bowers' mother believed it was her "place" to be with the man who consistently raped and beat her. The police and the legal system agreed; there was no recourse under Illinois law for Ms. Bowers' rape by her husband at that time. Attitudes around domestic violence were so grim at that time that a survivor's decision not to introduce mitigating evidence during a criminal sentencing was perfectly logical. This brief sheds light on why a survivor like Ms. Bowers would remain with her abuser and be completely unaware of the mitigating nature of evidence of domestic violence by her intimate partner when she was sentenced in 1990. It discusses how the social and legal understanding and treatment of domestic violence evolved in more recent decades to contextualize why the

Court should conclude that Laura Bowers' petition for resentencing relief under Section (b-5) of the Illinois Code of Civil Procedure was timely.

I. It is an unfortunate reality that, for far too long, society accepted domestic violence, intimate partner abuse, and marital rape as the cost of a marriage or partnership, allowing perpetrators of violence to enjoy impunity while victims were often blamed and shamed for their own victimization. Women constitute (and historically constituted) the overwhelming majority of victims of this violence. The retrograde attitudes about domestic violence were rooted in an archaic contract- and property-based understanding of marriage that effectively forfeited a woman's ability to leave a relationship, withhold consent for sex, or protect herself from abuse. However, views have evolved significantly in recent decades as a result of better understandings of victimization and trauma—though society has struggled to erase all vestiges of this past. It is now understood, in a way that was simply not the case in 1990, why a domestic violence survivor would be hesitant to disclose abuse.

II. As attitudes about domestic violence have evolved, American law has tried but sometimes struggled to keep pace with that progress. In response to changing societal understandings, over the past three decades, Illinois and federal lawmakers have enacted legislation designed to protect domestic violence survivors and punish their abusers. Unfortunately, some courts have adopted overly cramped interpretations of those legislative efforts, undermining the effectiveness of such remedial statutes.

III. The Illinois legislature plainly understood the historical difficulty of bringing about meaningful change to the social and legal treatment of survivors of domestic violence when it adopted Public Act 099-0384 in 2015; as a result, it just as plainly intended for Section (b-5), which that Public Act added to the Illinois Code of Civil Procedure, to be interpreted as expansively as possible. At a minimum, therefore, the statute must be interpreted in a manner that would reach a long-time incarcerated survivor like the Appellant, Laura Bowers, who was sentenced much more than two years before this change in law became effective. Ms. Bowers was sentenced in 1990 to life in prison for her role in the killing of her husband, a man who viciously and repeatedly raped and abused her. At that time, Illinois law still did not recognize marital rape as a crime, and her family blamed her for her own abuse; thus, she could not and did not attempt to mitigate her sentence by introducing evidence of her husband's abuse. On its face, Section (b-5) allows survivors to petition for resentencing if they were unaware of the mitigating nature of evidence of domestic violence by their intimate partner at the time of their original sentencing hearing. The statute's relief must therefore be available to Ms. Bowers and others like her, who were sentenced at a time in our social and legal history when their abuse was not properly understood, or worse, could have been held against them. It is these survivors, silenced, blamed and shamed for surviving their own abuse, who would benefit the most from the statute.

ARGUMENT

Intimate partner violence[1] is a nationwide issue touching every state and demographic in our country. This brief outlines the history of the social and legal treatment of domestic violence that animated the addition of Section (b-5) to the Illinois Code of Civil Procedure in 2015 and must inform interpretation of its scope. Attitudes toward domestic violence survivors have evolved in recent decades, driven largely by developments in understanding victimization and trauma. *See* Part I, *infra*. Recent reforms have tried to remediate the legal response to domestic violence, but occasionally confined judicial interpretations have undercut the broad remedial legislative intent. *See* Part II, *infra*. The history of these social and legal advances both highlights the need for, and affirmatively supports, an expansive interpretation of the availability of Section (b-5) relief. *See* Part III, *infra*.

I. ATTITUDES TOWARD DOMESTIC VIOLENCE SURVIVORS HAVE EVOLVED IN RECENT DECADES.

Intimate partner violence affects people of all backgrounds, regardless of socioeconomic status and education; occurs within married, cohabitating, and dating couples; and infects heterosexual and LGBTQ relationships alike. Dep't of Just., *OJP Fact Sheet: Domestic Violence* (Nov. 2011),

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[1] The statute at issue in this case refers to "domestic violence as perpetrated by an intimate partner", defined as "a spouse or former spouse, persons who have or allegedly have had a child in common, or persons who have or have had a dating or engagement relationship." 735 ILCS 5/2-1401(b-5). Although not all domestic violence is intimate partner violence, the dynamics and impact of such violence are largely the same. In this brief, *amici* use the terms "domestic violence" and "intimate partner violence" interchangeably unless otherwise noted.

https://bit.ly/3w9bnd7 ("Fact Sheet"). Each year, intimate partners rape or physically assault women in the United States nearly five million times. *Id.* At least one out of every three female murder victims is killed by her husband or boyfriend. Off. for Victims of Crime Training & Tech. Assistance Ctr., *Intimate Partner Violence*, https://bit.ly/2QOnnAO ("OVC").

While intimate partner abuse affects all social, ethnic, and racial groups, Kathryn E. Litchman, *Punishing the Protectors: The Illinois Domestic Violence Act Remedy for Victims of Domestic Violence Against Police Misconduct*, 38 Loy. U. Chi. L.J. 765, 774 (2007), this violence is inflicted most frequently on women who are immigrants, minorities, or living in poverty, *see* Lisa Young Larance et al., *Understanding and Addressing Women's Use of Force in Intimate Relationships: A Retrospective*, 25 Violence Against Women 56, 59 (2019) ("Black women experience higher rates of intimate partner homicide than their White counterparts."); Jamila K. Stockman, et al., *Intimate Partner Violence and Its Health Impact on Disproportionately Affected Populations, Including Minorities and Impoverished Groups*, 24 J. Women's Health 62, 75 (2015) (discussing "the disproportionate rates of [intimate partner violence] among ethnic minority women (i.e., Black, American Indian or Alaska Native, Hispanic/Latina), and those who are marginalized (i.e., immigrant women)").[2]

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[2] Some research even suggests that ethnic minority women suffer more severe effects from intimate partner violence than other women. *See* Stockman et al., *supra*, at 63 ("The psychological impact of [intimate partner violence] on ethnic minority women includes higher rates of depression, posttraumatic stress disorder (PTSD), low self-esteem, and suicidality as compared to their counterparts who have not experienced [intimate partner violence], and in some instances, as compared to White women with [intimate partner violence] experiences.").

In addition to harming the actual victims, intimate partner violence also negatively impacts the community at large by imposing an immense burden on often underfunded social and legal programs. *See* Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 Fordham L. Rev. 1285, 1326-27 (2000). "With the effects of domestic violence ranging from emergency room expenses, costs to employers from missed days of work, and government funds expended in providing for homeless battered women and children in foster care," preventing intimate-partner violence "is critical to the overall mental and financial health of individuals in our society." Tsai, *supra*, at 1326-27; Stockman et al., *supra*, at 63 ("An estimated $5.8 billion is spent annually as a result of medical and mental health costs and loss of productivity associated with [intimate partner violence]").

Understanding the harms caused by domestic violence—and how the Illinois legislature intended to combat these through the law at issue in this case—requires looking back at our nation's past social, cultural, and legal views on domestic abuse. This scourge is not a new phenomenon; to the contrary, many of the root causes of domestic violence and its consequences lie much "deeper—in beliefs and values we thought we had expunged many years ago." Emily J. Sack, *Confronting Domestic Violence Head On: The Role of Power in Domestic Relationships*, 32 T. Jefferson L. Rev. 31, 62-63 (2009).

A. Intimate Partner Violence Was Deemed Socially and Legally Acceptable Throughout Much of History.

American views toward women, and the roles they were expected to play in society, were largely inherited from England. One such view, the concept of "coverture," derived from English common law, which held that "[u]pon marriage, a woman's legal identity was merged into that of her husband." Sack, *supra*, at 33. "From the country's founding, American law" under coverture "recognized the legal right of a husband to 'chastise' his wife." *Id.* This right to physical "chastisement," along with the prevailing contractual understanding of marriage, created a de facto, unqualified right to on-demand sex, without regard to consent. Lord Matthew Hale, Chief Justice of the King's Bench in England during the 1670s, famously postulated that "[t]he husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract." Sack, *supra*, at 49.

The precept that marital rape was not even legally cognizable remained virtually untouched for centuries. In fact, in the rare instance when marital rape was discussed in judicial opinions during the 18th and 19th centuries, it was not because prosecutors were seeking to challenge the exemption as unjust; instead, it was because prosecutors disagreed on whether indictments for rape had to affirmatively state that the victim and defendant were not married to each other. Jill Elaine Hasday, *Contest and Consent: A Legal History of Marital Rape*, 88 Cal. L. Rev. 1373, 1393-94 (2000). "Some nineteenth-century courts actually reversed rape convictions because the

indictment had failed to explicitly indicate that the victim was not the defendant's wife." *Id.*

By the mid-19th century, states began granting women the ability to hold property in their own right. "As the laws of coverture disappeared, so too did the rationale for recognizing the husband's 'right of chastisement.'" Sack, *supra*, at 33-34. Nevertheless, intimate partner violence remained commonplace and acceptable within American society, and so the legal justifications for not punishing it shifted: "preservation of the family unit and promotion of domestic harmony required that the law not interfere in spousal relations." *Id.* The North Carolina Supreme Court, for instance, opined in 1874 that

> [i]f no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive.

State v. Oliver, 70 N.C. 60, 61-62 (1874).

Thus, even with the husband's "right of chastisement" technically gone, cultural understandings held firm. "[L]egal authorities continued . . . to treat wife beating more favorably than other instances of assault and battery and remained extremely reluctant to enforce criminal or civil penalties for marital violence." *Hasday*, *supra*, at 1390; *see also* Reva B. Siegel, *"The Rule of Love": Wife Beating as Prerogative and Privacy*, 105 Yale L.J. 2117, 2117 (1996) ("[F]or a century after courts repudiated the right of chastisement, the

American legal system continued to treat wife beating differently from other cases of assault and battery.").

At the same time, "Western culture almost uniformly perpetuated the assumption that forced intercourse is a woman's matrimonial duty." Lisa R. Eskow, *The Ultimate Weapon?: Demythologizing Spousal Rape and Reconceptualizing Its Prosecution*, 48 Stan. L. Rev. 677, 680 (1996). In response, the nineteenth-century women's rights movement vociferously "contested a husband's right to determine the terms of marital intercourse." *Hasday*, *supra*, at 1414. But to no avail. "If the fate of the nineteenth-century campaign against a husband's conjugal prerogatives illuminates anything, it is that society's reluctance to acknowledge that marriage is a potentially antagonistic and dangerous relation" for women "is long-standing, well-entrenched, and extremely resistant to feminist opposition, especially where marital sex and reproduction are directly implicated." *Id.* at 1499.

Thus, on the eve of the modern feminist movement in the mid-20th century, though the legal justifications permitting controlling and abusing women had changed, women were nonetheless still subjected to the same violence that had been prevalent for hundreds of years prior.

B. The Views of Society and the Legal System Toward Domestic Violence Have Lagged Behind Other Modern Landmarks of Progress.

The feminist movement of the 1960s and 1970s produced real change for many women in America, such as increased job opportunities and the hope of employment and education without sex discrimination. *See, e.g.*, Civil Rights

Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964). But many of the underlying cultural biases about domestic violence discussed above remained largely unchanged. One scholar wrote in 2000 that "[m]uch of the behavior that would be labeled 'domestic violence' today would fall well within the range of acceptable, if not recommended, behaviors that male household heads might have engaged in a few decades ago." Alissa Pollitz Worden, *The Changing Boundaries of the Criminal Justice System: Redefining the Problem and the Response in Domestic Violence*, 2 Crim. Justice 215, 220-21 (2000). For one thing, marital rape exemptions remained in force in many states into the 1990s, which both reflected and reinforced these attitudes.[3]

In some ways, the increasing freedoms that women began to enjoy perversely made it harder for victims to find support and justice: "[t]he reform of divorce and marital property laws contributed to the erroneous view that all wives could safely leave their marriages and support themselves by working outside the home." Carolyn B. Ramsey, *The Exit Myth: Family Law, Gender Roles, and Changing Attitudes Toward Female Victims of Domestic Violence*, 20 Mich. J. Gender & L. 1, 10 (2013). "Hence, changes in gender roles created a 'why didn't she leave?' question that had rarely been asked when the dominant social assumption was that wives and mothers should not seek paid

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[3] *See* Note, *To Have and To Hold: The Marital Rape Exemption and the Fourteenth Amendment*, 99 Harv. L. Rev. 1255, 1255 (1986) ("A husband's violent sexual possession of his wife against her will is such a point of power. And the law's sanctioning of this exercise of power transforms this power into truth. Therefore, when men say 'a husband cannot rape his wife,' they speak the truth. When women accuse their husbands of rape, they lie. Because women are perceived to be liars, they remain silent. The dominant discourse of truth thus evolves from the reality of ongoing subjugation.").

work." Ramsey, *supra*, at 28. This "erroneous view" accompanied a trend in psychology that blamed domestic violence on the victim, and "by the 1960s and 1970s, the widespread acceptance of such theories had contributed to the apathetic criminal justice response to domestic violence." Ramsey, *supra*, at 30-31.[4]

A grassroots movement to establish shelters for battered women "marked the beginning of a community-level movement to redefine battered women as crime victims, and to reevaluate common family-based explanations for men's violent behavior." Worden, *supra*, at 221. Unintentionally, however, the term "battered women's syndrome" subtly encouraged the public to view the psychological impacts of domestic violence as a defect in the woman, rather than as an effect of her abuser's actions. *See, e.g.*, Sack, *supra*, at 41 ("Initial efforts to defend battered women who had harmed their abusers often relied on a theory of temporary insanity, diminished capacity or other mental defect. In this context, it is easy to see how battered women's syndrome would be viewed as a mental disorder, since it was introduced to help establish such a mental defect."); Ramsey, *supra*, at 32 ("Psychological theories dismissed women who stayed with their batterers as masochistic."). Furthermore, paint[ing] battered women as "passive and helpless victims" ironically "render[ed] allegations of abuse made by women who did not fit this stereotype

[4] "When 'Beaten and Bruised' sought advice from Abigail Van Buren in 1962, for instance, the 'Dear Abby' columnist smugly retorted: 'A man who would repeatedly give his wife a crack across the jaw is sick. And a woman who would stick around for a repeat performance is sicker than the guy who hits her. Find a psychiatrist with two couches.'" Ramsey, *supra*, at 30.

less credible." Sack, *supra*, at 42-43. The majority of women who introduced expert testimony on battered women syndrome actually had their convictions or sentences affirmed rather than thrown out. Sack, *supra,* at 44 (discussing study which found in 152 state court appellate cases involving battered women defendants, 63% of convictions or sentences were affirmed, even with expert testimony admissible in 70% of cases). Furthermore, women who harmed their abusers in self-defense and later introduced evidence of domestic violence to explain their circumstances were sometimes accused of using the "abuse excuse" to get special treatment from the court. Sack, *supra*, at 44. As it turned out, abused women did get special treatment, just in the opposite way critics assumed—female victims of domestic violence who killed their abusers generally received longer sentences than men who killed their intimate partners. Sack, *supra*, at 44-45.

C. Developments in Understanding Victimization and Trauma Have Shifted Attitudes Towards Survivors of Domestic Violence.

Slowly, scientific research and grassroots activism have more recently begun to pull American attitudes towards a more accurate understanding of domestic violence and its impact on those who experience it.

Society eventually began to recognize the long-term psychological effects of intimate partner violence, and today there is a better clinical understanding of its uniquely corrosive effect on women, families, and communities. *See, e.g.*, Erin K. Jackson, *To Have and To Hold: Protecting the Sexual Integrity of the World's Married Women*, 49 U. Toledo L. Rev. 71, 73 (2017) ("Marital rape

results in a multitude of physical, psychological, and social ramifications." (citing Elaine K. Martin et al., *A Review of Marital Rape*, 12 Aggression & Violent Behavior 329, 335 (2007))); *see also* Sack, *supra*, at 37. Psychologists now understand "the cycle of violence" set forth by Dr. Lenore Walker to "explain the state of mind of domestic violence victims." Sack, *supra*, at 39-40.

> Based on interviews with domestic violence victims, Walker posited that most battering relationships did not involve continuous violence. Rather, such relationships went through a series of three phases that repeated themselves over time. First, in the tension-building phase, a battered woman knows that the abuser is going to use violence against her. Second, in the acute battering phase, the actual incident of violence occurs. Third, in the 'loving contrition' or honeymoon phase, the batterer apologizes profusely and promises not to become violent again. Because a woman in an intimate relationship wants to believe the abuser's promises, this honeymoon phase keeps her psychologically locked in to the relationship, hoping each time that the violence will end. Thus, she becomes trapped in this cycle of violence.

Sack, *supra*, at 39-40. Dr. Walker also illuminated the phenomenon now known as "learned helplessness":

> [T]he dynamic of power and control in a domestic violence relationship creates a situation that greatly undermines the battered woman's self-esteem and her sense of efficacy in being able to change her situation. In addition to constant undermining and humiliation, as well as restrictions on her freedom and movement, the unpredictability of the batterer's behavior

> conditions a battered woman into thinking she cannot escape—even when [the] opportunity presents itself.

Id. at 40. These constructs help us now understand why it is simply false that all abused "wives could safely leave their marriages" and create their own safety elsewhere. Ramsey, *supra*, at 10.

It is now understood how the ongoing nature of domestic violence has lasting effects, and can cause severe physical and mental health issues throughout a survivor's life. Fiona Duxbury, *Recognising domestic violence in clinical practice using the diagnoses of posttraumatic stress disorder, depression and low self-esteem*, 56 British J. Gen'l Prac. 294, 299 n.4 (2006) (citing Jacquelyn C. Campbell, *Health consequences of intimate partner violence*, 359 The Lancet 1331 (2002)). In a general practice study, post-traumatic stress disorder, or PTSD, was present in 35% of those in the study who had experienced domestic violence. Duxbury, *supra*, at 299 n.1 (citing A. Marais et al., *Domestic violence in patients visiting general practitioners—prevalence, phenomenology, and association with psychopathology*, 89 S. African Med. J. 635 (1999)). Chronic PTSD in domestic violence survivors not only has negative mental health impacts for the individual, but it can also result in large social and health costs throughout the victim's life. Duxbury, *supra*, at 300 n.7 (citing Ronald C. Kessler et al., *Posttraumatic stress disorder in the National Comorbidity Survey*, 52 Arch Gen Psychiatry 1048 (1995)).

Research has further demonstrated why "[c]ontrary to the criminal justice paradigm, victims seldom seek public confrontation or punishment for

their abusive partners." Worden, *supra*, at 238. There are many reasons why a domestic violence victim may not disclose the abuse to trusted family or friends or to authorities. A major barrier to reporting domestic violence is a victim's overwhelming sense of shame, guilt, or embarrassment for what they have endured and fear that no one will believe them. Edna Erez, *Domestic Violence and the Criminal Justice System: An Overview*, 7 Online J. of Issues in Nursing (2002); *see also* Jackson, *supra*, at 74 (stating that as a woman experiences more abuse, "the more she experiences feelings of self-blame rather than feelings of anger directed at her husband"). Victims often also fear that if they do report, not only might the perpetrator retaliate against them, but authorities who do not believe the victim is telling the truth might as well. *Id.* When victims do summon the courage to report their abuse, research suggests they tend to underplay the extent of their injuries. *Id.*

Finally, it is now a well-documented fact that "husbands' acts of physical and sexual violence escalate when their wives attempt to leave the marriage." Eskow, *supra*, at 687. This phenomenon, known as "separation assaults," "reflect[s] the abusive husband's 'quest for control.'" *Id.*

Nevertheless, while understanding of intimate partner violence and its impacts on survivors has certainly evolved, victim-blaming and inequitable institutional responses continue to exert powerful influence on everyone from jurors to journalists, from the pulpit to the classroom, and from the locker room

to the neighborhood.[5] It is sadly still a reality that no matter what a woman does, she risks being blamed for her experience of abuse. *See* Melissa L. Breger, *Reforming by Re-Norming: How the Legal System Has the Potential to Change a Toxic Culture of Domestic Violence*, 44 J. Legis. 170, 180 (2017); Larance, *supra*, at 58. Even in recent years women have continued to be treated skeptically when they claim to have used force in response to the violence of their partners, and have often been left without safety, accountability for their abusers, or legal recourse. While we have undoubtedly seen much progress in recent decades, it has not always been consistent or straightforward.

II. RECENT REFORMS HAVE TRIED TO REMEDIATE LEGAL RESPONSES TO DOMESTIC VIOLENCE.

As American society has evolved in its understanding of, and response to, domestic violence, so too has our legal system. Breger, *supra*, at 172 (the legal system often mirrors "norms and themes in larger societal culture"). However, progress remains slow and inconsistent. "Domestic violence continues to be a problem of epic proportion. Despite nationwide state-based legislative reform over the last three decades, nearly one in three American women reports having been exposed to domestic violence by a partner at some point in her life." Litchman, *supra*, at 767. For that reason, judges should

[5] Lord Hale's infamous supposition that women "cannot retract" their marital consent to sex persists to this day. For instance, echoing Hale, a Missouri pastor's sermon recently went viral for preaching that "[t]he wife does not have authority over her own body but yields it to her husband,' the scripture [the pastor] referenced says. 'After you get married, men, put this on your headboard in the house,' [the pastor] said. 'Whenever she's not in the mood, take out your Bible.'" Elisha Fieldstadt, *Missouri pastor on leave after sexist sermon preaching wives need to look good for their husbands*, NBC News (Mar. 8, 2021), https://nbcnews.to/31sfMKc.

liberally interpret remedial laws aimed at the entrenched inequities experienced by survivors of domestic violence to achieve their intended purpose.

Congress and state legislatures have made repeated attempts to enact legislation designed to both prevent domestic violence going forward and (just as importantly) to remediate past injustices arising from legal systems' response to intimate partner violence. Recent examples of such legal reforms include the federal Violence Against Women Act, the Illinois Domestic Violence Act, the elimination of the marital rape exemption, and the Illinois Justice for Victims of Sex Trafficking Crimes Act.

A. Changes Made to Federal and State Law Intended to Address the Problem of Domestic and Other Gender-Based Violence.

In the 1970s and 80s, advocates recognized the need to move from assisting individual women to seeking broader policy change, and began to demand a better understanding of and response to survivors of domestic violence from the legal system. For example, it was clear that the legal system response gravely misunderstood why victims of domestic violence would use force to protect themselves or their children, and advocates recognized the need for judge, jury, and law enforcement education. Larance, *supra*, at 57. Traction around domestic violence issues eventually caught speed, and dramatic reforms in civil and criminal justice policy began to address such violence. Sack, *supra*, at 33. Due to widespread activism and education, there were significant changes in arrest and prosecution polices to

criminalize domestic violence, and an increase in services for survivors. By the mid-1990s, the country finally seemed poised to adapt reforms which would effectively reduce this public problem. *Id.*

1. The Federal Violence Against Women Act

The federal Violence Against Women Act of 1994 (VAWA) was the capstone of initial reform efforts at the national level. Congress enacted VAWA "[i]n response to the problems of domestic violence, sexual assault, and other forms of violent crime against women." *Brzonkala v. Va. Polytechnic Inst. & State Univ.*, 169 F.3d 820, 827 (4th Cir. 1999) (en banc) (citing Pub. L. No. 103-322, §§ 40001-40703); *United States v. Casciano*, 124 F.3d 106, 110 (2d Cir. 1997) (VAWA "is a comprehensive statute designed to provide women nationwide greater protection and recourse against violence and to impose accountability on abusers."). "Congress's goal in enacting VAWA was to eliminate barriers to women leaving abusive relationships." *Lopez-Birrueta v. Holder*, 633 F.3d 1211, 1215 (9th Cir. 2011). The passage of VAWA was both a recognition of significant change as well as an initiation of further policy shifts related to domestic violence so that the country would make progress in its treatment of domestic violence survivors. Sack, *supra*, 32-36. Perhaps VAWA's most important innovation (in theory) was that it created a private cause of action for victims of a "crime of violence motivated by gender" to sue the perpetrators for money damages in federal court (i.e. the "civil rights provision"). Caroline S. Schmidt, *What Killed the Violence Against Women Act's*

Civil Rights Remedy Before the Supreme Court Did?, 101 Va. L. Rev. 501, 502-03 (2015).

VAWA's enactment occurred against a backdrop of vigorous opposition by federal and state judges, who objected that it would bring "private" matters into federal court. Sally F. Goldfarb, *Violence Against Women and the Persistence of Privacy*, 61 Ohio St. L.J. 1, 1 (2000). In fact, "[m]uch of the opposition to the civil rights provision took the form of assertions that federal courts should not interfere in the private, domestic sphere." Goldfarb, *supra*, at 52. For example, "[i]n a particularly striking evocation of the ideology of legal nonintervention in the family, the Conference of Chief Justices, which represents the state judiciary, criticized VAWA's civil rights provision on the ground that it would conflict with the marital rape exemption." *Id.* "Similarly, lawyer Bruce Fein, who testified against the legislation, specifically objected to the fact that VAWA would interfere with a state's choice not to criminalize spousal rape—a choice that, according to Fein, states should be free to make based on 'local customs.'" Goldfarb, *supra*, at 52.

However, VAWA "in general, and the civil rights provision in particular, [was] designed to counteract the view . . . that domestic violence (and by extension, other forms of violence against women) are 'private' and therefore do not deserve legal redress." Goldfarb, *supra*, at 46. During the hearings preceding VAWA's passage, "[a] great deal of emphasis was placed on state judicial systems' failure to adequately address violence against women."

Schmidt, *supra*, at 521; *see also* Sally F. Goldfarb, *"No Civilized System of Justice": The Fate of the Violence Against Women*, 102 W.Va. L. Rev. 499, 507 (2000) ("Congress found that state laws were inadequate to redress violence against women."). Thus, "VAWA provides extensive federal funding . . . to the States to help them curtail violence against women through law enforcement efforts, education and prevention programs, and the maintenance of battered women's shelters." *Brzonkala*, 169 F.3d at 827 (citing 42 U.S.C. §§ 3796gg, 300w-10, 10402). Furthermore, "it criminalizes interstate acts of domestic violence, as well as the interstate violation of protective orders against violence and harassment," "imposes various sentencing enhancements for existing federal crimes motivated by gender animus," provides "restitution to the victims of violent crime against women," and "amends the Federal Rules of Evidence by adopting a rape shield provision to exclude from sexual assault trials evidence of a victim's prior sexual behavior." *Id.* (citing 18 U.S.C. §§ 2247-48, 2259, 2261-65; 28 U.S.C. § 994). Finally, it provides "some relief for battered immigrants and their children." Shana Chen and Karen Cunningham, *Violence Against Women Act*, 1 Geo. J. Gender & L. 711, 711-12 (2000).

2. The Illinois Domestic Violence Act

Because of societal and judicial attitudes, "abuse victims from the mid-1900s through the 1970s (and even into the 1980s) may have encountered a less sympathetic [legal system] response than their predecessors in the early twentieth century had." Ramsey, *supra*, at 32. Illinois first enacted legislation

designed to combat these attitudes and protect victims of domestic violence in 1982. Terrence J. Brady, *The Illinois Domestic Violence Act of 1986: A Selective Critique*, 19 Loy. U. Chi. L.J. 797, 797 (1988). Four years later, prominent anti-domestic violence organizations called for comprehensive refinements to the law, leading to the Illinois Domestic Violence Act of 1986 (the "IDVA"). This law was thus in its infancy at the time that Ms. Bowers was enduring horrendous abuse by her husband.

The IDVA states that it "shall be liberally construed and applied to promote its underlying purposes," which include to "[r]ecognize domestic violence as a serious crime against the individual and society" and "that the legal system has ineffectively dealt with family violence in the past." 750 ILCS 60/102(1), (3); *see also In re Marriage of Young*, 2013 IL App (2d) 121196, ¶ 20 ("The Act is to be construed liberally to promote its purposes, which include supporting the victims of domestic violence to avoid further abuse and 'reduce the abuser's access to the victim . . . so that victims are not trapped in abusive situations . . . .'"). The IDVA likewise recognized that "although many laws have changed, in practice there is still widespread failure to appropriately protect and assist victims." 750 ILCS 60/102(3).

The IDVA was written to "provide[] broad categories of abuse and prohibited conduct sufficient to impose an order of protection" on behalf of victims. *In re Marriage of McCoy*, 253 Ill. App. 3d 958, 963 (4th Dist. 1993). Thus, "[o]nce one member of a household is abused, the court has maximum

discretionary power to fashion the scope of an order of protection to include other household members or relatives who may be at risk of retaliatory acts by the abuser." *Id.*

3. The Criminalization of Marital Rape

Spousal rape was not made a crime in all fifty states and the District of Columbia until 1993. Jessica Klarfield, *A Striking Disconnect: Marital Rape Law's Failure to Keep Up With Domestic Violence Law*, 48 Am. Crim. L. Rev. 1819, 1819 (2011). Illinois was one of the later states to change its law in regards to marital rape. Illinois's marital rape exception remained in effect in some form until 1992 (two years after Ms. Bowers' sentencing), when it was struck down on Equal Protection grounds by the Second District Appellate Court. *See People v. M.D.*, 231 Ill. App. 3d 176, 187-193 (2d Dist. 1992). The court in *M.D.* reviewed the traditional justifications for the marital rape exception, and emphatically disposed of them:

> The above archaic doctrines simply have no place in modern society, where the notions that a woman should be regarded as her husband's chattel and deprived of her dignity and recognition as a whole human being through the denial of a separate legal identity have been thoroughly rejected.

M.D., 231 Ill. App. 3d at 189.

Following *M.D.*, the Illinois General Assembly finally amended 720 ILCS 5/12-18(c) in 1993 to remove the marital-rape exemption provision, although it kept a perversely severe reporting requirement that immunized spousal rapists unless their victim reported the rape within "30 days after the

offense was committed." Public Act 88-421 (1993). That extra requirement was not finally deleted until 2004 by Public Act 93-958—co-sponsored by then-state senator Barack Obama. And even today, "[t]he ambivalence of public attitudes toward martial rape is evident in . . . the lack of prosecution and even lower conviction rates" in domestic rape cases. Sack, *supra*, at 52.

4. The Illinois Justice for Victims of Sex Trafficking Crimes Act

A shared hallmark of both intimate partner violence and sex trafficking is the perpetrator's deliberate and concerted tactical deployment of power and control against their victim. The Illinois Justice for Victims of Sex Trafficking Crimes Act (the "JVST"), passed in 2011, demonstrates progress in the legal system as it represents a significant paradigm shift from one that treats sex trafficked persons as criminals to one that recognizes such persons as crime victims based on modern understandings of the ways in which sex traffickers abuse and control trafficked persons. *See generally* Rachel Johnson, *Criminalizing Victims: The Importance of Ending Felony Prostitution in Illinois*, 3 DePaul J. Women, Gender & L. 27 (2014). The JVST "allows Illinois courts to vacate a conviction for prostitution if the Petitioner can prove that the conviction occurred as a direct result of their sex trafficking victimization." Rachel Derham, *Justice for Victims of Sex Trafficking: Why Current Illinois Efforts Aren't Enough*, 51 J. Marshall L. Rev. 715, 718 (2018); *see also* Public Act 97-267 (2011). The JVST aimed to "help victims of sex trafficking who have been charged with prostitution by giving them the opportunity to clear their

names.” State of Ill., Press Release, *Governor Quinn Signs Bill to Help Sex Trafficking Victims Rebuild Their Lives—New Law Will Give Victims of Sex Trafficking a Chance to Appeal Prostitution Convictions* (Aug. 6, 2011). According to one of the JVST’s co-sponsors,

> [v]ictims of human trafficking are often forced into prostitution and other crimes against their own will, and too many of them are being prosecuted as criminals…When we have evidence that involuntary human trafficking was the cause of the crime, even though the victim may not have had the ability or representation to prove it during trial, we must do the right thing and reverse their conviction so they can move on with repairing their lives.

Id. (quoting Representative Karen Yarbrough).

Specifically, a criminal defendant may file a motion to vacate a conviction “under Section 11-14 (prostitution) or Section 11-14.2 (first offender; felony prostitution) . . . or a similar local ordinance,” which the court “may grant . . . if, in the discretion of the court, the violation was a result of the defendant having been a victim of human trafficking.” 725 ILCS 5/116-2.1(a), (b). If the court grants a defendant’s motion, “it must vacate the conviction and *may take such additional action as is appropriate in the circumstances*.” 725 ILCS 5/116-2.1(c) (emphasis added).

B. In Some Instances Courts Have Undercut Legislative Intent by Adopting Cramped Interpretations of Remedial Statutes.

There have been a few instances when courts have confronted remedial statutes aimed at addressing the treatment of survivors of gender-based

violence and have interpreted those laws in extraordinarily narrow ways, blunting the robust impact the statutes were intended to create. This limits the remedial impact of legal reforms—and illustrates why, in part, this is an area of law that historically lags behind other markers of social progress. And it underscores why it is so crucial that this Court properly interpret Section (b-5) in line with clear legislative intent. *See* Part III, *infra*.

For example, just six years after the passage of VAWA the U.S. Supreme Court found the law's critical private-remedy "civil rights provision" unconstitutional for exceeding Congress' legislative authority. *See United States v. Morrison*, 529 U.S. 598 (2000). "Within the subtext of the opinion [in *Morrison*] . . . lies a systematic refutation of the existence and validity of the idea of violence against women." Jill Laurie Goodman, *The Idea of Violence Against Women: Lessons from United States v. Jessica Lenahan, The Federal Civil Rights Remedy, and the New York State Anti-Trafficking Campaign*, 36 N.Y.U. Rev. L. & Soc. Change 593, 621 (2012). Despite years of scientific research showing the unique and lasting trauma that intimate partner violence inflicts on women, *Morrison* "repeatedly characterized the acts of violence covered by the Civil Rights Remedy as no different from other violent felonies." *Id.*

Similarly, the JVST has sometimes collided headlong with cultural reluctance to recognize the plight of abused women. Despite the clear intent behind the JVST and its discretionary grant of authority to "take such

additional action as is appropriate in the circumstances", some Illinois have incorrectly interpreted the JVST narrowly to apply *only* to convictions for the single crime of "prostitution"—not for any other crime, like theft or underage drinking, that may also have been a result of having been a trafficking victim. *See* Derham, *supra*, at 719-20 (comparing *People v. J.S.*, a case interpreting the JVST narrowly, with *People v. B.J.*, where the court construed its authority to include vacating a public indecency conviction).

III. THE SOCIAL AND LEGAL EVOLUTION IN THE TREATMENT OF DOMESTIC VIOLENCE SUPPORTS AN EXPANSIVE INTERPRETATION OF THE AVAILABILITY OF SECTION (B-5) RELIEF.

The path of prior social and legal efforts to recognize and address domestic violence brings into singular focus the question before the Court in this case. "The fundamental rule of statutory interpretation is to ascertain and give effect to the legislature's intent." *Alison C. v. Westcott*, 343 Ill. App. 3d 648, 650 (2d Dist. 2003) (citing *Mich. Ave. Nat'l Bank v. Cook Cnty.*, 191 Ill. 2d 493, 503-04 (2000)). And in cases where it is appropriate to consider the legislative purpose, "[l]egislative intent must be ascertained from a consideration of the entire act, its nature, its object, and the consequences resulting from different constructions." *Alison C.*, 343 Ill. App. 3d at 651 (citing *Fumarola v. Chi. Bd. of Educ.*, 142 Ill. 2d 54, 96 (1990)).

For remedial statutes like Section (b-5), "[i]t is a familiar canon of construction that the language of a remedial statute should be so interpreted as to promote the remedy." *Conard v. Crowdson*, 75 Ill. App. 614, 620 (3d Dist.

1897). "In the construction of remedial statutes the judicial eye is always 'kept single' to the legislative intent," *id.*, "in order that the remedy provided by [the statute] be advanced, not crippled," *Jackson v. Warren*, 32 Ill. 331, 341 (1863).

Section (b-5), properly viewed in light of the foregoing history and interpretive tools, must be interpreted to reach Ms. Bowers, a survivor sentenced during a time in which mitigating evidence related to domestic violence by an intimate partner was not understood or favored. In 1990, a survivor like Ms. Bowersin the face of powerful social and legal forces sending the message that victims were at fault when their partners abused them and should live with the consequences in silence and shame—simply was not able to present evidence of intimate partner violence to a sentencing court.

Section (b-5) is not simply an additional ground for filing a motion for resentencing. It is instead the most recent in a series of efforts by Congress and the Illinois General Assembly to countermand stubborn, persistent societal attitudes about intimate partner violence. In other words, the "evil" to be "obviated" is a culture that punishes victims and protects abusers—a culture that has been stubbornly persistent. The pervasive and longstanding nature of this problem underscores that the state legislature must have intended to provide courts with the maximum possible discretion to right past wrongs arising from intimate partner violence. The Court should also keep in mind that, in certain instances, courts have unwittingly blunted previous legislative attempts at legal reform to address domestic and other gender-

based violence, undermining legislative intent. *See, e.g.*, *Morrison*, 529 U.S. 598 (holding VAWA's private cause of action unconstitutional); Derham, *supra*, at 719-20 (describing narrow interpretation of JVST). The Court should interpret Section (b-5) in light of this history which informs the legislative intent.

Ms. Bowers' experience with the legal system is a distillation of the precise history and misunderstandings of intimate partner violence that Section (b-5) sought to redress. Ms. Bowers was regularly beaten and threatened by her husband, an Illinois Conservation Police officer. C.322. He raped Ms. Bowers repeatedly throughout their marriage, starting on their wedding night. C.322-23. Yet societal norms limited Ms. Bowers' options. When she mustered the courage to drive to her mother's house, her own mother turned her away, telling her to go home because her "place" was with her abusive husband. C.323; *see also* Eskow, *supra*, at 680 ("Western culture almost uniformly perpetuated the assumption that forced intercourse is a woman's matrimonial duty."). When Ms. Bowers told her husband she wanted a divorce, he reacted by escalating his abuse. C.323; *see* Eskow, *supra*, at 687 ("[H]usbands' acts of physical and sexual violence escalate when their wives attempt to leave the marriage," a phenomenon known as "separation assaults" that "reflect the abusive husband's 'quest for control'"). The incident leading to Ms. Bowers' conviction took place only "after all previous attempts to stop the battering ha[d] failed." Erez, *supra*.

Despite the horrific torrent of abuse that her husband inflicted on her and her lack of direct involvement in his death, Ms. Bowers still turned herself in and ultimately pled guilty. C.324; R.459-588; *see* Jackson, *supra*, at 74 ("the more a woman is raped by her husband, the more she experiences feelings of self-blame rather than feelings of anger directed at her husband."). At no point in her sentencing hearing did she seek leniency based on her husband's abuses. *See* Erez, *supra* ("Research . . . suggests that when battered women first approach the justice system they tend to underplay the extent of their injuries, feel shame and guilt about their victimization, and are very hesitant to mobilize the system for their protection."). Ms. Bowers remains in prison with no possibility of parole, while one of the men who actually bludgeoned her husband to death has since gone free. *Cf.* Sack, *supra*, at 44-45 ("Women who kill their batterers generally receive longer sentences than men who kill intimates."). Precisely because Ms. Bowers was sentenced over 30 years ago at a time when neither society nor the law fully recognized the brutality of intimate partner violence, nor why that violence necessarily must be understood and considered as a mitigating factor, she has been blamed and treated inequitably by institutions supposedly in place to protect her.

By interpreting Section (b-5) as unavailable to Ms. Bowers and similarly situated long-incarcerated survivors, the trial court continued the legal system's documented history of misunderstanding the impact of domestic violence on a victim, contrary to the clear intent of the law to acknowledge and

redress the ways in which dominant culture historically obstructed justice for survivors of intimate partner violence. Any interpretation that would leave Ms. Bowers and others like her categorically without access to Section (b-5)'s legal recourse would be absurd and unjust, an outcome squarely contrary to the legislative purpose of the Illinois General Assembly. *Nelson v. Artley*, 2015 IL 118058, ¶ 27 ("In construing a statute, we presume that the legislature did not intend absurd, inconvenient, or unjust results, and we will not, absent the clearest reasons, interpret a law in a way that would yield such results."); *see also People v. Fredericks*, 2014 IL App (1st) 122122, ¶ 18 (courts must "presume the legislature did not intend to produce 'absurd, inconvenient, or unjust results'"). It would be absurd to import a time limitation not stated explicitly in Public Act 099-0384 itself because, as discussed above, domestic violence is not a problem that arose two years prior to the statute's passage. Indeed, Section (b-5) is aimed at overturning the legacy of centuries of acquiescence in the abuse of women. And it would be manifestly unjust to shut the courthouse doors to Ms. Bowers, because she is no less deserving of the opportunity to present this mitigating evidence than a woman sentenced in 2014. If anything, she and others like her are even more deserving of that opportunity, having already served years (or even decades) of criminal sentences that Illinois lawmakers have since unanimously recognized are too harsh. *See* Senate Vote, S.B. 209, 99th Gen. Assembly (Apr. 30, 2015), https://bit.ly/3saPBmo (51 to 0);

House Roll Call, S.B. 209, 99th Gen. Assembly (May 25, 2015), https://bit.ly/3mvTC3w (106 to 0).

In short, Ms. Bowers is, in every way, the type of person that the Illinois General Assembly set out to help when it drafted and passed Section (b-5). In light of the history of pernicious societal and legal attitudes towards intimate partner violence, this Court should interpret Section (b-5) as liberally as necessary to achieve its manifest purpose of offering a survivor of intimate partner violence like Ms. Bowers the chance for a fair resentencing hearing, regardless of the date of her initial sentencing.

CONCLUSION

The Court should reverse the decision below and remand Ms. Bowers' case for a resentencing hearing under 735 ILCS 5/2-1401(b-5).

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the appendix pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 9,008 words.

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CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for *amici curiae* American Civil Liberties Union of Illinois, *et al.*, certifies under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure that she caused a true and correct copy of the foregoing **Brief of *Amici Curiae* American Civil Liberties Union of Illinois, *et al.* in Support of Defendant-Appellant** to be filed through the Illinois e-filing system and also to be served by e-mail on April 15, 2021 to the following counsel of record:

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