

Supreme Court No. 78421-3

SUPREME COURT OF THE STATE OF WASHINGTON

RAMONA DANNY, Appellant,

v.

LIDLAW TRANSPORTATION SERVICES, INC., Respondent.

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MEMORANDUM OF *AMICUS CURIAE* WASHINGTON STATE
COALITION AGAINST DOMESTIC VIOLENCE IN SUPPORT OF
APPELLANT RAMONA DANNY

SEAN M. PHELAN
WSBA #27866
Frank Freed Subit & Thomas
705 2nd Ave Ste 1200
Seattle, WA 98104-1798
Telephone: (206) 682-6711
Facsimile: (206) 682-0401

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CLERK OF COURT
JAN 11 2016

GRACE HUANG
Washington State Coalition
Against Domestic Violence
WSBA #26488
1402 3rd Ave #406
Seattle, WA 98101
Telephone: (206) 389-2515
Facsimile: (206) 389-2520

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INDEX

	<i>Page</i>
I. INTEREST OF <i>AMICUS CURIAE</i>	1
II. STATEMENT OF THE CASE	1
III. ARGUMENT	1
A. PROTECTING EMPLOYEES WHO TAKE LEAVE FROM WORK TO ADDRESS ISSUES OF DOMESTIC VIOLENCE SERVES THE INTERESTS OF ALL OF SOCIETY, INCLUDING VICTIMS AND THEIR EMPLOYERS	1
1. Domestic Violence Entails More Than Simply Physical Assault and is Characterized by a Pattern of Coercive Controlling Behavior	2
2. The Impacts of Domestic Violence	3
a. The Impact on Victims	3
b. The Impact on Children	4
c. The Impact on Society	5
d. The Impact on Employers	6
3. Policies Protecting Job Security of Domestic Violence Victims Also Serve Employers Interests	7
a. Supportive Employer Policies are Crucial for Domestic Violence Victims to be Able to Escape Abuse	7
b. The Private Sector Has Taken Steps to Support Domestic Violence Victims	8

c.	Washington’s Own Experience Demonstrates that Victims and Employers Benefit From Workplace Policies That Support Domestic Violence Victims	9
	(1) Executive Order 96-05	9
	(2) The Supreme Court’s Experience as an Employer Recognizes that Protection of Victims Protects the Employer as Well	12
B.	THE WASHINGTON CONSTITUTION AND OTHER SOURCES EMBODY CLEAR PUBLIC POLICY BENEFITING VICTIMS, EMPLOYERS, AND SOCIETY AS A WHOLE	13
	1. The Washington Constitution establishes a Clear Public Policy Protecting Victims Who Participate in Criminal Legal Proceedings	13
	2. Washington’s Legislature Has Made Numerous Efforts to Comprehensively Address Barriers to Safety Facing Domestic Violence Victims	16
C.	LIDLAW’S CLAIMS THAT THIS COURT’S RECOGNITION OF AN EXCEPTION TO THE AT-WILL DOCTRINE FOR VICTIMS OF DOMESTIC VIOLENCE WILL UNDULY BURDEN EMPLOYERS AND CREATE AND PROMPT A FLOODGATE OF FRIVOLOUS CLAIMS ARE UNFOUNDED	17
	CONCLUSION	19

TABLE OF AUTHORITIES

	<i>Page</i>
WASHINGTON STATE CASES	
<i>Roberts v. Dudley</i> , 140 Wn.2d 58, 78, 993 P.2d 901 (2000)	13
CONSTITUTION	
Const. art I, § 35.	14
WASHINGTON STATE EXECUTIVE ORDERS	
Executive Order 96-05 by Governor Lowry	9, 19
REGULATIONS	
WAC 388-61-001	16, 18
ADMINISTRATIVE MATERIALS	
Governor’s Domestic Violence in the Workplace Policy	11
University of Washington’s Procedure on Domestic Violence and the Workplace	11
WASHINGTON STATE STATUTES	
RCW 10.99.020	2
RCW 26.50.010,	2
Laws of 1997, ch 58 § 103	16
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Washington State Domestic Violence Fatality Review Project 3, 7
(July 13, 2006)

I. INTEREST OF *AMICUS CURIAE*

Amicus Curiae Washington State Coalition Against Domestic Violence (WSCADV) is a non-profit, statewide membership organization committed to eradicating domestic violence through advocacy and action for social change. *Amicus* submits this brief to assist the Court in considering the benefits to Washington's enunciated social policy of protecting employees from retaliation because of leave taken to address domestic violence.

II. STATEMENT OF THE CASE

Amicus Curiae accepts and adopts the Certified Federal Question, Factual Statement and Statement of the Case as set forth by Appellant Ramona Danny.

III. ARGUMENT

A. PROTECTING EMPLOYEES WHO TAKE LEAVE FROM WORK TO ADDRESS ISSUES OF DOMESTIC VIOLENCE SERVES THE INTERESTS OF ALL OF SOCIETY, INCLUDING VICTIMS AND THEIR EMPLOYERS

The specific issue presented in this case is whether discharging an employee who took time off from work to protect herself and her children from domestic abuse contravenes Washington State's clear public policy that benefits the interests of all of society, including victims and employers.

1. Domestic Violence Entails More Than Physical Assault; It is Pattern of Coercive Controlling Behavior

While physical violence is ordinarily the sole aspect of domestic violence that reaches the legal system,¹ domestic violence includes many other forms of coercion and control.² Domestic violence is a pattern of assaultive and coercive behaviors, including physical, sexual, and psychological attacks, social isolation and economic coercion.³ Most domestic violence victims are subjected to “an *ongoing* strategy of intimidation, isolation, and control that extends to all areas of life, including sexuality; material needs; relations with family, children, and friends; and work.”⁴ As a result, there are a wide range of consequences to domestic violence, ranging from physical and psychological injury to the victim and her children, harms affecting friends and family, employers and co-workers, the courts, the healthcare system, and society as a whole.⁵ This complex pattern of intimidation affects the victims, children and everyone in their social circle, including employers.

¹ *E.g.*, RCW 26.50.010, RCW 10.99.020.

² *See, Domestic Violence Manual For Judges*, Chapter 2, (Washington State Gender and Justice Commission, 2002).

³ *Id.*

⁴ Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 Alb. L. Rev. 973, 986 (1995).

⁵ *Domestic Violence Manual for Judges*, *supra* note 2.

2. The Impacts of Domestic Violence

a. The Impact on Victims

As noted above, the tactics batterers use to control their victims are varied, but the ultimate risk to the victim is singular: loss of life. Between January 1997 and May of 2006, approximately 512 individuals have died in domestic violence related fatalities in Washington State.⁶

Those victims who do not lose their lives to a violent partner face other substantial risks – as well as financial costs. The Center for Disease Control (CDC) considers domestic violence or intimate partner violence a significant public health problem. According to CDC estimates, 5.3 million intimate partner violence victimizations occur against U.S. women ages 18 and older each year.⁷ A 2006 report in the American Journal of Preventative Medicine documenting a study of 3568 randomly sampled HMO-insured women, primarily aged 18 to 64 years in Washington, found that 44% reported experiencing intimate-partner violence at some point in their adult lives, and compared to women who never experienced domestic violence, women who had experienced recent abuse were almost three times as likely to report poor health, including an increased risk of

⁶ Interview with Kelly Starr, Project Coordinator, *Washington State Domestic Violence Fatality Review Project* (July 13, 2006).

⁷ U.S. Dept. of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention *Costs of Intimate Partner Violence Against Women in the United States*, 19 (2003).

depression.⁸ As a direct result, victims of domestic violence must access expensive health care-related services such as emergency department visits, hospitalizations, visits to physicians, dentists, physical therapists and mental health professionals, as well as ambulance transport and paramedic assistance.⁹

b. The Impact on Children

But the costs – both economic and otherwise – go beyond the physical risks to life and limb. When children are involved, issues of child safety become paramount. Psychological studies indicate a significant overlap between intimate partner violence and child abuse. For example, research indicates that in 30% to 60% of families where either child abuse or intimate partner violence was identified, the other form of violence was also present.¹⁰

The immediate and long-term impact of domestic violence on children is staggering. Children who are exposed to unabated domestic violence may suffer from emotional problems, including slowed development, sleep disturbances, depression, and anxiety, as well as from

⁸ Robert Thompson, et al., *Intimate Partner Violence: Prevalence, Types, and Chronicity in Adult Women*. 30(6) Am. J. Prev. Med. 447 (2006); Amy Bonomi et. al, *Intimate Partner Violence and Women's Physical, Mental, and Social Functioning*, 30(6) Am. J. Prev. Med. 458 (2006)., available at www.ajpm_online.net.

⁹ *Costs of Intimate Partner Violence Against Women in the United States*, *supra*, note 7.

¹⁰ See Jeffrey L. Edleson, *The Overlap Between Child Maltreatment and Woman Battering*, Violence Against Women (1998).

aggressive, antisocial fearful, and inhibited behaviors.¹¹ Studies indicate that over the long term, exposure to domestic violence is associated with adult reports of depression, low self esteem among women, and trauma related symptoms among men,¹² and children who witness their parents using violence against each other and who regularly receive excessive punishment are at increased risk of being involved in an abusive relationship as an adult.¹³

c. The Impact on Society

It is not only the direct victims of intimate partner violence who suffer its effects. Incidents of domestic violence come at an extremely high price to society as a whole. Their toll includes deaths, injuries, hospitalizations, property damage, employment problems, and lifelong impact on its victims and their children.¹⁴ Domestic violence also results in indirect economic costs to society in the form of the value of lost productivity for injured victims and the present value of lifetime earnings for victims of fatal intimate partner violence. The CDC has calculated that

¹¹ See Anne Ganley & Susan Schechter, *Domestic Violence: A National Curriculum for Children's Protective Services*, Family Violence Prevention Fund, (1996).

¹² See Louise Silvern et al., *Retrospective Reports of Parental Partner Abuse: Relationship to Depression, Trauma Symptoms and Self Esteem among College Students*, 10 J. Fam. Violence 177, 177 (1995).

¹³ M. Ekrensaft, et. al, *Intergenerational Transmission of Partner Violence: a 20 Year Prospective Study*, 71(4) Journal of Consulting and Clinical Psychology, American Psychological Association 741(2003).

¹⁴ *Costs of Intimate Partner Violence Against Women in the United States*, *supra*, note 7.

domestic violence victims lose a total of nearly 810 million days of paid work – the equivalent of more than 32,000 full-time jobs- and nearly 5.6 million days of household productivity as a result of violence.¹⁵ Victims often have difficulty establishing independent lives due to poor credit, rental, and employment histories resulting from their abuse.¹⁶

d. The Impact on Employers

As might be expected, domestic violence also takes an economic toll on employers. Research indicates that U.S. employers lose between \$3 billion and \$13 billion a year as a result of domestic violence.¹⁷ These figures include lost productivity by employees who are victimized by domestic violence and the costs of hiring and training new workers when domestic violence victims leave or lose their jobs.¹⁸ In recognition of these unacceptable economic and social costs, a growing number of corporations are developing and adopting policies and procedures to assist employees who are experiencing domestic violence.

¹⁵ *Id.*

¹⁶ See Susan A. Reif & Lisa J. Krisher, *Subsidized Housing and the Unique Needs of Domestic Violence Victims*, Clearinghouse Rev. 20 (May-June 2000).

¹⁷ Margaret Graham Tebo, *When Home Comes to Work*, ABA Journal, Sept. 2005.

¹⁸ *Id.*

3. Policies Protecting Job Security of Domestic Violence Victims Also Serve Employers Interests

a. Supportive Employer Policies are Crucial for Domestic Violence Victims to be Able to Escape Abuse

Economic self-sufficiency is often a critical factor in the decision-making of battered women considering separation from the batterer. The single most likely predictor of whether a battered woman will permanently separate from her abuser is whether she has the economic resources to escape and to survive without him.¹⁹ Without sufficient resources, victims are either compelled back into an abusive relationship, or face destitution and homelessness.²⁰

According to in-depth reviews of domestic violence-related homicides in Washington, “victims faced significant economic barriers in attempting to leave their relationships: low earning potential, rents which would have absorbed most of their incomes, waiting lists for subsidized housing, costs, and the difficulty of saving or obtaining enough money to secure a rental.”²¹

¹⁹ Jill Davies & Eleanor Lyon, *Safety Planning with Battered Women-Complex Lives/Difficult Choices* 78-79 (1998).

²⁰ See U.S. Conference of Mayors, *A Status Report on Hunger and Homelessness in America's Cities: A 27 City Survey*, December 2004. See also, Eleanor Lyon, *Poverty, Welfare and Battered Women: What Does the Research Tell Us?* National Electronic Network on Violence Against Women 1 (Dec. 1997).

²¹ Margaret Hobart, *Honoring their Lives, Learning from their Deaths: Findings and Recommendations from the Washington State Domestic Violence Fatality Review*, 2000, at 39.

As this data illustrates, economic resources are imperative for women's safety.²² Employment policies that provide job protections for domestic violence victims can eliminate one of the most significant barriers to leaving abusive relationships that women face. Furthermore, providing women the means to become economically self-sufficient can prevent them from returning to abusive relationships out of financial necessity.

b. The Private Sector Has Taken Steps to Support Domestic Violence Victims

In recognition of the important role of employers in fighting domestic violence, and the pervasive presence and harmful impact of domestic violence in the workplace, a growing number of corporations have *voluntarily* begun implementing workplace policies encouraging employees to seek the assistance and support of their employers when confronting issues of domestic violence.²³ These employer initiatives provide training for managers, human resources staff and employees, and employee assistance in the form of leaves of absence, scheduling flexibility, changes in work shift or work location, increased security in

²² Eleanor Lyon, *supra*, Note 20. ("Several studies in the past ten to fifteen years have documented the importance of economic resources for battered women's decision-making").

²³ The Family Violence Prevention Fund, Strategic Employer Responses to Domestic Violence, (visited August 8, 2006) <http://endabuse/workplace>. Examples of employers include Liz Claiborne, Inc., Verizon Wireless, Macy's West, Harman International, Blue Shield of California and Blue Shield of California Foundation.

the workplace, and referral services for external sources of assistance.²⁴ Liz Claiborne, Inc. reported responding to forty cases of employee reports of domestic violence between 2002 and 2004.²⁵

Research shows that employers who have adopted policies addressing domestic violence in the workplace report noticeable improvements in employee performance, productivity, health, work site safety and job retention.²⁶ These experiences illustrate the benefits to employers as well as employees when employers take an active role in combating domestic violence.

c. Washington's Own Experience Demonstrates that Victims and Employers Benefit From Workplace Policies That Support Domestic Violence Victims

(1) Executive Order 96-05

Exec. Order 96-05, issued by former Governor Mike Lowry almost ten years ago on October 1, 1996, demonstrates that prohibiting adverse employment consequences against victims of domestic violence who seek protection from their abusers works to the benefit of victims as well as

²⁴ Corporate Alliance to End Domestic Violence (visited July 31, 2006), <<http://www.caepv.org/>>.

²⁵ The Family Violence Prevention Fund, Workplace Examples: Liz Claiborne, (visited August 8, 2006), <<http://endabuse/workplace>>.

²⁶ Partnership for Prevention, *Domestic Violence and the Workplace*. Washington, D.C (2002).

their employers.²⁷ Entitled “Domestic Violence in the Workplace,” Exec. Order 96-05 aptly observes that “domestic violence is not solely a private, family dispute that affects only the people immediately involved, but also crosses over to the workplace, adversely affecting the safety and productivity of victims and co-workers.”

Exec. Order 96-05 recognizes that “the state of Washington, as an employer, is ... affected by domestic violence in the loss of productivity, increased health care costs, increased absenteeism, and increased employee turnover.” Consequently, Exec. Order 96-05 mandates that “Washington, as an employer, should provide needed support and assistance to employees who are victims of domestic violence.”

The Order directs state agencies and institutions of higher education to adopt policies that, “assure that every reasonable effort will be made to adjust work schedules and/or grant accrued or unpaid leave to allow employees who are victim of domestic violence to obtain medical treatment, counseling, legal assistance, to leave the area, or to make other arrangements to create a safer situation for themselves.” The Order also requires state agencies and institutions to assure that “every reasonable effort will be made to assist employees who are victims of domestic violence to find continued state employment when there is a need for the

²⁷ A copy of Exec. Order 96-05 is attached in Appendix A.

victim to relocate for safety reasons.” The Order expressly prohibits penalizing or disciplining employees solely because they are victims of domestic violence, and directs the Health Care Authority and the Public Employees Benefits Board to ensure that no victim of domestic violence is denied health, life or disability insurance due solely to a history of domestic violence.

Consistent with Exec. Order 96-05, the Governor’s Office²⁸ and the University of Washington²⁹ have adopted personnel policies addressing Domestic Violence in the Workplace. Although not directly implicated by the facts in this case, Exec. Order 96-05 and the policies and procedures implementing it illustrate the effectiveness of the state’s embrace of the important policy objectives served by enacting job protections for at-will employees experiencing domestic violence who take leave from work to access services and/or to hold their abusers accountable. The state has recognized that adopting proactive domestic violence policies can help address absenteeism and lost productivity as

²⁸ A copy of the Office of the Governor’s Domestic Violence in the Workplace Policy is attached hereto as Appendix B. to this brief.

²⁹ A copy of the University of Washington’s Procedure on Domestic Violence and the Workplace is attached hereto as Appendix C. to this brief.

well as provide protection against employer liability.³⁰

(2) **The Supreme Court's Experience as an Employer Recognizes that Protection of Victims Protects the Employer as Well**

In December 2004, this Court formally approved a model Workplace Domestic Violence Policy developed by the Gender and Justice Commission.³¹ The Supreme Court's model policy notes that the court "is committed to working with employees who are victims of domestic violence," and pledges to "provide the support and assistance it determines is appropriate in each case, which may include: resource and referral information; *work schedule adjustments or leave as needed to obtain assistance*; assistance in developing a workplace safety plan; workplace relocation; or consideration in performance evaluations of the impact domestic violence may have on an employee's work performance" (emphasis added). The policy further directs personnel charged with

³⁰ *C.f.*, Employee Advisory Service, Washington State Department of Personnel, ***Addressing Violence in the Workplace, Including Issues of Domestic Violence***, (October, 2001), available at <http://www.dop.wa.gov/NR/rdonlyres/82C504E0-01DF-4E15-84D8-02B76F313087/0/AddressingViolenceintheWorkplace.pdf>; ***Strategies for Preventing Workplace Violence***, HR Advisor, Municipal Research and Services Center of Washington (March 2004), (visited August 8, 2006) <<http://www.mrsc.org/focus/hradvisor/hra0403.aspx>>.

³¹ ***Washington State Supreme Court Gender and Justice Commission***, 2005 Annual Report 3. (The Supreme Court Clerk's Office, Commissioner's Office, Office of the Reporter of Decisions, Washington State Law Library, and Administrative Office of the Courts soon followed suit and also adopted versions of the policy. The Court of Appeals, Division I, voted to draft its own policy based upon the Commission model policy. Spokane County Superior Court also adopted a version of the policy, and other courts are expected to follow suit).

dealing with domestic violence concerns of employees to adjust work schedules and/or grant leave if necessary for an employee to seek medical or legal assistance, or to attend court appearance, obtain counseling or take other steps related to domestic violence issues. Finally, the Court's model policy also prohibits penalizing or discipline of an employee for being a victim of domestic violence. This Court's own experience demonstrates the mutual benefits to employers and employees of implementing policies addressing domestic violence in the workplace.

B. THE WASHINGTON CONSTITUTION AND OTHER SOURCES EMBODY CLEAR PUBLIC POLICY BENEFITING VICTIMS, EMPLOYERS, AND SOCIETY AS A WHOLE

1. The Washington Constitution Establishes a Clear Public Policy Protecting Victims Who Participate in Criminal Legal Proceedings

As shown, society as a whole benefits when all sectors work together to end domestic violence. It is to that end that Washington's laws and judicial decisions have established a clear public policy against terminating an at-will employee for taking actions to escape from such violence. In addition to those sources, the state constitution is one of the most appropriate places to glean the state's fundamental public policies. *Roberts v. Dudley*, 140 Wn.2d 58, 78, 993 P.2d 901 (2000) (Alexander, J., concurring). Washington' Constitution contains a clear public policy

mandate granting felony crime victims, including domestic violence victims, fundamental rights to participate in criminal proceedings against their abusers. Approved by the on November 7, 1989, Amendment 84, entitled the “Crime Victim’s Amendment” provides in relevant part:

SECTION 35 VICTIMS OF CRIMES – RIGHTS. Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crimes are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has a right to attend, and to make a statement at sentencing and at any proceedings where the defendant’s release is considered, subject to the same rules of procedure which govern the defendant’s rights....

Const. art I, § 35.

This provision gives certain crime victims, including domestic violence victims, “fundamental and basic rights” to attend and actively participate in criminal proceedings against the alleged perpetrators. As the Amendment itself states, effective law enforcement, which is a desirable social goal, is often contingent upon the cooperation of crime victims. This provision creates an unmistakably clear public policy mandate to empower victims, including domestic violence victims, to hold their

accusers accountable for their actions and thereby protect themselves from further victimization.

Furthermore, this policy mandate is directly implicated in this case. During Ms. Danny's leave from work, she met with law enforcement officials regarding the detention of her husband for committing domestic violence. She also cooperated with the prosecutor in prosecuting her husband for assaulting their son.³²

As this case illustrates, victims' ability to exercise the "basic and fundamental rights" created by Const. Art I, § 35, may well depend upon their employers' willingness to grant time off or accommodate work schedules to permit their participation in such proceedings. Permitting an employer to terminate an at-will employee who is a domestic violence victim because she took time off from work to participate in the criminal prosecution of her abuser would clearly contravene the letter and the purpose articulated in Const. Art I, § 35. Such a result would directly contravene the clear public policy mandate articulated in the Constitution, and would turn these "basic and fundamental rights" into empty and meaningless words. Consequently, this Court should hold that this constitutional provision establishes a clear public policy mandate prohibiting termination of an at-will employee who experiences domestic

³² Exh. 1, ¶ 3 to Order of District Court for the Western District of Washington.

violence and who takes time off from work to participate in criminal proceedings against her abuser.

2. Washington’s Legislature Has Made Numerous Efforts to Comprehensively Address Barriers to Safety Facing Domestic Violence Victims

Washington has continually and consistently recognized that domestic violence is a widespread societal problem that has devastating effects for individual victims, their children, and their communities.³³ In addition to criminalizing domestic violence and providing for domestic violence shelters, the Washington legislature has recognized the economic barriers to escaping domestic violence by adopting the Family Violence Option as part of Washington’s Workfirst (welfare-to-work) program,³⁴ and passing legislation providing that domestic violence victims could leave their jobs in order to protect themselves from abuse and continue to be eligible for unemployment compensation.³⁵ The Washington Legislature has also recognized the crucial need for victims to access safe housing by enacting protections for victims against eviction for the actions of their abusers and adverse rental decisions in Washington’s Residential Landlord-Tenant Act.³⁶

³³ See Laws of 2004, ch. 17, § 1.

³⁴ Laws of 1997, ch. 58 § 103; WAC 388-61-001.

³⁵ Laws of 2002, ch. 8 § 1

³⁶ Laws of 2004, ch 17 § 1.

Despite Respondent's contentions otherwise, the above cited legislation, among numerous other laws, demonstrate that the Washington Legislature has made abundantly clear that Washington intends to provide a comprehensive response to address the myriad of barriers facing domestic violence victims.

C. LAIDLAW'S CLAIMS THAT THIS COURT'S RECOGNITION OF AN EXCEPTION TO THE AT-WILL DOCTRINE FOR VICTIMS OF DOMESTIC VIOLENCE WILL UNDULY BURDEN EMPLOYERS AND PROMPT A FLOODGATE OF FRIVOLOUS CLAIMS ARE UNFOUNDED

Laidlaw's assertion that recognition of a clear public policy exception to the at-will employment doctrine will give employees such as Ms. Danny "the ultimate hand in bargaining," and permit them to abuse leave "to their frivolous advantage" is unfounded and, frankly, offensive.

Respondent's assertions demonstrate that it misapprehends of the nature of domestic violence. Frequently, the shame and stigma that accompanies domestic violence prevents victims from sharing very private information about the abuse happening in their lives. Notwithstanding the frequency of domestic violence,³⁷ evidence shows that only about half of

³⁷ Patricia Tjaden and Nancy Thoennes, *Extent, Nature and Consequences of Intimate Partner Violence: Research Report, Findings from the National Violence Against Women Survey*, U.S Department of Justice (July 2000) (Across the United States, approximately 1.5 million women in the United States experience intimate partner violence annually).

victims of domestic violence contact law enforcement for assistance³⁸, and notwithstanding the large number of victims represented in the welfare population, few victims who *could* take advantage of policies to be exempted from work requirements actually do.³⁹

Laidlaw's claim that recognition of a public policy exception to at-will employment for domestic violence victims would create an affirmative duty for employers to inquire about an employee's need for domestic violence leave are similarly unfounded. In fact, that did not happen in the case before the Court. According to the Certified Statement of Facts adopted by Laidlaw, Ms. Danny affirmatively requested "time off from work to move her children away from the abusive situation in their home," and subsequently "plaintiff requested time off to move her children to a shelter."

Furthermore, there is no evidence supporting Laidlaw's claim that recognizing a public policy exception to at will employment for domestic violence victims would cause a floodgate of frivolous litigation. There are

³⁸ Callie Rennison and Sara Welchans, *Intimate Partner Violence*, U.S. Department of Justice, Bureau of Justice Statistics (January 2002).

³⁹ According to Washington's Department of Social and Health Services, less than 2.9% of its welfare caseload has utilized exceptions to work activity requirements in TANF program based on family violence provided for in WAC 388-61- since August 2001. This small percentage is notable given extensive research demonstrating that up to 56 percent of welfare recipients are current domestic violence victims or had been victims in the past year, and between 55 and 65 percent have physically abused in their lifetime. *E.g., Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients*. US General Accounting Office, GAO/HEHS-99-12, (November 1998).

no reported cases or any other indicators that the adoption of policies protecting domestic violence victims within the Washington government pursuant to the Governor's Executive Order, or within the judicial branch have caused "an endless stream of litigation," converted the court system into "the functional equivalent of the Department of Social and Health Services," or created an incentive for employees to abuse the policies "to their frivolous advantage."

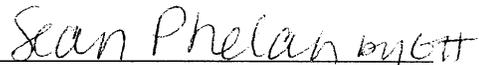
Washington's experience in implementing protections for domestic violence victims in the unemployment compensation program further calls Respondent's claim into question. According to the Washington State Employment Security Department, out of 928,454 applications for unemployment compensation in Washington between June of 2002 and May of 2006, only 1,120 applications, or .0012%, were based on claims of voluntary quits for domestic violence or stalking. The number of claimants taking advantage of benefits to protect domestic violence victims is negligible, much less abused "for frivolous advantage" or a "floodgate," and further shows that Respondent's allegation is groundless and without merit.

IV. CONCLUSION

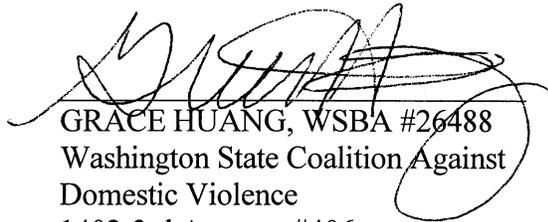
Ms. Danny is not asking this Court to *create* a public policy exception to at-will employment for employees experiencing domestic

violence. Instead, she requests this Court *recognize* the clear public policy mandates which justify such an exception found in the Crime Victim's Amendment to the Washington State Constitution, in the numerous statutes addressing the needs and rights of domestic violence victims cited in the Appellant's brief, and Executive Order 96-05 issued ten years ago by Governor Lowry. Such recognition benefits everyone – victims, their children, employers, and society as a whole. For the foregoing reasons, this Court should answer the certified question with a “yes.”

RESPECTFULLY SUBMITTED this 15th day of August, 2006.



SEAN M. PHELAN, WSBA # 27866
Frank Freed Subit & Thomas
705 2nd Ave Ste 1200
Seattle, WA 98104-1798
Telephone: (206) 682-6711
Facsimile: (206) 682-0401



GRACE HUANG, WSBA #26488
Washington State Coalition Against
Domestic Violence
1402-3rd Avenue, #406
Seattle, WA 98101
Telephone: (206) 389-2515
Facsimile: (206) 389-2520

EXECUTIVE ORDER 96-05**DOMESTIC VIOLENCE IN THE WORKPLACE**

WHEREAS, both employees and citizens of the state of Washington have a basic right to be safe from harm; and

WHEREAS, domestic violence is abusive behavior that is either physical, sexual, or psychological, and is intended to establish and maintain control over a partner, and

WHEREAS, domestic violence instills fear and harms victims and families and must not be tolerated; and

WHEREAS, domestic violence is criminal activity that statistics show affects everyone regardless of race, income, or age; occurs in every community of Washington State; and destroys relationships, families, and lives; and

WHEREAS, domestic violence is a major public policy concern of Washington State requiring a concentrated effort for its elimination; and

WHEREAS, domestic violence is not solely a private, family dispute that affects only the people immediately involved, but also crosses over to the workplace, adversely affecting the safety and productivity of victims and co-workers; and

WHEREAS, the state of Washington, as an employer, should provide needed support and assistance to employees who are victims of domestic violence; and

WHEREAS, the state of Washington, as an employer, is additionally affected by domestic violence in the loss of productivity, increased health care costs, increased absenteeism, and increased employee turnover;

NOW, THEREFORE, I, Mike Lowry, Governor of the state of Washington, by the authority vested in me, do hereby order and direct each state agency and institution of higher education to:

1. Initiate actions to create a workplace environment that provides an avenue for assistance for domestic violence victims without fear of reproach.
2. Ensure that personnel policies and procedures are responsive to victim of domestic violence.
3. Develop and make available to all employees a policy that:
 - a) Clearly directs that the state will not tolerate domestic violence. This includes harassment or the display of violent or threatening behavior that may result in physical or emotional injury to any state employee while in state offices, facilities, work sites, vehicles, or while conducting state business.
 - b) Offers a method for providing assistance to domestic violence victims in a confidential setting.

APPENDIX A

- c) Provides for immediate assistance to victims. This assistance shall, at a minimum, include: referral to the Department of Personnel's Employee Advisory Service or other available counseling services; information about community resources available to assist victims of domestic violence; development of workplace safety plans that seek to minimize the risk to the victim, other employees, and clients; and information on the methods to obtain civil orders of protection.
 - d) Following any applicable rules or statutes, assures that every reasonable effort will be made to adjust work schedules and/or grant accrued or unpaid leave to allow employees who are victim of domestic violence to obtain medical treatment, counseling, legal assistance, to leave the area, or to make other arrangements to create a safer situation for themselves.
 - e) Assures that every reasonable effort will be made to assist employees who are victims of domestic violence to find continued state employment when there is a need for the employee to relocate for safety reasons.
 - f) Encourages state employees who are perpetrators of domestic violence to seek assistance.
 - g) Provides for 'assistance to perpetrators. This assistance shall, at a minimum, include: referral to the Department of Personnel's Employee Advisory Service or other available counseling services; and information about available certified domestic violence perpetrator treatment programs.
 - h) Provides that corrective or disciplinary action may be taken against state employees who: misuse state resources to perpetrate domestic violence; harass, threaten, or commit an act of domestic violence in the workplace or while conducting state business; or are arrested, convicted, or issued a permanent injunction as a result of domestic violence when such action has a direct connection to the employee's duties as a state employee.
 - i) Provides that employees will not be penalized or disciplined solely because they have been victims of domestic violence.
4. Provide training on their respective policies and domestic violence awareness. The training shall include, at a minimum, information as to: what domestic violence is; what resources are available to victims and perpetrators; and what an employee can do if the employee believes a co-worker is a victim or perpetrator of domestic violence.
5. Have information about domestic violence and available resources posted in the worksite. Also, information needs to be available where employees can obtain it without having to request it or be seen removing it.

The Department of Personnel will provide training assistance and make a sample policy available for all agencies and institutions of higher education.

I am also requesting that the Health Care Authority and the Public Employees Benefits Board continue to make every effort to ensure that no victim of domestic violence has been or will be denied health, life, or disability insurance due solely to a history of domestic violence.

The provisions of this executive order are not intended to alter any existing collective bargaining agreements.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the State of Washington to be affixed at Olympia this 1st day of October A.D., Nineteen hundred and ninety-six.

MIKE LOWRY
Governor of Washington

BY THE GOVERNOR:

Secretary of State

[Back to Executive Orders Archive](#)



Municipal Research and Services Center of Washington

Working Together for Excellence in Local Government

Office of the Governor Domestic Violence and the Workplace Policy

PURPOSE:

The purpose of this policy is to set forth procedures and guidelines for all Governor's Office employees to address the occurrence of domestic violence and its impact in the workplace.

DESCRIPTION:

Domestic violence is abusive behavior that is either physical, sexual, and/or psychological, intended to establish and maintain control over a partner. Domestic violence is a serious problem that affects people from all walks of life. It can adversely affect the well-being and productivity of employees who are victims, as well as their co-workers. Other effects of domestic violence in the workplace include increased absenteeism, turnover, health care costs, and reduced productivity.

POLICY:

The Governor's Office will provide appropriate support and assistance to employees who are victims of domestic violence. This includes: confidential means for coming forward for help, resource and referral information, work schedule adjustments or leave as needed to obtain assistance, and workplace relocation as feasible. Other appropriate assistance will be provided based on individual need.

The Governor's Office is committed to working with employees who are victims of domestic violence to prevent abuse and harassment from occurring in the workplace. No employee will be penalized or disciplined solely for being a victim of harassment in the workplace.

Employees who are perpetrators of domestic violence are also encouraged to seek assistance. The Governor's Office will provide information regarding counseling and certified treatment resources, and make work schedule arrangements to receive such assistance.

The Governor's Office will not tolerate domestic violence including harassment of any employee or client while in state offices, facilities, work sites, vehicles, or while conducting state business. This includes the display of any violent or threatening behavior (verbal or physical) that may result in physical or emotional injury or otherwise places one's safety and productivity at risk.

Any employee who threatens, harasses, or abuses someone at the workplace or from the workplace using any state resources such as work time, workplace phones, FAX machines, mail, e-mail, or other means may be subject to corrective or disciplinary action, up to and including dismissal. Corrective or disciplinary action may also be taken against employees who are arrested, convicted or issued a permanent injunction as a result of domestic violence when such action has a direct connection to the employee's duties as a state employee.

All employees need to take seriously the problem of domestic violence and its effect in the workplace. The Governor's Office will take all reasonable measures to foster a safe working environment for all employees and clients.

PROCEDURE:

APPENDIX B

It is important that all employees know how best to respond to the effects of domestic violence in the workplace. The following clarifies roles for all staff.

Managers/Supervisors:

- Participate in domestic violence training.
- Be aware of physical or behavioral changes in employees and consult with your personnel officer and/or the Employee Advisory Service for advice. Do not attempt to diagnose the employee.
- Be responsive when an employee who is either the victim or the perpetrator of domestic violence asks for help. Immediately contact your personnel officer and the Employee Advisory Service for assistance. (tm)
- **Maintain confidentiality.** Information about the employee should only be given to others on a need-to-know basis.
- Work with the victim, your personnel officer, the Employee Advisory Service, the Attorney General's Office, available security staff, law enforcement, and community domestic violence programs, if necessary, to assess the need for and develop a workplace safety plan for the victim. Victims of domestic violence know their abusers better than anyone else. When it comes to their own personal safety, offer to assist them in developing a workplace safety plan, but allow them to decide what goes in it. If it is determined that other employees or clients are at risk, it is essential to take measures to provide protection for them.
- Adjust the employee's work schedule and/or grant leave (sick, annual, shared leave, compensatory time, or leave without pay) if the employee needs to take time off for medical assistance, legal assistance, court appearances, counseling, relocation, or to make other necessary arrangements to create a safe situation. (tm) Be sure to follow all applicable personnel rules and statutes.
- Maintain communication with the employee during the employee's absence. Remember to maintain confidentiality of the employee's whereabouts.
- Work with the personnel officer, Department of Personnel, and/or other state employers to assist the employee in finding other state employment if the employee needs to relocate for safety reasons.
- After consultation with your personnel officer, take any appropriate corrective disciplinary action against employees who: misuse state resources to perpetrate domestic violence; harass, threaten, or commit an act of domestic violence in the workplace or while conducting state business; or are arrested, convicted or issued a permanent injunction as a result of domestic violence when such action has a direct connection to the employee's duties as a state employee.
- Post information about domestic violence in your work area. Also, have information available where employees can obtain it without having to request it or be seen removing it. Some suggestions are: restrooms, lunchrooms, or where other employee resource information is located.
- Honor all civil protection orders. As appropriate, participate in court proceedings in obtaining protection orders on behalf of the employer.

Human Resource Professionals:

- Participate in domestic violence training.
- Maintain a list of services available to victims and perpetrators of domestic violence. This list should include: the Employee Advisory Service, local shelters, certified domestic violence treatment programs available to perpetrators, information on how to obtain civil orders of protection, and any other available community resources. The Employee Advisory Service can assist you in developing? (tm) this list.
- Be a resource to employees, managers, and supervisors in addressing domestic violence situations.
- Work with victims, the Employee Advisory Service, the Attorney General's Office, available security staff, law enforcement, and community domestic violence programs, if necessary, to develop a workplace safety plan to minimize the risk to the victim, other employees, and clients.
- Work with supervisors and managers to grant leave, adjust work schedules, or attempt to find continued employment for employees who are victims of domestic violence.
- **Maintain confidentiality.** Information about the employee should only be given to others on a need-to-know basis.

- Advise and assist supervisors and managers in taking corrective or disciplinary actions against perpetrators of domestic violence.

Options for Employees Who Are Victims Of Domestic Violence:

- Tell a trusted co-worker, supervisor, or manager, and ask for help.
- Contact your personnel officer for assistance.
- Contact the nearest Employee Advisory Service office: Olympia: (360) 753-3260 or TDD (360) 664-3563, Seattle: (206) 464-6883, or Spokane: (509) 456-5000.
- Contact the 24-hour Washington State Domestic Violence Hotline at 1-800-562-6025 (V/TTY); or the Washington State Coalition Against Domestic Violence at (360) 407-0756 (V/TTY).
- Call the local police.
- Notify your supervisor of the possible need to be absent and find out your leave options. Be clear about your plan to return to work and maintain communications with your supervisor during your absence. If necessary, make alternate arrangements for receiving your paycheck.
- If appropriate and safety is a concern, submit a recent photograph of the abuser and a copy of your protection order to your supervisor. This assists your employer in identifying the abuser should he/she appear in the workplace.

Options for Employees Who Are Perpetrators Of Domestic Violence:

- Tell a trusted co-worker, supervisor, or manager, and ask for help.
- Contact your personnel officer for assistance.
- Contact the nearest Employee Advisory Service office: Olympia: (360) 753-3260 or TDD (360) 664-3563, Seattle: (206) 464-6883, or Spokane: (509) 456-5000.
- Obtain a referral to a certified domestic violence perpetrators treatment program from the Employee Advisory Service.

Options for Other Employees Who Have Concerns About Domestic Violence:

- Tell a trusted co-worker, supervisor, or manager.
- Contact your personnel officer.
- Contact the nearest Employee Advisory Service office: Olympia: (360) 753-3260 or TDD (360) 664-3563, Seattle: (206) 464-6883, or Spokane: (509) 456-5000.

Components Of A Workplace Safety Plan:

- Consider obtaining civil orders for protection and make sure that they remain current and are in hand at all times. A copy should be provided to the employee's supervisor, reception area, and security areas if there is a concern about the abusive partner coming to the work site.
- The employee should consider providing a picture of the perpetrator to reception areas and/or security.
- An emergency contact person should be identified should the employer be unable to contact the employee.
- An agency contact person should be identified for the employee to reach when needed.
- Review the employee's parking arrangements for possible changes.
- Consider changing the employee's work schedule.
- Consider what steps need to be taken to provide for the safety of other employees and clients.
- Consider having the employee's telephone calls screened at work.

Resources:

- Employee Advisory Service: Olympia: (360) 753-3260 or TDD (360) 664-3563, Seattle: (206) 464-6883, Spokane: (509) 456-5000.
- 24-hour Washington State Domestic Violence Hotline: 1-800-562-6025?(tm)(V/TTY).
- Washington State Coalition Against Domestic Violence: (360) 407-0756.
- The National Domestic Violence Hotline: 1-800-799-SAFE, TTY 1-800-787-3224.

UW Procedure on Domestic Violence and the Workplace

Definition and Policy

Definition

Domestic violence is physically, sexually, and/or psychologically abusive behavior that a household member or dating partner uses to establish and maintain control over another person. Such behavior can be violent or threaten violence, and may result in physical or emotional harm or otherwise place a person's safety and productivity at risk. The University of Washington does not penalize or discipline employees because they are, or have been victims of domestic violence.

Policy

In accordance with Administrative Policy Statement 11.7, the University of Washington does not tolerate domestic violence that is perpetrated in, or that intrudes into the workplace.

Reporting Workplace Related Domestic Violence

Domestic Violence that intrudes into the workplace is reported by following the University's Workplace Violence Policy report/response procedure.

Where to Get Help

Resources for employees and supervisors who experience, observe or otherwise may be affected by domestic violence

1. Discuss your situation with a trusted coworker, supervisor, manager or your unit's Human Resources Consultant and ask for help.
2. Student employees or supervisors of student employees may contact the Office of the Vice President for Student Affairs or the Sexual Assault and Relationship Violence Information Service (SARIS).
3. UW CareLink - Confidential assistance for state employees and their families. For domestic violence perpetrators, the EAS can also make referral to a certified domestic violence perpetrators' treatment program.

In addition, victims of domestic violence may wish to contact the 24-hour Washington State Domestic Violence Hotline, 1-800-562-6025 or the Washington State Coalition Against Domestic Violence, 360-352-4029.

Leave Use and Work Schedule Adjustment

Employees who are victims of domestic violence may need time away from work or a modified work schedule to make arrangements for personal safety, or to obtain medical, legal or counseling services.

Employees should discuss their needs with their supervisor, administrator or unit head and:

1. Be as clear about leave needs as possible, including the amount of time and/or the planned return to work date.
2. If time away from work is necessary, employees and supervisors should agree on a communication plan.
3. If necessary, employees should make alternate arrangements for receiving their paycheck.

Guidelines for Supervisors and Managers

When an employee is a victim:

APPENDIX C

1. Maintain the confidentiality of information that a victim of domestic violence may share. Information should only be given to others on a need-to-know basis.
2. Contact your unit's Human Resources Consultant who can bring the necessary resources together to help evaluate risk and formulate an appropriate response or action plan.
3. Respect the victim's assessment of risk to self or others in evaluating the need for a workplace safety plan.
4. Be as flexible as possible in accommodating a victim's need for leave or work schedule adjustments.
5. If the victim needs to relocate, discuss the situation with your unit's Human Resources Consultant to determine what additional assistance may be available to help the employee find other state employment.

When an employee may be a perpetrator:

1. If an employee who may be a perpetrator asks for help, refer the employee to UW CareLink. UW CareLink counselors can make referral to a certified domestic violence perpetrators' treatment program.
 2. Discuss any actual, reported or suspected improper conduct with your unit's Human Resources Consultant to determine the course of action that is most appropriate.
 3. Document and maintain records of any times the employee may have used University resources such as work time, electronic communication technologies, mail etc. to engage in harassing, threatening or abusive behavior.
 4. Post information about domestic violence in the work area where employees can see it without having to request it
-

DECLARATION OF SERVICE

I, Leas J. Corpuz, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

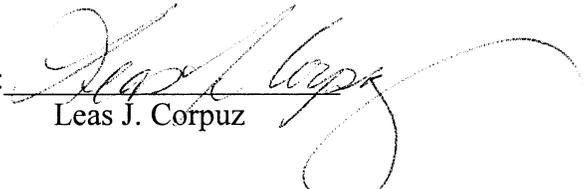
I simultaneously via electronic filing to the Supreme Court of the State of Washington, and via U.S. Postal Service, I caused to be served a true and correct copy of Motion For Leave To File Amicus Curiae Memorandum By The Washington State Coalition Against Domestic Violence In Support Of Appellant Ramona Danny and the Memorandum Of Amicus Curiae Washington State Coalition Against Domestic Violence In Support Of Appellant Ramona Danny with this Declaration of Service as follows:

Kathleen Phair Barnard
Schwerin Campbell Barnard, LLP
18 West Mercer Street, Suite 400
Seattle, Washington 98119

Sara Ainsworth
Northwest Women's Law Center
907 Pine Street, Suite 500
Seattle, WA 98101

Katheryn Bradley
Nick M. Beermann
Jackson Lewis, LLP
600 University Street, Suite 2900
Seattle, WA 98101

DATED this 15th day of August, 2006.

By: 
Leas J. Corpuz