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Supreme Court No. 78421-3
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SUPREME COURT OF THE STATE OF WASHINGTON
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RAMONA DANNY, Appellant,

v.

LAIDLAW TRANSPORTATION SERVICES, INC., Respondent.

Plaintiff's
APPELLANT'S REPLY BRIEF

Kathleen Phair Barnard
WSBA No. 17896
Sara Ainsworth
WSBA No. 26656
Northwest Women's Law Center
907 Pine Street, Suite 500
Seattle, Washington 98101
(206) 682-9552

Attorneys for Appellant

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I. NATURE OF PROCEEDINGS

Plaintiff Ramona Danny files this brief in reply to Defendant Laidlaw Transit Services, Inc. ("Laidlaw")'s response.

II. ARGUMENT

A. Summary Argument

This Court has been called upon to answer the following question:

Has the State of Washington established a clear mandate of public policy prohibiting an employer from discharging an at-will employee because she experienced domestic violence and took leave from work to take actions to protect herself, her family, and to hold her abuser accountable? (Order at 1)¹

This question is asked in the context of Danny's claim of wrongful discharge in violation of public policy. That claim asserts that an exception to the Washington common law doctrine of at-will employment exists to prohibit her discharge under the circumstances embodied in the certified question. Both the at-will doctrine and the claim for wrongful termination are creatures of common law. Despite Laidlaw's contention

¹ As in Danny's Opening Brief, the Order of the District Court for the Western District of Washington certifying this question is referenced herein as "Order" with citation to the appropriate page number. That order contains the statement of the record for purposes of the certification (Order at 3); the statement of facts, referenced as "Stmt." and several exhibits, referenced as "Ex." with the appropriate number.

that this Court has no role to play in recognizing the public policy implicated here, the common law of Washington is the province of the courts, and recognizing public policy enunciated by the Washington Legislature and its effect on the common law is this Court's work.

A wrongful termination claim is a tort claim which seeks to vindicate the interest of all of us – the public - in ensuring that the public policies of this state are not undermined. Therefore, the claim is not dependent on legislative regulation of the individual employee-employer relationship, but rather on the Court's recognition that termination from employment is wrongful when it jeopardizes a broader public policy important to society generally. Here, that broader public policy is prevention of the serious social harm caused by domestic violence.

The Washington Legislature has repeatedly pronounced that combating domestic violence is a matter of the highest public priority. The answer to the certified question then depends upon those statutes and judicial decisions and which of them are implicated by the actions Danny took to protect herself and her family and to hold her abuser accountable.

Danny obtained an order for protection of herself and her children, found shelter and housing away from their abuser, utilized services

provided to help victims of domestic violence escape and prevent further violence, and assisted in the criminal investigation and prosecution of their abuser. These actions are the predicate for determining the scope of the public policy mandate involved here. As described below, several legislative enactments, as well as judicially recognized public policy, clearly enunciate a mandate of public policy prohibiting Danny's discharge.

B. The Common Law Of Washington Is Properly The Province Of This Court, With Due Consideration Of The Effect Of Legislative Action On The Development Of The Common Law.

Laidlaw repeatedly, but erroneously, asserts that only where the legislature has statutorily regulated the employment relationship may this Court recognize a clear mandate of public policy. Laidlaw also mischaracterizes the role of Washington courts in pronouncing the common law by exhorting this Court not to "retroactively" create public policy, when, in fact, the Court's task here is to answer the question put to it: whether a clear mandate of public policy prohibits termination of an at-will employment relationship. The role of this Court in that determination is not policy making, but rather application of the common law in light of

legislatively declared public policy. This Court's recognition of that public policy will not invade the province of the Washington Legislature.

- 1. The tort of wrongful discharge in violation of public policy is a common law cause of action and operates as an exception to the common law doctrine of at-will employment.**

The employment "at-will" doctrine is a creature of common law. Under Washington common law, an employer generally may discharge an employee with or without cause absent an agreement to the contrary. *Roberts v. Atlantic Richfield Co.*, 88 Wn.2d 887, 891, 568 P.2d 764 (1977). However, beyond private regulation through employment contracts, the common law also applies to prevent tortious actions by employers, even where those actions concern "at-will" employment. As this Court explained in considering the tort of wrongful discharge in violation of public policy, the "duties of conduct which give rise to [tort actions] are imposed by law, and are based primarily upon social policy, and not necessarily upon the will or intention of the parties...." *Smith v. Bates College*, 139 Wn.2d 793, 804, 991 P.2d 1135 (2000) (quoting

Koehrer v. Superior Court, 181 Cal.App.3d 1155, 1165, 226 Cal.Rptr. 820 (1986) (quoting William L. Prosser, *The Law of Torts* 613 (4th ed.1971))²

Therefore, despite the at-will doctrine, “an employer's absolute prerogative to discharge an employee has not remained unfettered” under the common law. *Smith*, 139 Wn.2d at 801. Since 1984 Washington common law has recognized a cause of action in tort for wrongful discharge in violation of public policy. *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 233, 685 P.2d 1081 (1984) (public policy embodied in Foreign Corrupt Practices Act’s prohibition of bribery of foreign officials required an exception to the at-will doctrine to prohibit the termination of an employee who acted in compliance with that Act, in order to “ensure that this public policy was advanced.”). This common-law cause of action operates as an exception to the at-will doctrine and ensures that the “doctrine cannot be used to shield an employer's action which otherwise frustrates a clear manifestation of public policy.” *Thompson*, 102 Wn.2d at 231.

² In *Smith*, the question was the applicability of the tort to employment relationships that were not “at-will,” but rather governed by contract.

In *Smith*, 139 Wn.2d at 801, this Court reiterated that the wrongful termination “exception has been utilized in instances where application of the terminable at will doctrine would have led to a result clearly inconsistent with a stated public policy and the community interest it advances.” That stated public policy may or may not concern the employment relationship. For example, *Roberts v. Dudley*, 140 Wn.2d 58, 64-65, 993 P.2d 901 (2000), concerned the public policy prohibiting sex discrimination in employment declared in several statutes and applied that public policy to prohibit sex discrimination by an employer otherwise exempt from statutory prohibitions under RCW 49.60.180 because of the employer’s size.

However, the clear mandate of public policy element does not require that a statute impose explicit duties on an employer. Rather, the claim may assert a public policy outside the employment arena that is allegedly jeopardized by the termination of employment. For example, in *Lins v. Children's Discovery Centers of America, Inc.*, 95 Wn.App. 486, 491, 976 P.2d 168 (1999), the Court of Appeals noted several cases where the public policy involved did not pertain to the employment relationship, including the “public duty or obligation [of] serving on a jury ... or [of]

saving another citizen's life" (citing *Nees v. Hocks*, 272 Or. 210, 536 P.2d 512 (1975) and *Gardner v. Loomis Armored, Inc.*, 128 Wn.2d 931, 913 P.2d 377 (1996), respectively (footnotes and citations omitted).

In *Gardner*, the clear public policy established by the plaintiff was that of saving persons from life-threatening situations, not a specific statutorily-imposed duty of employers to not interfere with their employees' efforts to save persons in life-threatening situations. 128 Wn.2d at 945. Similarly in *Ellis v. City of Seattle*, 142 Wn.2d 450, 466-67, 13 P.3d 1065 (2000), the court recognized that a municipal fire code was sufficient to establish a public policy against disabling a fire system without proper authorization, although the municipal code did not impose any specific duties on employers. In *Hubbard v. Spokane*, 146 Wn.2d 699, 50 P.3d 602, 608 (2002), the court concluded Spokane County's zoning and the Spokane Airport's master plan "create[d] a valid public policy for purposes of the clarity element," although neither the code nor the master plan imposed any duties specifically on employers.

What is central in all these examples is not the "employment relationship involved, but rather the public interest in not permitting employers to impose as a condition of employment a requirement that an

employee act in a manner contrary to fundamental public policy." *Smith*, 139 Wn.2d at 804 (quoting *Foley v. Interactive Data Corp.*, 47 Cal.3d 654, 667 n. 7, 765 P.2d 373, 254 Cal.Rptr. 211 (1988)). What is "vindicated through the cause of action is ... the public interest in not permitting employers to impose as a condition of employment a requirement that an employee act in a manner contrary to fundamental public policy." *Smith*, 139 Wn.2d 793, 804 (quoting *Foley*, 47 Cal.3d at 667 n. 7, 254 Cal.Rptr. 211, 765 P.2d 373 (1988)).

Thus, Danny need not show that the Legislature enacted a specific statutory duty governing her employment relationship with Laidlaw, as Laidlaw contends. She must plead a clear policy of public interest that is allegedly jeopardized by Laidlaw's action in terminating her employment, which she has done.

2. **It is properly this Court's responsibility to consider the effect of public policy, as embodied in constitutional, statutory, or regulatory provisions or as judicially recognized, upon the common law at-will doctrine and to determine whether the effect of the public policy is to give rise to a claim of wrongful discharge.**

When determining whether a common law claim for wrongful termination may be made, Washington courts must consider "whether the

employer's conduct contravenes the letter or purpose of a constitutional, statutory, or regulatory provision or scheme" such that an exception to the at-will doctrine should be recognized. *Smith*, 139 Wn.2d at 807 (quoting *Thompson*, 102 Wash.2d at 232). This determination of the common law is a judicial responsibility, in which the courts weigh the effect of the public policy as enunciated in the constitution, as pronounced by the legislature in statutes, and as embodied in regulatory schemes. *Id*

The role of the Legislature in enunciating public policy is not invaded when Washington courts recognize an exception to the common law at-will doctrine, as Laidlaw insists. On the contrary, the Legislature's action in declaring public policy is given effect when the courts recognize an exception to "ensure that this public policy was advanced." *Thompson*, 102 Wn.2d at 233.

The Legislature is the proper institution to determine public policy in most instances³ and to address it through statutory schemes. Those

³ *Gardner* provides a good example of judicially recognized public policy, i.e., the public policy favoring saving human life. Laidlaw's assertion that Danny's Opening Brief did not acknowledge this enunciation of public policy of saving life (Brief of Respondent at 33) is puzzling, as she thoroughly briefed its applicability to her claim here. See Opening Brief at 21-22.

schemes are usually addressed to the prevention and remediation of the public problem identified. More often than not when the issue addressed does not directly involve employment, those statutory schemes do not include employment protections. In "defining the "activity" that public policy "protects ... [e]ither the legislature or the judiciary may address that problem, the legislature through statutes and the judiciary through decisional law." *Lins*, 95 Wn. App. at 492.⁴ The fact that the Legislature did not enact employment provisions regarding the public policy has not prevented the Washington courts from exercising the judicial function when that is necessary to protect and advance the public policy through prohibiting termination of employment where that would "contravene[] the letter or purpose of a constitutional, statutory, or regulatory provision or scheme." *Smith*, 139 Wash.2d at 808. *See e.g. Gardner*, 128 Wn.2d 931; *Ellis*, 142 Wn.2d 450; *Hubbard*, 146 Wn.2d 699.

⁴ The Legislature may, in addition to enacting statutes that enunciate public policy, provide statutory causes of action for discharge or other retaliation for certain protected activity. When the Legislature defines specifically activity protected from adverse action in employment, it creates either a statutory employment claim, *see e.g.*, 49.60.130 and .180 (statutory cause of action for discrimination) or a statutory employment tort, with an implied remedy, *see e.g.*, *Bravo v. Dolsen Companies*, 125 Wn.2d 745, 755-756, 758, 888 P.2d 147, 153, 154 (1995) (distinguishing between statutory tort providing an implied remedy for statutory violations short of discharge and the public policy tort of wrongful discharge and holding both claims could proceed to trial).

Laidlaw relies on the holding in *Sedlacek v Hillis*, 145 Wn.2d 379, 388, 36 P.3d 1014, 1018 (2001), to argue that the Legislature's failure to enact protections from discharge for victims of domestic violence in light of all its other statutory enactments concerning domestic violence signals a policy choice by the Legislature that precludes this Court from finding such a public policy exists. Laidlaw's reliance is seriously misplaced.

In *Sedlacek*, the plaintiff relied on the federal Americans with Disabilities Act ("ADA"), which prohibits discrimination on the basis of association with a disabled employee as a source of public policy. The ADA was not directly applicable to the association claim brought by the plaintiff because the defendant did not meet the statutory definition of covered employer (15 or more employees). *Sedlacek*, 145 Wn.2d at 388. The court held that the ADA was not applicable as a federal source of public policy because it was not enforceable against the employer there, unlike the federal statute that was the source of public policy in *Thompson* *Id.* at 392-93 (explaining that the source of public policy relied on in *Thompson*, the Foreign Corrupt Practices Act, applied to the employer in that case). Therefore, the public policy of the ADA was unavailable to the

plaintiff unless the Washington Legislature had affirmatively adopted that policy, which it had not. *Sedlacek*, 145 Wn.2d at 390-91.

The court noted that Washington had prohibited disability discrimination in the Washington Law Against Discrimination (“WLAD”) well before the ADA was enacted, and that the WLAD did not prohibit associational claims, and a recent court ruling had held that the WLAD’s disability provisions applied only to disabled employees. Noting that the Legislature had not amended the WLAD to include associational claims after the ADA was enacted, the court determined that there was no Washington public policy concerning association with disabled employees. The WLAD therefore could not be the necessary source of public policy. *Id.* at 391. *Sedlacek*, therefore, is not instructive because of its very unusual facts: a federal statute that does not apply, a state statute that does not address the factual situation presented by the case, and a prior judicial decision holding that the statute does not address the type of harm sought to be vindicated.

Here, Danny does not rely on an employment statute as a source of public policy and does not seek to extend the policy beyond what the statute provides, as did the plaintiff in *Sedlacek*. Nor does Danny rely on a

federal source of public policy that is not applicable in Washington or which has not been adopted by Washington. She relies on clear pronouncements by the Washington Legislature regarding domestic violence and the terrible impact of its consequences on greater Washington society.

Laidlaw's reliance on the failure of a bill that would have provided employment protections for victims of domestic violence is similarly unavailing. The scant legislative history of Senate Bill 5329 indicates that the proposed legislation was initially passed by the Senate, then, after review in the House, never made it out of committee. Therefore, the Bill was never considered by the full Legislature. (Brief of Respondent, App.) This record hardly establishes what Laidlaw asserts, that the Legislature rejected as a matter of public policy providing protections from discharge for employees who experience domestic violence and need to take leave to address that violence.

Regardless, the Legislature's consideration of this bill it is not decisive of the question before this Court. Washington courts have a responsibility to develop the common law to address tortious wrongs, in the absence of legislation, or in the face of limited legislation. *See e.g.*,

Ueland v. Reynolds Metals Co., 103 Wn.2d 131, 691 P.2d 190 (1984). In *Ueland*, this Court extended the common law cause of action for loss of consortium to children. In so doing, the Court considered an argument identical to Laidlaw's contention: that the declaration of causes of action is solely within the province of the Legislature. The Court's recognition of its ancient responsibility for upkeep of the common law girded its holding that justice required the application of this cause of action to children, despite the Legislature's decision to limit the parameters of such a cause of action to adults: "[w]hen justice requires, this court does not hesitate to expand the common law and recognize a cause of action. In the present case, just as in *Lundgren*, to defer to the Legislature in this instance would be to abdicate our responsibility to reform the common law to meet the evolving standards of justice." *Id.* at 136, citing *Lundgren v. Whitney's Inc.*, 94 Wn.2d 91, 95, 615 P.2d 1272 (1980).

Further, in a recent decision recognizing the non-tortious common law claim of *de facto* parenthood, this Court stated that "so long as it is consistent with Washington statutory law, Washington courts adopt and reform the common law." *In re Parentage of L.B.*, 155 Wn.2d 679 at 688, 122 P.3d 161 (2005) (citing RCW 4.04.010). Significantly, this Court

stressed that it is the appropriate function of the court to adapt the common law to “fill interstices that legislative enactments do not cover.” *Id.* (citing *Dep’t. of Soc. & Health Servs. v. State Pers. Bd.*, 61 Wn. App 778, 783-84, 812 P.2d 500 (1991)).

The certified question before this Court is more limited than the issues raised in either *Ueland* or *L.B.* Here, Danny is not asking this Court to create a new tort claim – this Court has already recognized the common law claim of wrongful termination in violation of public policy. She does not ask this Court to weigh competing public policies, as *Laidlaw* would have it.⁵ She simply asks that the Court recognize enunciated public policy.

⁵ It is *Laidlaw* that has asked this Court to weigh public policy. *Laidlaw*’s arguments do not go to the core question of whether the State’s public policy prohibits a discharge as described in the certified question. Rather its real contention is that it should not be subject to regulation as an employer short of express legislative enactment. Its asserted concerns that employees may falsely claim to be victims of domestic violence when requesting leave and therefore flood the courts with frivolous claims is not presented by the certified question. If this Court answers the question in the affirmative, Danny, as well as any other employee bringing such a claim, will have to satisfy the other elements of the claim, such as causation and lack of overriding justification. Similarly, *Laidlaw*’s repeated refrain that recognizing the public policy relating to domestic violence would make employers the “functional equivalent” to the Department of Social and Health Services, and force employer intrusion into employees’ personal lives in an unworkable fashion, is an inaccurate and overblown policy argument, not presented by the question here. *Laidlaw* misapprehends the role of DSHS vis a vis domestic violence victims (it, in fact, does not investigate individual circumstances or provide direct services except in very limited situations, such as in the child welfare context), and employers have

The single question before this Court is whether the Legislature and the courts in previous opinions have announced a clear public policy against terminating a victim of domestic violence from her employment because of the actions she took to protect herself and her children from that violence.⁶

C. Clear Public Policy Applies to Prohibit the Discharge Described in the Certified Question And Record.

"Public policy 'concerns what is right and just and what affects the citizens of the State collectively.'" *Roberts v. Dudley*, 92 Wn.App. 652, 659, 966 P.2d 377 (1998), *aff'd* 140 Wash.2d 58 (2000)(quoting *Dicomes v. State*, 113 Wn.2d 612, 618, 782 P.2d 1002 (1989)). "Although there is no precise line of demarcation dividing matters that are ... public ... from matters purely personal, ... a matter must strike at the heart of a citizen's social rights, duties, and responsibilities ..." *Dicomes*, 113 Wn.2d at 618.

successfully dealt with statutorily required leave without the horrors Laidlaw contends would follow should this Court recognize the public policy obviously at play here.

⁶ Despite Laidlaw's attempts to distinguish cases cited by Danny, she stands by her discussion of the caselaw in Washington and other jurisdictions recognizing the public policy surrounding combating domestic violence and citizen's assistance in government investigations and criminal prosecutions. Danny cited those cases to demonstrate that the courts may recognize public policy enunciated elsewhere or recognize it as arising from pre-existing common law.

In *Smith*, 139 Wn.2d at 801, the court explained the difference between a private interest and public policy by comparing *Harless v. First Nat'l Bank*, 162 W.Va. 116, 246 S.E.2d 270 (1978) (bank employee discharged after attempting to make his employer comply with consumer credit and protection laws could bring public policy wrongful discharge claim because the discharge would otherwise frustrate a clear manifestation of public policy, the protection of consumers of credit) with *Campbell v. Ford Indus., Inc.*, 274 Or. 243, 546 P.2d 141 (1976) (an employee/stockholder allegedly fired for pursuing stockholders' rights raised issue purely private in nature and not of general public concern and could not therefore bring public policy claim).

As Danny's Opening Brief discussed, the Washington Legislature has enacted many statutes in response to the social crises of domestic violence and pertaining to citizen assistance in government investigations and prosecutions. The Washington courts have recognized these statutes as legislative pronouncements of public policy. The task before this Court is to determine which of those statutes and judicial opinions are pertinent here. The problem, of course, is defining the "activity" that public policy "protects." *Lins*, 95 Wn. App. at 492.

As in *Gardner*, the potential sources of public policies that are implicated by the plaintiff's conduct must be identified and examined to determine if the public policy they enunciate prohibits a discharge as described in the certified question and record. Laidlaw misinterprets the purpose of Judge Lasnik's inclusion of Danny's declaration in the certified record.⁷ The purpose of including the declaration was to provide this Court with more facts than were available in the record on the Motion for Judgment on the Pleadings in order to assist the Court in determining which statutory sources of public policy are involved here, not to argue that Danny can satisfy the jeopardy element, an hurdle she will face in the District Court. That the Court will rely on the record facts in answering the certified question will not prevent Laidlaw from contesting those facts

⁷ Laidlaw acknowledges that this Court lacks jurisdiction to hear its objections to the record as designated by the federal District Court. Its argument that this Court should not consider on appeal the Danny declaration because it is outside the record of its motion for judgment on the pleadings and is therefore somehow presented for the first time on appeal, is simply a weak attempt to end-run its acknowledgment that it may not present its objections to this Court after losing on that issue before the District Court. The record is properly constituted and should be considered in full.

later in subsequent proceedings in District Court.⁸

Here, the record discloses that Danny asked for time off from work so she could move her children away from her abusive husband and that she was denied that leave. (Ex. 1 ¶ 15; Stmt. at 3) A few weeks later, while Danny's children were still living with their father, the abuser, he beat Danny's son so badly he required hospitalization. Danny immediately took all five of her children out of the home and with the help of Child Protective Services began the process of moving into a battered women's shelter with her children. (Ex. 1 ¶ 16; Stmt. at 3) That day, she phoned Laidlaw to say that she needed to take the day off to take her son to the hospital because her husband had beaten him. (Ex. 1 ¶ 17) When Danny returned to work, she asked for time off so that she could move her children to a shelter. This time Laidlaw approved two weeks of leave

⁸ Nor has it prevented Laidlaw from contesting Danny's facts in this forum, despite the rule that those facts must be taken as true for purposes of this appeal. *See* Brief of Respondent at 30, 33, 35 all contending that Laidlaw discharged Danny for reasons unrelated to the leave she took because of domestic violence.

from August 25 through September 8, 2003. (Ex. 1 ¶ 18; Stmt. at 3)⁹

During her leave, Danny obtained an Order for Protection against her husband (Ex. 7 ¶ 2, Ex. A). She conferred with law enforcement officers regarding protection from her husband and his detention for domestic violence. She also cooperated with the prosecutor in prosecuting her husband for assaulting their son. (Ex. 7, ¶ 3, Ex. B).

During her leave, Danny utilized the services of the King County Department of Community and Human Services to assist her in obtaining shelter, transitional housing, domestic violence education, counseling and health services, and legal assistance related to the domestic violence she and her children had suffered. (Ex. 7 ¶ 4, Exs. C and D) After returning from her leave, Danny continued to take occasional small amounts of time off work to access services for victims of domestic violence. (Ex. 7 ¶ 5, Ex. E)

⁹ Laidlaw argues that the record does not disclose that Danny notified Laidlaw of all the reasons for her leave and therefore she may not rely on actions she took without notice to Laidlaw. Again, that argument does not go to the clarity element, but rather to causation, and is another attempt to prevent this Court from addressing the certified question rather than leaving that factual dispute for subsequent proceedings.

Just seven weeks after Danny's son was hospitalized due to domestic violence, Laidlaw terminated Danny from her manager position. It offered her a job as a scheduler at a reduced wage and gave her three days to consider the offer. (Ex. 1 ¶ 21; Stmt. at 3) Danny accepted the scheduler position. (Ex. 1 ¶ 24) On December 3, 2003, Laidlaw terminated Plaintiff's employment. (Ex. 1 ¶ 27)¹⁰

On this record, several Washington statutes concerning the broad public policy of responding to the crisis of domestic violence in our society are implicated. These are public policies of a concern to society as a whole, as they must be to justify a wrongful discharge in violation of public policy claim. Danny's original request for leave must be understood to have been made to protect her children from imminent and serious abuse by their father. As such, that request for leave implicates the following statutes enunciating public policy:

- Chapter 70.123 RCW providing funding and standards for shelters for victims of domestic violence because "Domestic violence is a

¹⁰ Laidlaw's contention that it eventually allowed Danny leave misses the point that it initially denied her leave and then when grudgingly gave it allegedly terminated her in retaliation for taking the leave. Again, Laidlaw does not accept the facts as stated in the certified question or construed in Danny's favor, as they must be for purposes of answering the certified question.

disruptive influence on personal and community life and is often interrelated with a number of other family problems and stresses. ...” RCW 70.123.010; and

- RCW 26.50.030, which states that “Domestic violence has long been recognized as being at the core of other major social problems [including] [c]hild abuse.”

Danny’s request for leave so she could provide medical care for her son and so she could remove her children to a shelter implicates the following statutes enunciating public policy:

- Chapter 70.123 RCW concerning shelter for families who suffer domestic violence. “Shelters for victims of domestic violence are essential to provide protection to victims from further abuse and physical harm and to help the victim find long-range alternative living situations, if requested. Shelters provide safety, refuge, advocacy, and helping resources to victims who may not have access to such things if they remain in abusive situations.” RCW 70.123.010.

Danny returned to work after removing her children to a shelter and requested two weeks’ leave related to the domestic violence. During this leave, her actions implicated the following statutory sources of public policy:

- RCW 70.123.010 concerning providing advocacy and helping resources to victims of domestic violence;
- Chapter 26.50 RCW, which created the civil Order for Protection, which she obtained to protect herself and her children;

- RCW 9.69.100, requiring witnesses of violent crimes to report the crime to officials;
- RCW 9A.72.110, stating that persons may “give truthful and complete information relevant to a criminal investigation of the abuse or neglect of a minor child” without intimidation (moving and assisting in the prosecution of her husband worked to eliminate the intimidation that may have followed from her cooperation with the police and prosecutor in the successful prosecution of her husband for the violence against her son);
- RCW 9A.72.120, stating persons may provide “information relevant to a criminal investigation or the abuse or neglect of minor child” without any person attempting to induce that witness “to testify falsely [or] withhold testimony” (moving and assisting in the prosecution of her husband worked to eliminate the possible attempt by her husband to induce false testimony or to make her withhold her testimony in the successful prosecution of her husband for the violence against her son);
- RCW 9.01.055, 9A.76.020, 9A.76.030, and 7.69.010, “support a public policy encouraging citizens to *cooperate* with law enforcement when requested or clearly required by law.” *Gardner*, 128 Wn.2d at 942 (emphasis in original);
- RCW 7.69.010, providing that witnesses and victims of crimes have a civic and moral duty to cooperate fully with law enforcement and prosecutors; and RCW 9.01.055 giving citizens who aid police the same civil and criminal immunity as the police. *Gaspar v. Peshastin Hi-Up Growers*, 128 P.3d 627 (2006)

Clearly, terminating Danny’s employment because “she experienced domestic violence and took leave from work to take actions to

protect herself, her family, and to hold her abuser accountable” implicates all the statutory sources of public policy mentioned above. (Order at 1)

Finally, Danny’s actions were clearly taken to prevent further domestic violence being perpetrated on her and her children. That these actions were necessary to preserve her life and the lives of her children cannot be doubted.¹¹ Yet Laidlaw insists that Danny’s actions were not in furtherance of this “fundamental public policy [which] is clearly evidenced by countless statutes and judicial decisions.” *Gardner*, 128 Wn.2d at 944 (plaintiff who had come “to the assistance [of another] who is in danger of serious physical injury and/or death[,]” had satisfied the clarity element of his claim for wrongful discharge in violation of public policy.) Laidlaw’s remarkable resistance to conceding that Danny’s actions were taken to preserve human life is indicative of its refusal to

¹¹ See, e.g., *Starr, et al., 2004 Washington State Fatality Review Report*, Washington State Coalition Against Domestic Violence, pp 6-7 (December 2004) (noting that 44% of women murdered in Washington in 2003 were killed by their current or former intimate partners.) See also, Klein and Orloff, *Symposium on Domestic Violence: Article: Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 813(1993)(“Studies demonstrate that offering protection and services to battered women significantly reduces the number killed by their batterers”).

acknowledge that this Court may act in furtherance of public policy by girding the common law to protect that policy. However resistant Laidlaw may be, its position is not correct. This Court's responsibility is to recognize public policy as enunciated by the legislature and previous judicial opinions, as it has been enunciated here, and to protect Washington's public policy through recognizing that the common law provides a cause of action for wrongful termination in violation of public policy on this record.

III. CONCLUSION

For all the reasons stated above and in the Opening Brief, this Court should answer the certified question with a "yes."

DATED this 30th day of May, 2006.

Respectfully submitted,

NORTHWEST WOMEN'S LAW CENTER

By: /s/ Kathleen Phair Barnard
Kathleen Phair Barnard, WSBA # 17896
Sara Ainsworth, WSBA #26656
907 Pine Street, Suite 500
Seattle, Washington 98101
(206) 682-9552

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I hereby certify that on this 30th day of May, 2006, I caused the foregoing brief to be e-mailed to the Washington State Supreme Court and a copy delivered to:

Nick Beermann, WSBA #30860
Katheryn Bradley, WSBA #31064
Jackson Lewis LLP
One Union Square
600 University Street, Ste. 2900
Seattle, WA 98101

/s/ Kathleen Phair Barnard **FILED AS ATTACHMENT**
Kathleen Phair Barnard **TO E-MAIL**
WSBA #17896