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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MEGAN ROAKE,
Respondent-Appellant,

v.

MAXWELL DELMAN,
Petitioner-Appellee.

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BRIEF OF *AMICI CURIAE* LEGAL VOICE, [REDACTED]

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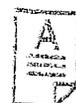
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ORIGINAL

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I. INTRODUCTION

Recognizing the traumatizing impacts of sexual assault, the legislature enacted the Sexual Assault Protection Order (“SAPO”) Act to create a straightforward and accessible process to protect survivors from further interactions with their assailants. That protection extends to survivors like Megan Roake, who were sexually assaulted a single time. In light of the statute’s unambiguous language, the Court of Appeals correctly held that the SAPO statute means what it says: proof of nonconsensual sexual conduct alone is sufficient to obtain a SAPO.

While the Court of Appeals correctly interpreted the unambiguous statutory language setting forth the standard for issuance of a SAPO, the Court’s convoluted interpretation of the SAPO petition requirements in dicta requires clarification. The Court concluded that victims must plead specific statements or actions “separate from the sexual assault itself” to demonstrate that they are afraid of their assailants. Such a requirement is inconsistent with the legislature’s express declaration that “sexual assault is the most heinous crime against another person short of murder” and “inflicts humiliation, degradation, and terror on victims.” RCW 7.90.005. Consistent with that purpose, this Court should clarify that specific allegations of sexual assault are sufficient to meet the petition

requirements of RCW 7.90.020. With this clarification, the Court should affirm.

II. IDENTITY AND INTEREST OF AMICI CURIAE

The Identity and Interest of Amici Curiae Legal Voice, [REDACTED]

[REDACTED]
[REDACTED] is fully set forth in the Motion for Leave to File Brief of Amici Curiae filed concurrently with this brief.

III. STATEMENT OF THE CASE

A. The Sexual Assault Petition

The SAPO petition filed in this case alleged a violent sexual assault upon Megan Roake, a student at the University of Washington, by a fellow student, Maxwell Delman. CP 4. The petition alleged nonconsensual sexual conduct and penetration perpetrated by Mr. Delman, including that he penetrated Ms. Roake's vagina with his fingers and tongue, that he bit her in the vaginal area, that he attempted to penetrate her vagina with his penis, and that he forced his penis into her mouth, repeatedly banging her head into the wall and causing her to feel as if she was choking. *Id.* As stated in her petition, during the assault, Ms. Roake repeatedly told Mr. Delman "no," and attempted to push Mr. Delman away and cover herself. *Id.* Ms. Roake stated that there was a puddle of

blood the size of a basketball hoop on the floor and that her underwear and skirt were soaked in blood. *Id.* She further alleged that Mr. Delman finally stopped only after he ejaculated on her face and chest and saw that Ms. Roake was bleeding. *Id.* At that point he said he “had to go.” *Id.*

B. The Trial Court Proceedings

Ms. Roake filed a petition for a SAPO.¹ In her petition, she described the assault and stated that she did not know Mr. Delman, she did not know what he was capable of, and she feared seeing him on campus. *Roake v. Delman*, 194 Wn. App. 442, 445, 377 P.3d 258, 260 (2016), *review granted*, 386 P.3d 1098 (2017). The commissioner set a hearing date and granted Ms. Roake an ex parte temporary protection order, valid until the full hearing. *Id.*

On February 10, 2015, the superior court held a hearing for entry of a final order. Ms. Roake provided the trial court with multiple declarations from witnesses who saw her immediately after the assault and testified to her distress. CP 15-31. Ms. Roake began to testify about the

¹Mr. Delman makes much of the fact that Ms. Roake did not file a petition for a SAPO immediately after the assault. But the facts of this case illustrate the role of the SAPO process to provide protection where other avenues for relief are unavailable. Shortly after the sexual assault, Ms. Roake left the Seattle area for summer break. CP 18. When she returned for fall quarter, she reported the assault to campus police on September 10, 2014. CP 34. The investigation was submitted to the King County Prosecuting Attorney’s Special Assault Unit, but they declined to file charges. *Id.* Ms. Roake then filed a complaint through the university’s student conduct process, which issued a no-contact order. CP 35. Despite the no-contact order, after the holidays Ms. Roake encountered Mr. Delman several times. CP 4. She then decided to seek a SAPO.

assault, but was interrupted by Mr. Delman, who claimed he did not receive the declarations in support of the petition that Ms. Roake's attorney had filed several days earlier, despite Ms. Roake's counsel providing proof of service. VRP 23-29. After interrupting Ms. Roake's testimony, Mr. Delman's counsel argued against entry of the order on the basis that it would be damaging to Mr. Delman, stating "the damage to this particular SAPO, the sexual assault protection order, is it lasts with Mr. Delman forever. I mean, even if he applies to be a little league coach for his kids, he can't do that with this order." VRP 42.

Over Ms. Roake's objection, the trial court then granted Mr. Delman's request for a continuance, and the hearing was continued to February 20th. When the hearing resumed, Mr. Delman moved to dismiss the petition, arguing that Ms. Roake did not prove by a preponderance of the evidence a "reasonable fear of future dangerous acts." CP 42-43. Mr. Delman did not testify or provide a declaration rebutting Ms. Roake's testimony about the sexual assault. Rather, in support of his motion to dismiss, Mr. Delman filed 36 pages of declarations from friends and family members, vouching for Mr. Delman's character and arguing that the court should consider the impact of the SAPO on Mr. Delman's ability to "obtain future employment, continue with his active community service work and to coach his own children (when he has them) in sports." CP 51.

The longest declaration was from Mr. Delman's father, who filed what amounted to a legal brief in support of the motion, arguing which evidence the court should exclude and repeatedly reminding the court throughout his declaration that he was an attorney and former prosecutor. CP 44-52.

The court granted the motion to dismiss, concluding that "[t]he petitioner failed to establish that she had any reasonable fear of future dangerous acts from the respondent and therefore the temporary order was invalid." CP 116. The court did not give Ms. Roake the opportunity to resume her live testimony, despite having allowed Mr. Delman to interrupt her at the previous hearing. Ms. Roake moved for reconsideration, and the court denied the motion. CP 118. Ms. Roake appealed.

C. The Appeal

In a published opinion, Division I of the Court of Appeals reversed and remanded. App. A. The Court of Appeals held both that the trial court erred by granting Mr. Delman's motion to dismiss and that the court had erroneously read the SAPO Act. Specifically, the Court held that "the plain language of the statute directs the court to issue a protection order if the petitioner proves by preponderance of the evidence that the sexual assault occurred and shows that she satisfied the Act's notice requirements." *Roake*, 194 Wn. App. at 451. The Court also held that Mr. Delman's "motion to dismiss" was improperly before the Court and, even

if proper, should not have been granted. *Id.* at 454-55. The Court noted in dicta that a petition for a protection order under the SAPO Act must include “both (1) an allegation that a sexual assault occurred and (2) the specific statements or actions, other than the assault itself, that cause the petitioner to reasonably fear future dangerous acts from the respondent,” but that “[n]otably, RCW 7.90.090 does not require that a petitioner prove each of the allegations that must be included in a SAPO petition.” *Id.* at 449–50. The Court remanded for a full hearing.

On August 9, 2016, Mr. Delman submitted a petition for review to this Court. On January 5, 2017, this Court granted review.

IV. ARGUMENT

A. **The Plain Language of the SAPO Statute Requires Only Proof of a Sexual Assault for Entry of a Final Order.**

The Court of Appeals properly held that RCW 7.90.090 is unambiguous, and requires a petitioner to prove only a single incident of sexual assault in order to obtain the protection of a SAPO. *Roake*, 194 Wn. App. at 448 (citing RCW 7.90.030(1)(a)) (“the SAPO Act specifically applies to victims who have experienced a single incident of nonconsensual sexual conduct.”). Relying on the plain language of the statute, the Court of Appeals rejected the same claim that Mr. Delman makes to this Court: that the SAPO statute requires a petitioner to prove “reasonable fear of future dangerous acts” at the final hearing.

Specifically, the Court of Appeals held that RCW 7.90.090 “does not require that a petitioner prove each of the allegations that must be included in a SAPO petition.” *Id.* at 451. Noting the well-settled rule that unambiguous statutes do not require construction, the Court of Appeals held:

The SAPO Act is clear that at a full hearing for a final protection order, the petitioner has the burden to prove by a preponderance of the evidence that a sexual assault occurred. The petitioner must also show that she has satisfied the Act's notice requirement. If the petitioner meets this burden, the court “shall issue” a final protection order.

Id. at 453-54. The Court of Appeals’s interpretation of the required proof for entry of a final order should be affirmed.

B. This Court Should Clarify That Specific Allegations of a Sexual Assault Are Sufficient to Satisfy the Petition Requirements in the SAPO Statute.

1. Requiring a SAPO petition to allege additional facts beyond the sexual assault is inconsistent with the text and purpose of the SAPO statute.

Though the Court of Appeals properly held that at the final hearing a SAPO petitioner need prove only that a single sexual assault occurred to obtain a SAPO, the Court nonetheless misinterpreted the petition requirements in RCW 7.90.020 to require something more. This aspect of the Court’s opinion is bound to cause confusion in the lower courts and undermine the intent of the statute, which is to provide a straightforward

and simple mechanism by which sexual assault survivors can secure civil protection, particularly when so many petitioners appear *pro se*. Accordingly, this Court should clarify that specific allegations describing a sexual assault are sufficient to satisfy the statutory requirements of a SAPO petition.

RCW 7.90.020 establishes the mechanism for petitioning for a SAPO, and requires the following:

A petition for relief shall allege the existence of nonconsensual sexual conduct or nonconsensual sexual penetration, and shall be accompanied by an affidavit made under oath stating the specific statements or actions made at the same time of the sexual assault or subsequently thereafter, which give rise to a reasonable fear of future dangerous acts, for which relief is sought.

RCW 7.90.020(1). The statute thus requires two components: a petition and an affidavit.² The Court of Appeals, however, incorrectly equated these components to “two substantive allegations,” which it defined as (1) “the existence of nonconsensual sexual conduct or nonconsensual sexual penetration,” and (2) a statement of the “specific statements or actions . . . which give rise to a reasonable fear of future dangerous acts.” *Roake*, 194 Wn. App. at 448-49. The Court then wrongly concluded that “[t]he “specific statements or actions must be separate from the sexual assault

² A single form comprises both the petition and the affidavit. *See* Wash. Courts, Court Forms: Sexual Assault, Form SA 1.015 (June 2014), *available at* <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=65>.

itself, because the requirement would otherwise be redundant.” *Id.* The Court explicitly declined to interpret “future dangerous acts,” but noted “that even if any future interaction with the respondent poses a danger, a petitioner must nevertheless allege some specific statement or action that gives rise to a reasonable fear of that danger.” *Id.*

The Court’s contrived construction of the statute sets up a false distinction between the allegations of sexual assault and the petitioner’s fear. Nowhere does the statute include the words added by the Court of Appeals that require that “[t]he ‘specific statements or actions’ **must be separate from** the sexual assault itself.” 194 Wn. App. at 449 (emphasis added). Rather, a plain reading of the statute is that to obtain an ex parte temporary order, a petitioner must submit two things: (1) a petition and (2) an affidavit. The petition must contain the allegations of nonconsensual sexual conduct or penetration that would support the ultimate showing of a sexual assault that is required for entry of a final order. In contrast, the affidavit must include “specific statements or actions,” but these “specific statements or actions” may well be the same statements or actions that establish the same two elements a petitioner must ultimately prove at a hearing for a final order: (1) lack of consent and (2) a sexual assault.

For example, the affidavit may contain information about physical restraint, threatening statements, or even, as recognized in the recent case

Nelson v. Duvall, information about alcohol incapacitation that shows lack of consent. *See Nelson v. Duvall*, No. 73416-4-I, 2017 WL 28451, at *1 (Wash. Ct. App. Jan. 3, 2017). In other words, the same specific facts that describe the sexual assault, such as the interactions between the parties, what physical actions occurred, and when, can be the same as the statements or actions that lead to a reasonable fear of future danger. Requiring allegations of some **additional** statements or actions over and above the facts and circumstances establishing the sexual assault is not only illogical, but is also inconsistent with the Legislature’s clear direction that a single incident of sexual assault is sufficient to warrant a SAPO.

Recognizing that the same facts and circumstances will support both a finding of sexual assault and reasonable fear does not render any part of the statute “redundant,” as the Court of Appeals opined. 194 Wn. App. at 449. Rather, the requirement for “specific statements and actions” directs petitioners regarding the level of detail required in their affidavit. Indeed, the phrase “which give rise to a reasonable fear of future dangerous acts” is a modifying phrase, and adds to, but does not limit, the preceding phrase “specific statements or actions made at the same time of the sexual assault or subsequently thereafter.”³ Consider the examples in the instructions prepared by the Administrative Office of the Courts:

³ *See* University of Chicago, Chicago Manual of Style Online, § 5.220 (16th ed. 2010),

Describe any nonconsensual sexual conduct or nonconsensual sexual penetration and the approximate date and time. Include any statements or actions of the respondent made at the time of the incident or at any other time that caused the petitioner fear. The more details you can provide, the more helpful it is to the judge.

Example:

It is better to say, “On Saturday, May 5 at 10:00 p.m, Joe held me down with his body weight and forced me to have sex in my living room” rather than “Joe assaulted me.”

It is better to say, “Joe forced me to touch his penis by grabbing my hand and forcing me to touch him there” rather than “Joe made me touch him.”

It is better to say, “Joe told me if I didn’t agree to have sex with him, he would hurt me. He said, ‘If you don’t want to get hurt, you better keep quiet’ ” rather than “Joe threatened me.”

If the respondent said something that caused the petitioner fear, try to use the respondent’s exact words.

See Washington State Courts, Instructions for Petition for Sexual Assault Protection Order (Form SAi-1.015) (revised June 2010), *available at* <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=65>.

These examples show that the same specific actions or statements can establish lack of consent that, combined with the proof of the sexual

available at <http://www.chicagomanualofstyle.org/home.html> (“*that* is used restrictively to narrow a category or identify a particular item being talked about {any building that is taller must be outside the state}; *which* is used nonrestrictively—not to narrow a class or identify a particular item but to add something about an item already identified {alongside the officer trotted a toy poodle, which is hardly a typical police dog}”); *See also id.*, section 6.22 (“many writers preserve the distinction between restrictive that (with no commas) and nonrestrictive which (with commas)”).

assault itself, are sufficient for a court to issue a SAPO. These instructions and examples emphasize that the level of specificity is important, in keeping with the statutory language requiring the affidavit accompanying the petition to include “specific statements.” Nothing supports the Court of Appeals’ interpretation that the specific statements or actions must be “separate” from the sexual assault.

The facts of this case underscore this point. Mr. Delman asks this Court to require that Ms. Roake prove more than the sexual assault to establish that she is afraid of him—even though her affidavit details that despite her entreaties, a man she had just met penetrated her vagina with his fingers and tongue, bit her vaginal area, attempted to penetrate her vagina with his penis, forced his penis into her mouth causing her to feel as if she was choking and repeatedly banged her head against a wall, ejaculated on her face and chest, and caused her to bleed, soaking her underwear and skirt with blood. CP 4. Those “specific statements or actions” provide compelling evidence of the assault, and also adequately support the conclusion that Ms. Roake is reasonably afraid of what Mr. Delman might do in the future.

This statutory interpretation is also consistent with social science research on the traumatizing and debilitating effects of sexual assault on victims. Sexual assault has a profound impact on victims and their

families and, “regardless of whether it happened recently or many years ago, it may impact daily functioning.”⁴ Many sexual assault victims experience Rape Trauma Syndrome, which is a group of acute and prolonged emotional, physical, and behavioral responses that disrupt and disorganize victims’ lives.⁵ Sexual assault can also cause psychological reactions such as nightmares, flashbacks, depression, anxiety, and Posttraumatic Stress Disorder.⁶ Particularly where the assailant was not previously known to the victim, sexual assault shatters a victim’s sense of safety.⁷

In sum, this Court should clarify that specific allegations of sexual assault made under oath in an affidavit submitted with a petition are sufficient for entry of a temporary order. Neither the language of the statute nor the legislative purpose requires additional allegations of conduct or statements separate from the sexual assault.

⁴ National Sexual Violence Resource Center, Impact of Sexual Violence, Fact Sheet (2010), available at http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Factsheet_Impact-of-sexual-violence_0.pdf.

⁵ King County Sexual Assault Resource Center, Resources, Rape Trauma Syndrome, available at <http://www.kcsarc.org/sites/default/files/Resources%20-%20Rape%20Trauma%20Syndrome.pdf>.

⁶ *Id.* Posttraumatic Stress Disorder occurs when a learned fear due to a traumatic event becomes generalized to situations that would normally appear safe. A. Mahan & K. Ressler, *Fear Conditioning, Synaptic Plasticity, and the Amygdala: Implications for Posttraumatic Stress Disorder*, 35 *Trends NeuroSci.* 1, 24-25 (2012).

⁷ *Id.* “When the assault is committed by a stranger, fear seems to be the most difficult emotion to manage for many people. Because the randomness of the attack creates an overwhelming sense of vulnerability, those victimized may move, change jobs, or otherwise alter their lifestyle in an attempt to feel safe.” Rape Trauma Syndrome, at *2. 45% of adult female sexual assault victims in Washington feared death or injury.

2. Interpreting the SAPO petition requirements to require only allegations that a sexual assault occurred ensures that the SAPO statute remains a straightforward and accessible remedy to pro se litigants.

Sexual assault protection orders were designed to provide emergency relief to survivors of sexual assault. *See* S.B. Rep. No. 6478 (Wash. 2006) (stating legislative intent that victims of sexual assault “should be able to get the same protections as a domestic violence victim”). Because many petitioners are unable to obtain counsel, the system is designed for use by pro se litigants. *Cf. Aiken v. Aiken*, 387 P.3d 680, No. 92631-0, at *6 (Wash. Jan. 12, 2017) (noting domestic violence protection order system is designed for pro se litigants); *Maldonado v. Maldonado*, No. 15-2-30568-9 KNT, at *7 (Wash. Ct. App. Feb. 13, 2017) (quoting with approval petitioner’s position that “[p]rotection order actions are supposed to be **quick, easy, and efficient.** . . .”) (emphasis added). Indeed, the statute expressly directs the administrative office of the courts to develop and prepare instructions and informational brochures, a standard petition and order for protection forms, and a court staff handbook on sexual assault and the protection order process.⁸ RCW 7.90.180. In addition, the statute requires all court clerks’ offices to make these standardized forms, instructions, and brochures available, as well as

⁸ This information is available online through the Washington Courts’ website at <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=65>.

to fill in and keep current specific program names and telephone numbers for community resources. RCW 7.90.020.

The legislative intent to make SAPOs a relatively uncomplicated and accessible form of relief for pro se petitioners is further borne out by reality. Despite the fact that courts may appoint counsel for the petitioner if the respondent is represented by counsel, RCW 7.90.070, reports examining SAPO cases in King County over a five-year period consistently show that petitioners have legal representation in fewer than 50% of cases.⁹ And in Washington State, a 2015 report confirmed that survivors of sexual violence (including domestic violence and sexual assault) are among the key populations with unmet civil legal needs.¹⁰ They experience much higher rates of legal problems—fully 100% compared to 71% of all low-income Washington residents,¹¹ and of those who experience a civil legal problem, “at least 76% do not get the help they need to solve their problems.”¹²

⁹ The percentage of cases in which petitioners had counsel from 2011-15 were 21% (2011), 25% (2012), 23% (2012), 35% (2013), and 38% (2015). *See* 2011-15 CourtWatch reports, King County Sexual Assault Resource Center, *available at* <http://www.kcsarc.org/courtwatchreports>.

¹⁰ Civil Legal Needs Study Update Committee, Washington Supreme Court, 2015 Washington State Civil Legal Needs Study Update, at 13 (2015), *available at* http://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf.

¹¹ *Id.*

¹² *Id.* at 15. Sexual violence survivors were also 2.25 times less likely to seek help from a paid attorney than members of the general population, and while they were more likely to seek help from other volunteer or pro bono social service organizations, their rates of

Given the legislature's intent and the reality that petitioners for SAPOs are often pro se, the most reasonable interpretation of the requirements for a petition is likewise straightforward. This Court should hold that a petition that contains specific allegations of nonconsensual sexual conduct or penetration is sufficient to meet the requirements of RCW 7.90.020, without evidence separate from the sexual assault.

C. The SAPO Statute Satisfies Due Process.

The gist of Mr. Delman's due process argument is that SAPO respondents are "misled" by the petition requirements and will inappropriately focus their defense on disproving reasonable fear of future dangerous acts instead of disputing the occurrence of the sexual assault itself. *See* Pet. for Rev. 10. This argument fails for several reasons. First, if this Court interprets the SAPO petition requirements as amici urge, there is no difference between what is required in the petition and what is required in the burden of proof components of the statute. Namely, the petition requires an affidavit with specific allegations of nonconsensual sexual conduct or penetration, and the petitioner must prove the same at the final hearing. There is thus no discrepancy that could "mislead" a

getting legal help were no better than those of other low-income residents. Danna Moore and Arina Gertseva, *Civil Legal Problems Experienced by Victims of Domestic Violence and Sexual Assault in Washington State: Findings from 2014 Civil Legal Needs Study Update*, Technical Paper #15-034, Washington State Office of Civil Legal Aid, at 11 (2014), available at <http://ocla.wa.gov/wp-content/uploads/2015/07/DV-victims-report-for-OCLA-07-05-2015-Final.pdf>.

respondent.

Second, even if this Court accepts the Court of Appeals' interpretation of the petition requirements, Mr. Delman has failed to establish a due process claim. Specifically, even if, as the Court of Appeals erroneously held, a petitioner must plead specific actions or statements separate from the sexual assault in order to secure temporary *ex parte* relief via the petition, there is no due process violation by imposing a higher bar for temporary *ex parte* relief than for permanent final relief. To the contrary, though amici maintain that alleging a sexual assault alone is sufficient at both the petition and final hearing stages, if a higher burden were appropriate at any stage of the proceedings, it would logically be imposed in the context of an *ex parte* request for relief. Unlike the criminal cases cited by Mr. Delman, the SAPO statute, as interpreted by the Court of Appeals, does not change the elements of "nonconsensual sexual conduct or penetration" without notice to a respondent.¹³ To the

¹³ See *State v. Pelkey*, 109 Wn.2d 484, 491, 745 P.2d 854 (1987) (midtrial amendment of information to allege different crime "necessarily prejudices th[e] substantial constitutional right" to notice); *State v. Vangerpen*, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995) (same); *U.S. v. Marolda*, 615 F.2d 867, 872 (1980) (defendant prejudiced where he focused on allegations in indictment without knowing "the court would not allow those issues to go to the jury as defenses to the charge"); *U.S. v. Cancelliere*, 69 F.3d 1116, 1122 (1995) (defendant prejudiced by redaction of "willfully" from indictment because "his whole defense to th[e] charge rested on his lack of willfulness"); see also Pet. Rev. 15 (citing *Soundgarden v. Eikenberry*, 123 Wn.2d 750, 871 P.2d 1050 (1994) ("[t]he statute in question violated due process because it 'allow[ed] the determination whether material sold is 'erotic' to be made at [an] initial civil hearing and **presented as a judicial fact to a jury in a subsequent criminal proceeding.**") (emphasis added).

contrary, nonconsensual sexual conduct and penetration are clearly defined in RCW 7.90.010.

Finally, there is no question that Mr. Delman was afforded due process here.¹⁴ As detailed in Ms. Roake's supplemental brief, due process requires notice and an opportunity to be heard. Roake Supp. Br. 4-5. Mr. Delman received both. He received notice of the temporary order and, in response, filed a "Reply to Petition For Sexual Assault Order" in which he argued that the Court should not grant the order in part because of the "negative ramifications" to him if the order was entered.¹⁵ CP 9. Mr. Delman did not submit evidence contesting Ms. Roake's factual allegations about the assault, but he could have. *Id.* The trial court began the final hearing on February 10, but continued it until February 20 at the request of Mr. Delman, over Ms. Roake's objection. At the

¹⁴ Mr. Delman's assertion that he will be registered in the state's criminal database is factually incorrect. The SAPO statute directs law enforcement agencies to enter SAPOs into the computer-based criminal intelligence information system that is used to list outstanding warrants. RCW 7.90.160. The SAPO is removed from the system when it expires. The SAPO will not appear on a Criminal History Record Background Check requested by a member of the public, which is limited to conviction information only. Wash. State Patrol, Crime & Safety, Request A State Criminal History Record (Background Check) (2008), available at <http://www.wsp.wa.gov/crime/chrequests.htm>; see also RCW 10.97.030; RCW 10.97.050 (Washington State Criminal Records Privacy Act).

¹⁵ "[T]he common assumption that men who commit sexual assault in college make a single bad decision is erroneous. Instead, repeat predators may account for as many as nine out of every ten rapes." Karen Oehme et al., *A Deficiency in Addressing Campus Sexual Assault: The Lack of Women Law Enforcement Officers*, 38 Harv. J. L. & Gender 337, 349 (2015) (citing Joseph Shapiro, *Myths That Make It Hard to Stop Campus Rape*, Nat'l Pub. Radio (Mar. 4, 2010), available at <http://www.npr.org/templates/story/story.php?storyId=124272157>, archived at <http://perma.cc/PV5Z-6E7W>).

continued hearing, Mr. Delman again opted not to dispute Ms. Roake's factual allegations, but instead submitted 36 pages of declarations about his character, interrupted Ms. Roake's testimony, and again moved to dismiss the petition, which the trial court granted. Though the Court of Appeals ultimately reversed the dismissal, it remanded the case for further proceedings. The statute protects due process, and there is no question that Mr. Delman has been (and continues to be) afforded due process in this case.

D. Any Alleged Errors Can Be Cured on Remand.

Mr. Delman asks this Court to reverse the Court of Appeals and "reinstate the trial court's dismissal of Roake's SAPO petition." Pet. for Rev. 20. But as the Court of Appeals properly held, the sufficiency of Ms. Roake's petition is not at issue in this case. Rather, at the final hearing stage, the sufficiency of the petition is irrelevant. RCW 7.90.090. The plain language of the burden of proof statute states what is required for issuance of a SAPO: proof by a preponderance of the evidence that a sexual assault occurred. *Id.* Accordingly, the Court of Appeals properly remanded this case to the trial court to determine if Ms. Roake has met her burden. *Nelson*, No. 73416-4-I, at *8 ("Where the trial court fails to make necessary findings on ultimate issues of fact, or the decision rests on an improper interpretation of the law, "the appropriate course of action is to

remand to the trial judge to apply the correct rule” and make and enter the necessary findings of fact and conclusions of law.”). This Court should likewise remand to the trial court for a full hearing on Ms. Roake’s SAPO petition.

V. CONCLUSION

The goal of the SAPO statute is to provide straight-forward and accessible protection to survivors of sexual assault who do not qualify for another type of protective order. Courts adjudicating SAPO petitions should be cognizant of this express purpose. While the Court of Appeals correctly held that a SAPO petitioner is not required to prove more than the occurrence of a sexual assault, the decision undermines the purpose of the statute by requiring a petitioner to plead specific statements or actions “separate from the sexual assault itself” that demonstrate the petitioner’s fear of her assailant. The Legislature has explicitly declared that “sexual assault is the most heinous crime against another person short of murder” and “inflicts humiliation, degradation, and terror on victims.” In light of this declaration, and the goals of the statute, this Court should clarify that specific allegations of sexual assault are sufficient to satisfy the SAPO petition requirements. With this clarification, the Court should affirm.

RESPECTFULLY SUBMITTED this 13th day of February, 2017.

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No. 93456-8

SUPREME COURT OF THE STATE OF WASHINGTON

MEGAN ROAKE,

Appellant,

v.

MAXWELL DELMAN,

Respondent.

PROOF OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, and not a party to this action. On the 13th day of February, 2017, I caused to be served a true copy of: 1) Motion for Leave to File *Amici Curiae* Brief; 2) Brief of *Amici Curiae* Legal Voice, King County Sexual Assault Resource Center, Northwest Justice Project and Washington Coalition of Sexual Assault Programs; and 3) Proof of Service, via electronic mail and U.S. Mail to the parties listed below.

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DATED this 13th day of February, 2017.

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On behalf of Kimberly Evanson (WSBA No. 39973) and Alana Peterson (WSBA No. 46502) of Pacifica Law Group, attached please find (1) Motion for Leave to File Amici Curiae Brief and the (2) Brief of *Amici Curiae* Legal Voice, King County Sexual Assault Resource Center, Northwest Justice Project and Washington Coalition of Sexual Assault Programs, and (3) accompanying Proof of Service.

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