
IN THE
COURT OF APPEALS OF VIRGINIA

Record No. 1062-22-4

AMBER LAURA HEARD,
Defendant-Appellant,

v.

JOHN C. DEPP, II,
Plaintiff-Appellee.

BRIEF OF AMICI CURIAE SANCTUARY FOR FAMILIES, THE VIRGINIA NATIONAL ORGANIZATION FOR WOMEN, THE DC COALITION AGAINST DOMESTIC VIOLENCE, EQUALITY NOW, ESPERANZA UNITED, THE FEMINIST MAJORITY FOUNDATION, BATTERED WOMEN’S JUSTICE PROJECT, THE WOMEN’S EQUAL JUSTICE PROJECT, NATIONAL CRIME VICTIM LAW INSTITUTE, THE COALITION AGAINST TRAFFICKING IN WOMEN, PROFESSOR CATHARINE A. MACKINNON AND THE ORGANIZATIONS, PROFESSORS, ADVOCATES AND PROFESSIONALS LISTED IN APPENDIX A

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IDENTITIES AND INTERESTS OF AMICI CURIAE

Amici curiae (“*Amici*”) are leading nonprofit organizations, professors, victim advocates and professionals around the world dedicated to advancing the safety and well-being of survivors of domestic violence. Collectively, *Amici* provide a broad range of legal and other services to victims of domestic violence, and are active contributors to, and experts in, the scholarship surrounding the dynamics of domestic violence. *Amici* are concerned because the jury verdict reflects a deep and dangerous ignorance of the coercive tactics and non-physical forms of abuse that are a critical component of domestic violence. *Amici* also wish to advise the Court of the troubling chilling effects this highly-publicized verdict will have on victims of abuse seeking to protect themselves, report abuse and raise awareness. Pursuant to Rule 5A:23, *Amici* respectfully submit this Brief in support of Appellant, Amber Laura Heard.

Amici are qualified to understand and express the interests of domestic violence victims in Virginia with respect to matters of common concern that come before this Court.

Amici requested the consent from all parties to file this *amicus curiae* brief. Appellant, Ms. Heard, has consented. Appellee, Mr. John C. Depp, II, opposed.

A full list of *Amici* is attached hereto as Appendix A.

SOURCE OF AUTHORITY TO FILE

Amici have moved for leave to file this brief in the accompanying motion pursuant to Supreme Court of Virginia Rule 5A:23.

STATEMENT OF THE NATURE OF THE CASE

Though Johnny Depp’s defamation claims are facially limited to three statements made by Amber Heard in a *Washington Post* op-ed,¹ the record in this case makes plain that Mr. Depp used his lawsuit to retaliate against Ms. Heard for obtaining a temporary restraining order against him six years prior, in an effort to escape Mr. Depp’s increasingly insufferable abuse. At trial, Mr. Depp painted the traumatic events that led to Ms. Heard’s protective order as an elaborate “hoax” perpetrated by Ms. Heard against Mr. Depp, the true “victim.” Mr. Depp’s ploy was successful. It was not successful because Mr. Depp carried his burden to demonstrate by clear and convincing evidence that the alleged defamatory statements regarding abuse were made with “actual malice”—a subjective standard

¹ The alleged actionable statements were: 1) “I spoke up against sexual violence—and faced our culture’s wrath. That has to change”; 2) “Then two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture’s wrath for women who speak out”; and 3) “I had the rare vantage point of seeing, in real time, how institutions protect men accused of abuse.” *Depp v. Heard*, 104 Va. Cir. 377 (2020); *see also* Amber Heard, Opinion, *Amber Heard: I spoke up against sexual violence – and faced our culture’s wrath. That has to change*, WASH. POST (Dec. 18, 2018), https://www.washingtonpost.com/opinions/ive-seen-how-institutions-protect-men-accused-of-abuse-heres-what-we-can-do/2018/12/18/71fd876a-02ed-11e9-b5df-5d3874f1ac36_story.html.

that requires proof Ms. Heard recklessly disregarded the truth. Rather, as a post-trial interview with one juror revealed, the jury found in favor of Mr. Depp because while “[t]he jury concluded ‘they were both abusive to each other[,]’[] Heard’s team failed to prove Depp’s abuse was physical.”²

The jury’s singular focus on allegations of physical abuse is contrary to the evidence presented at trial and demonstrates a fundamental misunderstanding of the law. The conduct by Mr. Depp, laid bare at trial in text messages, audio recordings, videos and his own testimony, demonstrated that in addition to physical abuse, Ms. Heard was the victim of emotional, verbal, psychological and other well-documented forms of abuse. These additional types of conduct all fall within widely accepted definitions of “abuse” in the Commonwealth of Virginia and in the scholarship of domestic violence more generally. The trial court rejected Ms. Heard’s request to provide the jury with an instruction on what amounts to “abuse” and, as a result, the jury improperly disregarded non-physical conduct when considering whether actual abuse occurred and, more importantly, whether Ms. Heard *believed* Mr. Depp’s conduct amounted to abuse as required under the actual malice standard applicable in this case. *Amici* respectfully submit that in conducting

² See Mark Guarino & Doug Lantz, *Juror in Johnny Depp-Amber Heard Defamation Trial Speaks Out*, GOOD MORNING AM.: CULTURE (June 16, 2022), <https://www.goodmorningamerica.com/culture/story/juror-johnny-depp-amber-heard-defamation-trial-speaks-85432281>.

its independent review of the record, this honorable Court will find ample, uncontroverted evidence of various forms of abuse suffered by Ms. Heard at the hands of Mr. Depp. As such, Ms. Heard’s statement that she “became a public figure representing domestic abuse” could not be false, let alone made with actual malice. The Court should therefore conclude that the trial court erred in not setting aside the verdict.

Such a finding will not only rectify the injustice served in this case, but also send a message to those who may seek to improperly use defamation lawsuits or other legal proceedings as a means to retaliate against victims of abuse. Indeed, an abuser’s misuse of legal processes to further control and coerce their partners, referred to as “legal abuse,” is itself a widely recognized form of domestic violence.³ The verdict in this case is part of a growing and troubling trend of individuals accused of abuse and harassment using lawsuits as a tool to silence victims. As the New York Appellate Division, First Department, recognized in *Sagaille v. Carrega*, “sexual assaults remain vastly underreported, primarily due to victims’ fear of

³ See Ellen R. Gutowski & Lisa A. Goodman, *Coercive Control in the Courtroom: The Legal Abuse Scale (LAS)*, J. FAM. VIOLENCE (May 19, 2022), <https://link.springer.com/article/10.1007/s10896-022-00408-3> (“Intimate partner violence (IPV) survivors seeking safety and justice for themselves and their children through family court and other legal systems may instead encounter their partners’ misuse of court processes to further enact coercive control” and noting that “[m]ultiple qualitative studies have described the range of strategies that abusive partners use to extend coercive control into the legal context”).

retaliation. It does not escape us that defamation suits like the instant one may constitute a form of retaliation against those with the courage to speak out.” 194 A.D.3d 92, 94, *leave to appeal denied*, 174 N.E.3d 710 (2021). Similarly, in her report to the General Assembly, U.N. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan warned of “a perverse twist . . . [that] women who publicly denounce alleged perpetrators of sexual violence online are increasingly subject to defamation suits or charged with criminal libel or the false reporting of crimes.”⁴

This phenomenon creates a troubling chilling effect on survivors of abuse seeking to access justice to protect themselves and prosecute abuse. Already, clients of *Amici* have expressed fear as to how the *Depp v. Heard* verdict may impact their ability or willingness to pursue legal remedies against domestic violence. A meritorious reversal of this case, which has been widely publicized and closely watched by victim support and advocacy groups around the world, will serve to reinforce that the rule of law supports and does not hinder the ability of survivors of all forms of abuse to speak up, seek help and encourage others like them to be brave enough to do the same.

⁴ U.N. Special Rapporteur, *Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ II.D.22, U.N. Doc. A/76/258 (July 30, 2021).

ASSIGNMENT OF ERROR

Amici support Ms. Heard with respect to Assignment of Error Number 14, which reads: “The trial court erred in denying the motions to strike and set aside the jury’s verdict with regard to Mr. Depp’s failure to prove actual malice by clear and convincing evidence.” Appellant’s Designation of Assignments of Error ¶ 14.

STATEMENT OF FACTS

Ms. Heard’s Statement of Facts is accurate, and is incorporated herein by reference.

STANDARD OF REVIEW

On appeal, this Court may overturn the trial court’s denial of a motion to set aside a jury verdict if the denial is “plainly wrong or without evidence to support it.” VA. CODE ANN. § 8.01-680 (1977). The standard is clearly met in this case. Libel under Virginia law requires an “actionable statement” that is both “false and defamatory,” made with the requisite intent. *Jordan v. Kollman*, 269 Va. 569, 575 (2005) (citations omitted). Where, as here, a public figure brings the defamation case, the requisite intent is actual malice—a subjective inquiry which requires “the plaintiff to prove that the defendant ‘in fact entertained serious doubts as to the truth of [her] publication.’” *Cannon v. Peck*, 36 F.4th 547, 565 (4th Cir. 2022) (quoting *Saint Amant v. Thompson*, 390 U.S. 727, 731 (1968)); see also *Jackson v. Hartig*,

274 Va. 219, 228 (2007) (quoting *Jordan*, 269 Va. at 575).⁵ As the plaintiff and a public figure, it is Mr. Depp’s burden to prove that the statements were “false” by a preponderance of the evidence, and to prove actual malice by clear and convincing evidence. See *N.Y. Times v. Sullivan*, 376 U.S. 254, 273 (1964); *Gazette, Inc. v. Harris*, 229 Va. 1, 10 (1985); see also Tr. Jury Instructions C-E.

Because “[t]he question whether the evidence in the record in a defamation case is sufficient to support a finding of actual malice is a question of law,” *Harte-Hanks Commc’ns v. Cannaughton*, 491 U.S. 657, 685 (1989) (citation omitted), Virginia appellate courts must conduct an independent examination of the entire record. *Jordan*, 269 Va. at 577; *Gazette, Inc.*, 229 Va. at 19. The Court does so by “examin[ing] the facts pertinent to the [jury] award and exercis[ing] independent judgment to ‘determine whether the record establishes actual malice with convincing clarity.’” *Jordan*, 269 Va. at 577 (quoting *Gazette*, 229 Va. at 19).⁶ The Court’s

⁵ “Actual malice” requires that a defendant made an allegedly defamatory statement either (i) “with knowledge that it was false” or (ii) “with reckless disregard of whether it was false or not.” *N.Y. Times v. Sullivan*, 376 U.S. 254, 279-80 (1964); see also *Shenandoah Publ’g House, Inc. v. Gunter*, 245 Va. 320, 324 (1993). “For defamation purposes, ‘reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing.’” *Cannon*, 36 F.4th at 565 (quoting *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968)). Instead, the “standard is a subjective one—there must be sufficient evidence to permit the conclusion that the defendant actually had a ‘high degree of awareness of . . . probable falsity.’” *Id.* at 566. (quoting *Harte-Hanks*, 491 U.S. at 688).

⁶ In cases not involving public figures, plaintiff bears the burden of proving “by a preponderance of the evidence that the defamatory publication was false, and that the defendant either knew it to be false, or believing it to be false, lacked reasonable

duty to meaningfully assess the record is “a constitutional responsibility that cannot be delegated to the trier of fact[.]” *Bose Corp. v. Consumers Union*, 466 U.S. 485, 501 (1984).

ARGUMENT

I. THE JURY VERDICT WAS PLAINLY WRONG TO IGNORE UNCONTROVERTED EVIDENCE OF WIDELY-RECOGNIZED FORMS OF ABUSE

Mr. Depp’s defamation claims put front and center the question of whether Ms. Heard believed she was a victim of abuse. And yet the trial court refused to provide the jury with an instruction on the full scope of what qualifies as “abuse.” *See* Hearing Transcript, dated May 20, 2022, at 97:12–21 9; Def.’s Proposed Jury Instr. NN (formerly 39). The jury was left instead to reason by negative inference based on the instructions it received on the elements of falsity and actual malice. As a result, the jury’s verdict completely ignored uncontroverted evidence that Ms. Heard endured numerous forms of well-recognized non-physical abuse, including emotional, psychological, and verbal abuse. The jury’s verdict was therefore plainly wrong and must be set aside.

grounds for such belief, or acted negligently in failing to ascertain the facts on which the publication was based. The plaintiff must prove falsity.” *Givens v. Dominion Mortg. Funding Corp.*, 1988 WL 619329, at *2 (Va. Cir. Ct. Sept. 1, 1988).

A. Undisputed Evidence Demonstrates Ms. Heard Was Subjected To Emotional, Psychological, And Verbal Abuse

This Court’s independent examination will reveal that the record is replete with audio recordings, videos, text messages and other indisputable evidence establishing the non-physical abuse suffered by Ms. Heard.⁷ Ms. Heard testified—and Mr. Depp admitted—to numerous instances of vicious name-calling, manipulative attempts to control her career, accusations that she had been unfaithful and threatening behavior. For example, Mr. Depp repeatedly degraded Ms. Heard verbally:

⁷ While beyond the focus of this *Amici* brief, Ms. Heard was also physically and sexually abused by Mr. Depp, as supported by ample evidence in the record. *See, e.g.*, Trial Tr. 2121:19-2122:6 (Mr. Depp admitting in an audio tape that he head-butted Ms. Heard); Pl.’s Ex. 343 at 1:04:40 to 1:05:30 and Trial Tr. 4164:18-22, 4166:6-18 (Mr. Depp stating in recordings, “I left last night, honestly, I swear to you, because I just couldn’t take the idea of more physicality, more physical abuse on each other[,]” and “[w]e had a fight on the train . . . [w]hich was physical[,]” indicating at the very least that Mr. Depp engaged in physical altercations with Ms. Heard); Trial Tr. 4535:17-4536:3 (Ms. Heard graphically testifying that Mr. Depp sexually assaulted her with a liquor bottle, causing her to bleed from the vagina and told her “I’ll fucking kill you”); Trial Tr. 4238:4-4343:20 (Ms. Heard recounting numerous instances of physical abuse, testifying that Mr. Depp slapped her); Trial Tr. 4246:5-4248:16 (Ms. Heard testifying that Mr. Depp pushed, shoved, and slapped her across the face); Trial Tr. 4232:9-4237:22 (Ms. Heard testifying that Mr. Depp smashed up apartments they stayed in, and threw glass that narrowly missed and shattered behind her); Trial Tr. 4271:19-4273:16 (Ms. Heard testifying graphically how Mr. Depp “backhand[ed]” her while wearing “a lot of rings[,]” and she felt her “lip went into my teeth”); Trial Tr. 4306:16-4311:15 (Ms. Heard testifying how Mr. Depp shoved her hard into a glass table, and then “whack[ed] [her] in the face”).

- In an audio recording, Mr. Depp called Ms. Heard a “fucking cunt” Trial Tr. 2210:19-2211:14; Def.’s Ex. 366. In another recording, “you stupid fuck.” Trial. Tr. 2211:15-2212:14; Def.’s Ex. 396B.
- In an audio recording, Mr. Depp stated “Shut up, fat ass” when Ms. Heard told him to put his cigarettes out on someone else instead of her. Trial Tr. 2201:21-2202:15; Def.’s Ex. 582.
- In text communications, Mr. Depp told Ms. Heard, “You sicken me. Leave me fuckin’ be, Officer square head[.]” Trial Tr. 2167:11-13; Def.’s Ex. 180. Other times, Mr. Depp would claim that Ms. Heard was “bitching” and “fucking barking.” Trial Tr. 2253:1-3, 9-10; Def.’s Ex. 342A.
- In an audio recording, Mr. Depp accused Ms. Heard of having a “fucking lover” while describing her feelings as “screaming like a banshee[.]” Trial Tr. 2358:1, 2358:20-2359:15; Def.’s Ex. 342A.
- Referencing exchanged texts and audio recordings, Mr. Depp confirmed that a recent argument with Ms. Heard was a “bloodbath.” Trial Tr. 2208:22-2209:10; Def.’s Ex. 598B; Def.’s Ex. 161.
- In a text message, Mr. Depp admitted that drugs and alcohol turned him into “[a]n angry, aggro Injun in a fuckin’ blackout” who “spray[ed] rage at the one I love.” Trial Tr. 1915:1-18, Def.’s Ex. 245 (recounting how

he “Drank all night before I picked Amber up to fly to LA this past Sunday . . . Ugly, mate . . . No food for days . . . Powders . . . Half a bottle of whisky, a thousand red bull and vodkas, pills, 2 bottles of Champers on plane and what do you get[]? An angry, aggro Injun in a fuckin’ blackout, screaming obscenities and insulting any fuck who got near. I’m done. I am admittedly too fucked in the head to spray my rage at the one I love. . . For little reason, as well. I’m too old to be that guy. But pills are fine!!!”).

- Mr. Depp wrote an apology to Ms. Heard, stating “I don’t want to be conditioned to continue that behavior . . . Therefore, I’ll put in heavy work with Shrank . . . I’m sorry for being less . . . I’m a fucking savage . . . Gotta lose that . . . Know that YOU ARE RIGHT. . .!!! I am WELL AWARE that I SHOULD have been bigger than the moment . . . And that it WILL NEVER again manifest in negative experiences. . . It can be done!!!” Trial Tr. 1920:5-1921:12.
- In text communications to a friend while dating Ms. Heard, Mr. Depp said “[I]et’s burn Amber!!!” and “[I]et’s drown her before we burn her!!! I will fuck her burnt corpse afterwards to make sure she is dead.” Trial Tr. 1910:9-1912:9, Def.’s Ex. 178. He later texted that

“hopefully that cunt’s rotting corpse is decomposing in the fucking trunk of a Honda Civic!!” Trial Tr. 2151:4-9; Def.’s Ex. 157A.

- In text communications, Mr. Depp referred to Ms. Heard as “the idiot cow,” that he would “smack the ugly cunt around before [he] let her in” and asked “[d]id that worthless hooker arrive,” referencing Ms. Heard.⁸ Trial Tr. 1924:5-14; Def.’s Ex. 153.

Mr. Depp also subjected Ms. Heard to emotional and psychological abuse, including repeated, alarming and violent attempts to exert control over her:

- In an audio recording, Mr. Depp brandished a knife and implored Ms. Heard to cut him with it. Def.’s Ex. 586A. Despite Ms. Heard begging Mr. Depp to put the knife down, Mr. Depp refused and told Ms. Heard to “Cut me. If you don’t I will.” Def.’s Ex. 586A.

⁸ Undoubtedly, Mr. Depp’s choice of language—“hooker,” “cunt,” to “fuck her burnt corpse”—and violent ideations with respect to Ms. Heard are consistent with understandings of gender violence and plainly, unblemished misogyny. See *Domestic Abuse Is a Gendered Crime*, WOMEN’S AID (2022), <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/domestic-abuse-is-a-gendered-crime/>; Walker M. Hester & E. Williamson, *Gendered Experiences of Justice and Domestic Abuse: Evidence for Policy and Practice*, WOMEN’S AID & UNIV. OF BRISTOL (July 2021), <https://www.womensaid.org.uk/wp-content/uploads/2021/07/FINAL-Gendered-experiences-WA-UoB-July-2021.pdf> (noting that women “differ from men in that they experience domestic abuse as part of embedded, structural inequalities against their sex” such that “the prominence of sexism and misogyny in our society creates a culture and context that enables and entitles men to demean, objectify, abuse and control women”).

- As depicted in photographs, after Ms. Heard finished filming a movie with Billy Bob Thornton, Mr. Depp severed his finger during a drunken fight with Ms. Heard, and then wrote on a mirror with a mix of paint and blood from his severed finger: “Starring Billy Bob and Easy Amber.” Trial Tr. 2078:5-9; Trial Tr. 2080:7-19; Def.’s Ex. 369; Trial Tr. 2086:6-10; Def.’s Ex. 374. As documented in videos and photos, Mr. Depp’s finger was severed during a violent outburst in which he caused approximately \$50,000 worth of property damage to a home the couple was renting, including smears of blood on the wall, plaster damage, and a broken ping pong table. Trial Tr. 2459:19-21, 2460:7-9, 2460:22-2461:6.
- In text communications, Mr. Depp forbade Ms. Heard from acting in movies and said “no goddamn meetings. No movies.” Trial Tr. 2233:6-15; Def.’s Ex. 195. A recording captured Mr. Depp saying that he “become[s] irrational when [Ms. Heard] is doing movies. I become jealous and fucking crazy, weird and, you know, we fight a lot more.” Trial Tr. 2113:4-6, 2115:15-21; Def.’s Ex. 343.
- Mr. Depp confirmed in his testimony that when Ms. Heard was working, Mr. Depp would accuse her of being unfaithful and having affairs with co-stars like James Franco. Trial Tr. 2004:8-19.

Further still, Mr. Depp repeatedly acted in a threatening manner toward Ms. Heard, engaging in physically violent outbursts and destroying property⁹ in Ms. Heard's presence:

- Mr. Depp's bodyguard testified that during an argument, Mr. Depp called Ms. Heard "fucking washed up" and "a fucking cunt," before he threw down every rack of clothing and shoes in her closet from the second floor of a loft apartment. Trial Tr. 3457:9-19, 3457:20-3458:9.
- Mr. Depp was captured on video violently slamming cabinets in front of Ms. Heard. Trial Tr. 5017:20-5018:9.
- Mr. Depp admitted that during an argument with Ms. Heard in a trailer, he punched a bathroom sconce and ripped a mounted phone off the wall and repeatedly smashed it against the wall, because another woman had touched Ms. Heard in an intimate manner. Trial Tr. 1997:7-1998:3; Trial Tr. 7294:3-12.

⁹ Destroying property is a tactic many abusers use to threaten their victims by demonstrating their capacity to engage in violence. See D. Kelly Weisberg, *Property Damage in the Domestic Violence Context*, DOMESTIC VIOLENCE REP. (2017), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2542&context=faculty_scholarship (noting that "[t]he abuser's motivation in damaging and destroying property is to 'terrorize, threaten, and exert control over a victim of domestic violence'").

These examples of Mr. Depp’s undisputed conduct were not an exhibition of “common couple violence” experienced in some relationships.¹⁰ By contrast, Mr. Depp’s behavior fits a paradigm of serious, chronic abuse designed to “dominate one’s partner and to exert general control over the relationship,” which is “manifested in the use of a wide range of power and control tactics,” many of which are non-physical.¹¹ In fact, Mr. Depp’s undisputed conduct is also consistent with numerous factors scholars have identified to assess the risk of grave danger and death in abusive relationships, including:

- Has the physical violence increased in severity over the past year and/or has a weapon or threat from a weapon ever been used?
- Is he drunk every day or almost every day?

¹⁰ See Michael Johnson, *Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence Against Women*, 57 J. MARRIAGE & FAM. 383, 394 (1995) (commenting that some conflicts may “occasionally ‘get out of hand,’ leading usually to ‘minor’ forms of violence” in contrast to serious or life-threatening forms of violence evidenced in chronic behavior); see also Ross Macmillan & Catherine Kruttschnitt, *Patterns of Violence Against Women: Risk Factors and Consequences*, NAT’L INST. JUST. FINAL REPORT (Jan. 2005), <https://www.ojp.gov/pdffiles1/nij/grants/208346.pdf> (noting that “partner relationships may be characterized by several distinct classes of violence that reflect variation in the number and extent of violent acts”).

¹¹ Michael P. Johnson & Janel M. Leone, *The Differential Effects of Intimate Terrorism and Situational Couple Violence*, FINDINGS: NAT’L VIOLENCE AGAINST WOMEN SURV. 322, 323 (2005), <http://www.personal.psu.edu/mpj/2005%20JFI%20Johnson%20&%20Leone.pdf>; see also EVAN STARK, COERCIVE CONTROL: THE ENTRAPMENT OF WOMEN IN PERSONAL LIFE 5 (2007).

- Does he control most or all of your daily activities?
- Does he use drugs?
- Is he violently and constantly jealous of you? (For instance, does he say, “If I can’t have you, no one can.”)
- Has he ever threatened or tried to commit suicide?¹²

The undisputed fact that Mr. Depp brandished a knife and implored Ms. Heard to cut him or else he would do it himself evinces not only a propensity for physical violence, but also his attempts to manipulate Ms. Heard. *See* Def.’s Ex. 586A. Mr. Depp’s pervasive drug and alcohol use turned him into a self-confirmed “monster,” Trial Tr. 1717:20-1718:16, 1926:11-1927:9, 1933:14-1934:20; Def.’s Ex. 427. Mr. Depp was also no stranger to jealousy, as he himself texted that he “become[s] irrational when [Ms. Heard] is doing movies. I become jealous and fucking crazy, weird and, you know, we fight a lot more.” Trial Tr. 2113:4-6, 2115:15-21; Def.’s Ex. 343.

Even putting aside whether Ms. Heard *believed* that she was abused—which is all that the law requires in this case—the uncontroverted evidence outlined above

¹² *See generally* JACQUELYN C. CAMPBELL, *ASSESSING DANGEROUSNESS: VIOLENCE BY SEXUAL OFFENDERS, BATTERS, AND CHILD ABUSERS* (Newbury Park 1995); JACQUELYN C. CAMPBELL, PHYLLIS W. SHARPS & NANCY GLOSS, “RISK ASSESSMENT FOR INTIMATE PARTNER VIOLENCE,” IN *CLINICAL ASSESSMENT OF DANGEROUSNESS: EMPIRICAL CONTRIBUTIONS* (N.Y. Cambridge Univ. Press 2000).

clearly demonstrates that Mr. Depp engaged in abusive conduct and Ms. Heard was in fact abused.

B. Virginia Law, As Well As National And International Authorities And Scholars, Recognize Mr. Depp’s Conduct As “Abuse”

Virginia law recognizes non-physical abuse like that suffered by Ms. Heard. For instance, Virginia courts have recognized “‘that evidence of violence or apprehension of bodily harm are not indispensable ingredients in divorce suits charging cruelty,’ and that ‘mental anguish, repeated and unrelenting neglect and humiliation’ can amount to cruelty as that term is used in divorce law.” *Blanks-Hotchkiss v. Hotchkiss*, 1992 WL 885027, at *2-3 (Va. Cir. Ct. Nov. 19, 1992) (quoting *Hoback v. Hoback*, 208 Va. 432, 436 (1968)) (recounting also how “[m]ental anguish, repeated and unrelenting neglect and humiliation, may be as bad as physical wounds and bruises” and recognizing how such cruelty is abuse). Similarly, “angry words, coarse and abusive language, humiliating insults, and annoyances in all the forms that malice can suggest, may as effectually endanger life or health as personal violence, and afford grounds of relief to [an] injured spouse.” *Sollie v. Sollie*, 202 Va. 855, 860-61 (1961) (citations omitted). Virginia courts regularly take verbal and emotional abuse into consideration in family law decisions, demonstrating their recognition of the harmful impacts of non-physical abuse.¹³ *See*,

¹³ Studies have found that emotional abuse can lead to severe trauma including PTSD. *See* Donald A. Godfrey et al., *Examining the Associations Between Multi-*

e.g., *Brawand v. Brawand*, 1 Va. App. 305, 311 (1986) (“Husband engaged in violent, verbal outbursts and spoke language which reasonably could be interpreted as threatening. The cumulative effect of these incidents and other marital strife provided [wife] ample justification or excuse to leave.”); *Baxani v. Baxani*, 2003 WL 21498903, at *2 (Va. Ct. App. July 1, 2003) (“[W]ife testified that she suffered both verbal and emotional abuse from husband during the marriage. Based on this evidence, we cannot say that the trial court abused its discretion in awarding wife spousal support.”).

Virginia state and local authorities have provided similar advice and guidance to victims of abuse. The Virginia Department of Social Services defines “domestic violence” similar to the sources discussed above, focusing on a pattern of behaviors “intended to exert power and control” in an intimate relationship. *Understanding the Problem of Domestic Violence*, VA. DEP’T SOC. SERVS. (2022), https://www.dss.virginia.gov/files/division/dfs/ofv/general_information/understanding_dv.pdf. These abusive behaviors “may include, but are not limited to, physical assaults, verbal assaults, threats, intimidation . . . destruction of property, [and] violence toward other significant people.” *Id.* The Department of Social Services explicitly states that “[i]t is very important to recognize that domestic violence is not

Dimensional Facets of Emotional Abuse and Posttraumatic Stress Disorder Among Trauma Exposed Women, J. FAM. VIOLENCE (Aug. 10, 2022).

always physical[.]” and that “[v]erbal, emotional, and economic abuse can have long-lasting effects, even if a victim is never physically or sexually assaulted.” *Id.*

Virginia organizations dedicated to domestic abuse awareness, education, and policy objectives also endorse definitions of domestic abuse that are not limited to physical abuse. A few of these organizations include the Virginia Sexual and Domestic Violence Action Alliance, Avalon Center, and Women’s Resource Center of the New River Valley. *See Definition of Domestic Violence*, VA. SEXUAL & DOMESTIC VIOLENCE ACTION ALL. (Sept. 2020), <https://vsdvalliance.org/wp-content/uploads/2020/09/Definitions-of-Sexual-Domestic-Violence.pdf> (defining domestic abuse as a pattern of coercive behavior “not limited to physical assaults”); *What Is Abuse?*, AVALON CENTER (2022), <https://www.avaloncenter.org/what-is-abuse> (describing domestic abuse to include verbal or nonverbal psychological or emotional abuse and that “[e]motional abuse can be just as damaging as physical abuse”); *What Is Domestic Violence?*, WOMEN’S RES. CTR. NEW RIVER VALLEY (2022); <https://www.wrcnrv.org/domestic-violence/> (adopting definition of domestic abuse as pattern of abusive behavior where “[b]oth emotional and physical abuse can be devastating for the individual”).

Virginia is not unique in recognizing that victims may be abused in both physical and non-physical ways. Government agencies, international organizations, non-profit organizations, and domestic violence help centers have all endorsed

definitions of domestic abuse that include various forms of non-physical abuse. For example, the United States Department of Justice (“DOJ”) defines domestic abuse as a “pattern of abusive behavior in any relationship that is used by one partner to gain or maintain [] power and control over another intimate partner.” *Domestic Violence*, OFF. ON VIOLENCE AGAINST WOMEN (OVW), DEP’T JUST. (2022), <https://www.justice.gov/ovw/domestic-violence>. Such patterns may include emotional, psychological, and physical abuse.¹⁴ The DOJ defines “emotional abuse” as “undermining an individual’s sense of self-worth and/or self-esteem” including through “constant criticism, diminishing one’s abilities, [or] name-calling.” *Id.* The DOJ defines “psychological abuse” as including “causing fear by intimidation, threatening physical harm to self, partner, children, or partner’s family or friends; destruction of pets and property; and forcing isolation from family, friends, or school and/or work.” *Id.* Similarly, the DOJ recognizes that “other patterns of coercive behavior that influence another person” may constitute abuse. *Id.*

The Centers for Disease Control and Prevention (“CDC”) defines domestic abuse as “abuse or aggression that occurs in a romantic relationship.” *Fast Facts: Preventing Intimate Partner Violence*, CTRS. DISEASE CONTROL & PREVENTION (2022), <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/>

¹⁴ The Department of Justice also includes economic abuse, sexual abuse, and technological abuse as additional forms of abusive behavior. *See id.*

fastfact.html. The CDC recognizes that domestic abuse includes “psychological aggression,” defined as the “use of verbal and non-verbal communication with the intent to harm a partner mentally or emotionally and/or to exert control over a partner.” *Id.*

The United Nations also defines domestic abuse, domestic violence, or intimate partner violence as “a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner.” *What Is Domestic Abuse*, UNITED NATIONS (2022), <https://www.un.org/en/coronavirus/what-is-domestic-abuse>. Much like the DOJ, the United Nations has determined that “abuse” includes a wide range of conduct including emotional, psychological, economic, sexual, or physical actions or threats of actions intended to influence another person. *Id.* Moreover, “influencing” can take many forms and includes conduct intended to frighten, intimidate, terrorize, manipulate, hurt, blame, wound, or humiliate the victim. *Id.* To evaluate whether abuse has occurred, the United Nations asks whether one’s partner has conducted any of the physical and non-physical acts below:

- Embarrass or make fun of you in front of your friends or family?¹⁵

¹⁵ In this case, among other evidence, Whitney Henriquez, Ms. Heard’s sister recalled guests going around the table at Ms. Heard’s birthday party to share nice things about Ms. Heard until Mr. Depp shared that the time he first met Ms. Heard “her perfect ass left a perfect imprint on the couch” and he would not let anyone sit there, leaving “everyone [] kind of embarrassed” about his chosen story. Trial Tr.

- Put down your accomplishments?¹⁶
- Make you feel like you are unable to make decisions?¹⁷
- Use intimidation or threats to gain compliance?¹⁸
- Tell you that you are nothing without them?
- Treat you roughly—grab, push, pinch, shove or hit you?¹⁹
- Call you several times a night or show up to make sure you are where you said you would be?

5721:18-5722:20. Another witness, commenting on the same event, noted that Ms. Heard “was clearly embarrassed” and that Ms. Heard “asked him to stop and he kept telling the story.” Trial Tr. 5851:12-5853:5.

¹⁶ In this case, among other evidence, when Ms. Heard’s film career gained traction, Mr. Depp texted Ms. Heard and told her “no goddamn meetings. No movies.” Trial Tr. 2233:6-15; Def.’s Ex. 195. Mr. Depp also said that Ms. Heard was “whoring [her]self out . . . in the context of [her] acting,” and that other actresses who did work like her were “worthless whores,” implying that she was the same. Trial Tr. 4232:9-4237:22. This made Ms. Heard feel “dirty that [she] wanted to do this job[.]” Trial Tr. 4232:9-4237:22.

¹⁷ In this case, among other evidence, Ms. Heard asked Mr. Depp what he thought of a dress she wore for a charitable event, he said “Yeah, yeah. I think the whole world saw that, kid. That’s how they’ll remember you. That’s how the world will remember you[.]” implying that the low-cut dress was revealing and made Ms. Heard ask herself, “How could I have made that choice? Of course, you know, he’s right[.]” starting to believe him. Trial Tr. 4232:9-4237:22.

¹⁸ In a text communication, Mr. Depp texted “Do you want me to roll the dice? This sounds more like an aggravated ultimatum than soft words that can help us make both feel better. Don’t test me, please.” Trial Tr. 4358:11-4359:5; Def.’s Ex. 188A. Ms. Heard testified that she understood this to be a threat. *Id.*

¹⁹ *See supra* note 7.

- Use drugs or alcohol as an excuse for saying hurtful things or abusing you?²⁰
- Blame you for how they feel or act?²¹
- Prevent you from doing things you want – like spending time with friends or family?

What Is Domestic Abuse, UNITED NATIONS (2022), <https://www.un.org/en/coronavirus/what-is-domestic-abuse>.

The National Domestic Violence Hotline similarly defines “domestic violence,” “relationship abuse,” or “intimate partner violence” (IPV) as behavioral patterns used by one partner to control another partner in the relationship. *Understand Relationship Abuse*, NAT’L DOMESTIC VIOLENCE HOTLINE (2022), <https://www.thehotline.org/identify-abuse/understand-relationship-abuse/>. To

²⁰ In this case, among other evidence, Mr. Depp texted and admitted to using drugs and alcohol, which turned him into “[a]n angry, aggro Injun in a fuckin’ blackout” who “spray[ed] rage at the one I love.” Trial Tr. 1915:1-18; Def.’s Ex. 245 (recounting he “Drank all night before I picked Amber up to fly to LA this past Sunday . . . Ugly, mate . . . No food for days . . . Powders . . . Half a bottle of whisky, a thousand red bull and vodkas, pills, 2 bottles of Champers on plane and what do you get[]? An angry, aggro Injun in a fuckin’ blackout, screaming obscenities and insulting any fuck who got near. I’m done. I am admittedly too fucked in the head to spray my rage at the one I love... For little reason, as well. I’m too old to be that guy. But pills are fine!!!”).

²¹ In this case, among other evidence, an audio recording captured Mr. Depp saying about Ms. Heard, “I wish you fuck’ understood what you are and who you are and how you fucked me over and make me feel sick of myself.” Trial Tr. 2111:4-9, Def.’s Ex. 380A.

identify abuse, the National Domestic Violence Hotline utilizes a visual diagram of tactics known as the Duluth Model Power and Control Wheel. *Power and Control*, NAT'L DOMESTIC VIOLENCE HOTLINE (2022), <https://www.thehotline.org/identify-abuse/power-and-control/>. An example of the Power and Control Wheel is seen below, and such wheels are “widely recognized as a critical tool in explaining the context of domestic violence.”²² See also Figure 1.1.²³

²² Laurie S. Kohn, *The Justice System and Domestic Violence: Engaging the Case but Divorcing the Victim*, 32 N.Y.U. REV. L. & SOC. CHANGE 191, 209 (2008); see also Tamara L. Kuennen, *Analyzing the Impact of Coercion on Domestic Violence Victims: How Much Is Too Much?*, 22 BERKELEY J. GENDER L. & JUST. 2, 9 (2007) (referring to the Power and Control Wheel as a “cornerstone feminist theory of domestic violence portraying ways in which batterers coerce victims”); Carolyn Puzella, *Social Scientists’ Perspectives on the Causes of Spousal Abuse*, 11 J. CONTEMP. LEGAL ISSUES 37, 42 n.31 (2000) (explaining the use of the Wheel nationwide to depict the interconnectedness of violence and other forms of coercive control).

²³ Amanda Kippert, *What Are the Power and Control Wheels*, DOMESTIC SHELTERS ORG. (Aug. 16, 2021), <https://www.domesticshelters.org/articles/identifying-abuse/what-are-the-power-and-control-wheels>.



Figure 1.1 – Power and Control Wheel

By design, the Power and Control Wheel has eight spokes each designed to categorize “the pattern of actions that an individual uses to intentionally control or dominate his intimate partner.” *Understanding the Power and Control Wheel*, DOMESTIC ABUSE INTERVENTION PROGRAMS (DAIP) (2022), <https://www.theduluthmodel.org/wheels/faqs-about-the-wheels/>. Three of the spokes focus on (1) using coercion and threats, (2) using intimidation, and (3) using emotional abuse, all of which are consistent with other national and international organizations’ definition of domestic abuse and violence. The Power and Control wheel illustrates how coercive, non-physical behaviors are central to domestic

abuse.²⁴ In recognition of this, states including California, where Mr. Depp and Ms. Heard lived together, have added “coercive control” definitions to abuse statutes.²⁵

Even the parties’ respective experts, Dr. Shannon Curry (Mr. Depp) and Dr. Dawn Hughes (Ms. Heard), agree that domestic abuse includes acts of emotional and psychological abuse. Trial Tr. 2669; 3884:22-3885:7. Dr. Hughes, a preeminent forensic psychologist in the field, explained at trial that intimate partner violence is a pattern of manipulation and coercive control that could be emotional abuse or psychological aggression. *Id.* Dr. Hughes elaborated that coercive control erodes a victim’s autonomy and independence, and results in abusers wanting a say in everything a “victim does or does not do.” Trial Tr. 3885:16-3886:9. Psychological aggression includes threats and “[s]lamming your hand on a table” or “punching a wall” or “cursing [and] screaming”, all actions that “cause a victim to feel afraid and feel intimidated.” Trial Tr. 3887:16-3888:6. Additionally, Dr. Hughes testified

²⁴ *The Power and Control Wheel*, LA CASA DE LAS MADRES (Mar. 18, 2022), https://www.lacasa.org/blog/2022/3/18/powerandcontrol?locale=en_us (noting how the Power and Control Wheel “can shed light on . . . the different ways batterers establish and maintain control over their partner” and that such acts are part of a system of abuse).

²⁵ *See* CAL. FAM. CODE § 6320(c) (Family Code includes “coercive control” as an action that may be enjoined by an *ex parte* order); *see also* HAW. REV. STAT. § 586-1(1)-(8) (Hawaii including “coercive control” as a subsection of its “domestic abuse” protective order definitions); CONN. GEN. STAT. § 46b-1(b)(4) (Connecticut amending its statutory definition of “domestic violence” to include a similar “coercive control” provision).

regarding emotional abuse and defined it as “denigrat[ing] a person’s sense of self-worth and their self-perception” through “name-calling”. Trial Tr. 3888:16-3889:1. Dr. Hughes’ testimony also demonstrated that destruction of property is a risk factor for danger and fatality, providing a data point as to whether an individual is in a dangerous situation. Trial Tr. 3922:13-17.

Dr. Curry, Mr. Depp’s expert, testified that intimate partner violence is “abuse” that can be “psychological . . . from one partner to another in an intimate relationship.” Trial Tr. at 2580:2-5. She also agreed, without qualification, that domestic abuse could “absolutely” be verbal, and could “certainly” be emotional. Trial Tr. at 2669:6-14.

In short, there is a broad consensus that abuse is not limited to physical violence. Instead, the law and the scholarly literature recognize the impact of verbal, emotional, and psychological abuse. Accordingly, the jury was plainly wrong to disregard Mr. Depp’s acts of non-physical violence in determining whether Ms. Heard’s statement that she “became a public figure representing domestic abuse” was defamatory—and the trial court should have granted Ms. Heard’s motion to set aside the verdict.

II. ALLOWING THE VERDICT TO STAND CREATES HARMFUL CHILLING EFFECTS ON ABUSE VICTIMS SEEKING RELIEF

Due to the highly publicized nature of the trial, the ramifications of the verdict—if allowed to stand—will extend far beyond this case alone. Coupled with

the intense retaliation Ms. Heard faced inside and outside the courtroom,²⁶ the verdict will have widespread chilling effects on other survivors of domestic violence seeking to exit abusive relationships, get help or speak out against abuse. The chilling effects will be clear: *First*, victims may avoid seeking legal redress, such as protective orders if they fear the orders will indirectly become the subject of retaliatory litigation against them, such as in a defamation suit, or in family court proceedings.²⁷ *Second*, abusers may feel emboldened to engage in retaliation through actual or threatened litigation against their victims, further subjecting victims to their abusers' control and crippling them both emotionally and financially.

²⁶ *Targeted Trolling and Trend Manipulation: How Organized Attacks on Amber Heard and Other Women Thrive on Twitter*, BOT SENTINEL INC. (July 18, 2022), <https://botsentinel.com/reports/documents/amber-heard/report-07-18-2022.pdf> (noting how thousands of accounts were dedicated to tweeting negative characterizations about Amber Heard and how it was “one of the worst cases of platform manipulation and flagrant abuse from a group of Twitter accounts” observed); Anastasia Tsioulcas, *On Social Media, Johnny Depp Is Winning Public Sympathy over Amber Heard*, NPR (May 23, 2022), <https://www.npr.org/2022/05/23/1100685712/on-social-media-johnny-depp-is-winning-public-sympathy-over-amber-heard> (noting how the #JusticeForJohnnyDepp hashtag on TikTok obtained 15 billion views compared to just 8.2 million for #IStandWithAmberHeard).

²⁷ Note that it “is well settled that ‘words spoken or written in a judicial proceeding that are relevant and pertinent to the matter under inquiry are absolutely privileged’ against actions on the basis of defamation.” *Mansfield v. Bernabei*, 284 Va. 116, 121-122 (2012). However, like Mr. Depp in this current lawsuit, individuals may bring defamation lawsuits ostensibly regarding statements that are not privileged while the root cause of the defamation lawsuit was based on legal proceedings that are absolutely privileged. Further, many *pro se* victims will not be aware of this privilege.

Third, the verdict amplifies an environment where victims are doubted and their credibility is questioned—discouraging them from pursuing legal relief and undermining their ability to obtain it. These issues are addressed in turn below.

A. The Verdict Discourages Domestic Abuse Survivors From Seeking Protective Orders

Protective orders are a critical tool in the fight against domestic violence because they are proven to deter physical violence, keep victims safe and reduce the severity of future abuse.²⁸ Studies have shown they also confer psychological benefits to victims.²⁹ The challenged statements at issue in this case do not mention the May 2016 protective order Ms. Heard obtained against Mr. Depp more than two years before her op-ed was published. But Mr. Depp’s legal team was intent on framing the very act of Ms. Heard’s seeking a protective order as the heart of the injury for which Mr. Depp sought redress. During opening statements, Mr. Depp’s attorney stated that after Ms. Heard filed for the restraining order,³⁰ “Johnny Depp’s

²⁸ See Victoria L. Holt et al., *Do Protection Orders Affect the Likelihood of Future Partner Violence and Injury*, 24 AM. J. PREVENTATIVE MED. 16, 20 (2003).

²⁹ Andrew R. Klein, *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges*, NAT’L INST. OF JUSTICE, U.S. DEP’T OF JUSTICE 59 (2009), <https://www.ojp.gov/pdffiles1/nij/225722.pdf> (noting that victims who obtained protective orders “expressed the feeling that the order demonstrated to the abuser that the ‘law was on her side’” and that obtaining the order “improved their overall well-being”).

³⁰ Note that restraining orders are a form of protective orders, and temporary protective orders are commonly granted *ex parte*. Debra Poggrund Stark & Jessica Choplin, *Seeing the Wrecking Ball in Motion: Ex Parte Protection Orders and the*

name was forever associated with the image of an innocent, battered woman.” Trial Tr. at 317:3-22. Counsel for Mr. Depp further described how the act of Ms. Heard’s obtaining a restraining order “forever changed Mr. Depp’s life and reputation” through the resulting “media storm.” Trial Tr. 319:15-20; 323:9-18. Indeed, while Mr. Depp’s trial team occasionally referenced the statements in the op-ed upon which his defamation claims were based, time and again they made clear that the true origin of his lawsuit was Ms. Heard filing for a restraining order. *See* Trial Tr. at 7740:14-7741:3 (“On May 27th, 2016, Ms. Heard walked into a courthouse in Los Angeles, California, to get a no notice ex-parte restraining order against Mr. Depp, and *in doing so*, ruined his life by falsely telling the world that she was a survivor of domestic abuse at the hands of Mr. Depp.”) (emphasis added); Trial Tr. 1601:15-22 (Mr. Depp responding, when asked why he was here today, that “[a]bout six years ago [the date Ms. Heard filed for the restraining order], Ms. Heard made some quite heinous and disturbing, brought these certain criminal acts against me that – that were not based in any species of truth”); Trial Tr. 324:1-4 (referencing Ms. Heard’s protective order and that “Ms. Heard’s false claim that Mr. Depp had abused her remained in the public sphere”).

Realities of Domestic Violence, 32 WIS. J.L. GENDER & SOC’Y 13, 18 n.11 (2017) (utilizing the term “restraining order” interchangeably with “protective order”); Margaret Johnson, *Redefining Harm, Reimagining Remedies and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1130 (2009) (noting that the majority of states permit an *ex parte* hearing for temporary protective orders).

Mr. Depp’s success at positioning a protective order as the root of his alleged financial and reputational downfall will chill victims from seeking protective orders against abusers who may weaponize them in divorce or custody proceedings, retaliatory defamation lawsuits, or through other forms of retaliation such as by subjecting victims to social harassment due to obtaining these orders.³¹ Many abuse victims will likely come to question whether seeking legal redress or protection is worth the risk of having to face separate or protracted legal proceedings and potential liability, forcing them to re-live their trauma at tremendous personal or financial cost.

Domestic violence advocates have discussed extensively how *Depp v. Heard* may cause victims of abuse to shy away seeking from legal recourse due to the retaliation, harassment and credibility attacks they face.³² This chilling effect will

³¹ *False Allegations, Recantations, and Unfounding in the Context of Sexual Assault*, ATT’Y GEN.’S SEXUAL ASSAULT TASK FORCE 3 (Jan. 10, 2018), <https://evawintl.org/wp-content/uploads/ORSATFPaperFalseReports.pdf> (stating that victims may choose not to speak out against abuse due to socio-cultural influences such as isolation or disapproval from their community).

³² See, e.g., Jessica Winter, *The Johnny Depp-Heard Verdict Is Chilling*, THE NEW YORKER (June 2, 2022), <https://www.newyorker.com/culture/cultural-comment/the-depp-heard-verdict-is-chilling> (noting how victims may believe that “they will be disbelieved, harassed, shamed, and ostracized if they press charges or share their experiences”); MaryClaire Dale and Jocelyn Noveck, *Depp-Heard Trial: Advocates Fear Chilling Effect on Accusers*, ASSOCIATED PRESS (June 3, 2022), <https://apnews.com/article/bill-cosby-johnny-depp-amber-heard-entertainment-politics-c105463a8b87f54d2ce19a9cd772a5d1> (recounting concerns expressed by Christine Scartz, director of the University of Georgia School of Law’s Family

have devastating consequences for victims of abuse due to the well-established benefits protective orders provide to people facing domestic abuse. While the terms of protective orders vary by jurisdiction, they generally enable victims of abuse to petition and obtain stay-away orders, no-contact orders, and vacate orders which can be a critical component of a safety-planning strategy for victims.³³ Violations of protective orders may result in civil contempt penalties, or even criminal charges, thereby acting as a powerful deterrent.³⁴

Studies have shown that protective orders are a key aid in the prevention of domestic violence, and may substantially reduce the physical abuse victims face.³⁵ Crucially, one study regarding protective orders demonstrated that victims who sought protective orders reported significantly lower levels of subsequent physical abuse and threats of abuse, regardless of whether they were actually granted the

Justice clinic, that the *Depp v. Heard* verdict may prevent victims from pursuing claims for fear of being called a liar).

³³ Christopher T. Benitez et al., *Do Protection Orders Protect?*, 38 J. AM. ACAD. PSYCHIATRY & L. ONLINE 376, 376-377 (2010).

³⁴ *Id.*

³⁵ Holt, *supra* note 28, at 20 (finding “a 70% decrease in physical abuse among women who maintained their CPOs [civil protection orders] throughout the follow-up” and noting a substantially reduced risk of subsequent threats and violence after obtaining a civil protection order).

protective order.³⁶ This indicates that the very act of pursuing their legal rights may have deterrence effects.³⁷ The National Institute of Justice (“NIJ”), the research arm of the DOJ, has similarly recognized that protective orders may deter abusers from committing further acts of abuse, and reduce the severity of abuse.³⁸ Beyond the actual reduction of violence, there are also psychological benefits to protective orders, as victims may view the legal system as a means of regaining some of the power they lost due to their abuse. This in turn may help support a victim’s decision to leave an abuser.³⁹ Indeed, the NIJ notes how “the research consistently finds that victims largely express satisfaction with civil orders, even if [the orders] are violated by their abusers.”⁴⁰

In Virginia, protective orders offer many avenues to shield those abused, and it is crucial that victims continue to access such resources. The core purpose of the protective order statutes is “to protect victims of domestic violence.” *Jacobs v. Wilcoxson*, 71 Va. App. 521, 526 (2020). A judge on the Juvenile and Domestic

³⁶ See Judith McFarlane et al., *Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women*, 94 AM. J. PUB. HEALTH 613, 616 (2004).

³⁷ *Id.*

³⁸ See Klein, *supra* note 29, at 58 (“[I]n terms of their effectiveness in deterring repeat abuse, before and after studies suggest that protective orders may deter certain abusers.”).

³⁹ See McFarlane, *supra* note 36, at 617.

⁴⁰ Klein, *supra* note 29, at 59.

Relations District court may, for example, issue emergency protective orders that grant a household member possession of the premises occupied by the parties, thus ensuring the victim has a safe place to stay or to go to work, and that any children are no longer exposed to domestic abuse in their homes. VA CODE ANN. § 16.1-253.4. Virginia courts recognize that these protective orders are needed to ensure the safety of those abused.⁴¹ The chilling effects of the verdict stand to impact thousands of Virginians who have secured protective orders by reducing their willingness to obtain or hold on to these important tools.⁴²

Allowing the trial court verdict to stand threatens to undermine this critical source of relief by deterring victims who fear retaliation, many of whom pursue protective orders *pro se*. The consequences will be widespread, given that as many as two million protective orders are currently in effect nationwide.⁴³ Some victims may choose to dissolve their protective orders, and future victims may choose not to pursue protective orders at all.

⁴¹ ASS'N OF DIST. COURT JUDGES OF VIRGINIA BENCHBOOK COMMITTEE, DISTRICT COURT JUDGES' BENCHBOOK 389 (2012) (noting that protective orders “may be issued to protect the health or safety of any person, in the case of family abuse.”).

⁴² Susheela Varky, *The Entry and Service of Protective Orders in Virginia: Are You Really Protected*, 12 RICH. J. L. & PUB. INT. 333, 336 (2009) (noting that there were several thousand protective orders issued by Virginia courts every year).

⁴³ See Ian Ayres et al., *The Impact of Student Assistance on the Granting and Service of Temporary Restraining Orders*, 53 CONN. L. REV. 235 (2021).

B. The Verdict Emboldens Retaliatory Defamation Lawsuits, Further Chilling Victims From Seeking Relief

If allowed to stand, the success of Johnny Depp’s retaliation strategy will embolden abusers to engage in legal abuse, including through the filing of defamation suits in response to abuse allegations. Mr. Depp followed a playbook increasingly employed by powerful individuals to retaliate against those who accuse them of abuse. Prominent artists, athletes, and business executives are among those who have filed defamation lawsuits in response to allegations of sexual misconduct.⁴⁴ Critically, however, the use of retaliatory defamation lawsuits extends well beyond the celebrity spotlight—it has become a strategy through which “perpetrators [] lock survivors into years of abuse.”⁴⁵ By tying victims up in years of retaliatory legal abuse and defamation litigation and thus attacking their

⁴⁴ Madison Pauly, *She Said, He Sued*, MOTHER JONES (April 2020), <https://www.motherjones.com/crime-justice/2020/02/metoo-me-too-defamation-libel-accuser-sexual-assault/> [hereinafter *She Said, He sued*].

⁴⁵ Jennifer Gerson, *Johnny Depp Trial Unlocks New Way for Abusers to Exert Power over Survivors, Experts Worry*, THE 19TH (May 18, 2022), <https://19thnews.org/2022/05/johnny-depp-amber-heard-trial-abusers-power-survivors/>; see also David Ward, *In Her Words: Recognizing and Preventing Abusive Litigation against Domestic Violence Survivors*, 14 SEATTLE J. SOC. JUST. 429, 434 (2016) (discussing how abusers may sue survivors for defamation if they discuss the abuse they endured); Sarah Nesbitt & Sage Carson, *The Cost of Reporting: Perpetrator Retaliation, Institutional Betrayal, and Student Survivor Pushout*, KNOW YOUR IX, <https://www.knowyourix.org/wp-content/uploads/2021/03/Know-Your-IX-2021-Report-Final-Copy.pdf> (23% of the 107 surveyed reported their perpetrator or perpetrator’s attorney threatened to sue them for defamation).

credibility, perpetrators are able to continue the cycle of abuse even after victims have escaped (or attempted to escape) their abusive relationship.

When a victim has left an abusive relationship, previous methods of abuse may no longer be as accessible to the abuser.⁴⁶ Thus, abusers may turn to legal abuse to continue the cycle of violence. It is well known that many abusers “use litigation to harass and control ex-spouses and partners” and that “[a] perpetrator of domestic violence may use the legal system as a tool to maintain power and control over his former spouse or partner.”⁴⁷ Indeed, abusive litigation in the domestic violence context has been recognized by state legislatures, who acknowledge that the “legal system unwittingly becomes another avenue that abusers exploit to cause psychological, emotional, and financial devastation” and that it can be a means “for an abuser to exert and reestablish power and control over a domestic violence survivor.”⁴⁸ In addition to defamation lawsuits, legal abuse may occur in the context of dissolutions, legal separations, parenting plan actions or modifications and

⁴⁶ Heather Douglas, *Legal Systems Abuse and Coercive Control*, 18 CRIMINOLOGY & CRIM. JUSTICE 84 (2018).

⁴⁷ Leah J. Pollema, *Beyond the Bounds of Zealous Advocacy: The Prevalence of Abusive Litigation in Family Law and the Need for Tort Remedies*, 75 UMKC L. REV. 1107, 1108, 1110 (2007); see also Douglas *supra* note 46, at 85 (“[L]itigation can provide a new opportunity for perpetrators to continue to perpetrate abuse in a way that is apparently legally justified.”).

⁴⁸ REV. CODE WASH § 26.51.010 (2020).

protective order proceedings, or even through false reports about victims to child welfare or immigration authorities.⁴⁹

In recent years, there has been a sharp rise in the number of defamation lawsuits filed against abuse victims. Since 2014, over 100 defamation lawsuits have been brought against individuals raising sexual assault and harassment allegations, and cases “have been filed at a faster rate” since 2017.⁵⁰ This has been documented through studies and also first-hand observations of practitioners.⁵¹ Many of these suits are brought in response to allegations of workplace sexual harassment or sexual assault on college campuses, or where victims voice their allegations online.

The threat of a defamation suit is particularly effective at deterring victims from seeking relief, given the power imbalances that are often inherent in abusive relationships. Due to the financial burdens imposed on defendants through these

⁴⁹ *See id.*

⁵⁰ *She Said, He Sued.* (quoting the Director of Time’s Up Legal Defense fund, an organization supporting individuals subjected to workplace sex discrimination, regarding the increase in defamation lawsuits in the last few years and Bruce Johnson, a First Amendment lawyer, regarding how since 2017 there has been an approximate 13x increase in the number of victims contacting him about being sued if they spoke out about sexual violence).

⁵¹ Sarah J. Harsey & Jennifer J. Freyd, *Defamation and DARVO*, 23 J. TRAUMA & DISSOCIATION 481 (2022) (noting the growing trend of perpetrators of abuse filing defamation lawsuits against those they abused and how “a lawyer who works with campus sexual assault victims shared that previously only a small fraction – 5% – of her cases included a defamation lawsuit but more recently that number had jumped to about 50%”).

lawsuits, survivors may not be able to effectively mount a defense against such claims.⁵² Survivors face the risk of being bankrupted by defending themselves in a defamation lawsuit.⁵³ The risk is exacerbated by the fact that many abusers engage in economic abuse by restricting their victims' educational and employment opportunities to prevent them from gaining financial independence.⁵⁴ This means many victims have far fewer financial resources than their abusers to begin with. The mere threat of a defamation suit, even if not actually filed, may therefore present an effective and coercive legal strategy to control and silence abuse victims.

These lawsuits also have harmful emotional impacts on survivors. Victims are re-victimized through legal proceedings that force them to recount and describe specific details of their past traumatic abuse.⁵⁵ As in *Depp v. Heard*, the litigation

⁵² See Shaina Weisbrot, *The Impact of the #MeToo Movement on Defamation Claims against Survivors*, 23 CUNY L. REV. 332, 352-353 (2020) (noting how many survivors “cannot afford the emotional and financial costs of civil [defamation] litigation”).

⁵³ Michelle Goldberg, Opinion, *The Amber Heard Verdict Was a Travesty. Others Will Follow*, N.Y. TIMES (June 2, 2022), <https://www.nytimes.com/2022/06/02/opinion/amber-heard-johnny-depp-verdict.html> (“All victims of domestic or sexual abuse must now contend with the possibility that, should they decide to tell their story publicly, they could end up bankrupted by their abusers.”)

⁵⁴ See Dana Harrington Conner, *Financial Freedom: Women, Money, and Domestic Abuse*, 20 WM. & MARY J. WOMEN & L. 339, 358 (2014).

⁵⁵ See Weisbrot, *supra* note 52, at 339 (describing how “one of the greatest challenges survivors will face” is “publicly present[ing] the details of their traumatic experience to prove their own truthfulness”).

becomes the mechanism through which a survivor must “document and participate in her own spectacular humiliation in front of a judge [and] jury.”⁵⁶ Further, the mere fact that a defamation lawsuit is filed against victims and the resulting questioning they face can tarnish the victim’s reputation and self-worth by suggesting that they lied.⁵⁷ Additionally, the strategy in these defamation lawsuits is to recast the actual perpetrators of abuse as victims, thereby increasing the sense of hopelessness, fear and trauma victims may experience if they feel like the legal system not only cannot protect them, but can be manipulated by their abusers as a tool of retaliation.⁵⁸

That the threat of being sued deters many victims from speaking out about abuse is supported by scholarship as well as experiential evidence.⁵⁹ Survivors now

⁵⁶ Winter, *supra* note 32.

⁵⁷ Weisbrot, *supra* note 52, at 353.

⁵⁸ Harsey & Freyd, *supra* note 51, at 483 (“Moreover, defamation lawsuits position the plaintiffs – *i.e.*, the abusers – as victims harmed by libel or slander.”).

⁵⁹ See, e.g., Aliosha Hurry, *Defamation as a Sword: The Weaponization of Civil Liability against Sexual Assault Survivors in the Post-#MeToo Era*, 34 CANADIAN J. WOMEN & L. 82, 84 (2022) (noting how defamation lawsuits have a chilling effect on victims speaking out against abuse); *She Said, He Sued* (describing how a former lobbyist that accused a Congressman of harassment along with 7 other women stated that a dozen more women did not come out with allegations due to fears of a defamation suit); Madison Pauly, *And the Winner of the Johnny Depp vs. Amber Heard Trial Is . . . Men*, MOTHER JONES (May 27, 2022), <https://www.motherjones.com/media/2022/05/and-the-winner-of-the-johnny-depp-v-amber-heard-trial-is-men/> (describing reports from victims’ rights organizations

have to determine the likelihood abusers will bring defamation suits or other legal retaliation before deciding whether to seek help or speak out against abuse. The threat of a defamation suit may lead victims to question whether they can speak about their abuse at all, even in order to seek the protection they need. *See Doe v. Salisbury Univ.*, 123 F. Supp. 3d 748, 759 (D. Md. 2015) (stating that victims informing family they have been sexually assaulted should be privileged as a matter of public policy because otherwise “[v]ictims would have to weigh, on the one hand, the value of reaching out for help in the aftermath of a traumatic sexual assault, and on the other hand the risk that they could be subject to civil liability for defamation if the occurrence of sexual assault is contested by the alleged perpetrator”). The verdict below amplifies this dilemma for abuse victims, while reinforcing abusers’ efforts to weaponize defamation law as a powerful means of quashing both past and future allegations of abuse.

C. The Verdict Fosters a Climate of Second-Guessing Victims

The verdict for Mr. Depp in the face of uncontroverted evidence of abuse also furthers unrealistic standards in the eye of public opinion as to what qualifies as “credible” victim testimony. Ms. Heard’s credibility was continually undermined

of receiving calls from students afraid of being sued for defamation for reporting an assault).

online through a firestorm of negative commentary on social media sites including TikTok and Twitter.⁶⁰ Indeed, *Amici* are now subjected to this firestorm.

The attacks on Ms. Heard’s credibility frequently employed common victim-blaming tropes that demonstrate a fundamental misunderstanding of abuse. These included criticizing Ms. Heard “for not leaving Depp after the first instance of alleged abuse” and doubting Ms. Heard’s credibility on the witness stand for displaying too much emotion.⁶¹

It is well-recognized that victims stay with their abusers for numerous reasons, including the abuser’s efforts to exert control and create dependence between abuser

⁶⁰ Alexandra Del Rosario, *TikTok’s Impact on the Depp-Heard Trial Takes Center Stage in a New NBC Documentary*, L.A. TIMES (July 13, 2022), <https://www.latimes.com/entertainment-arts/story/2022-07-13/johnny-depp-amber-heard-defamation-trial-tiktok-documentary> (“When the court hearings began in April, TikTok became a hotspot for seemingly endless pro-Depp and anti-Heard memes and videos about the trial[.]”); Eliana Dockterman, *The Depp-Heard Trial Perpetuates the Myth of the Perfect Victim*, TIME (June 2, 2022), <https://time.com/6183505/amber-heard-perfect-victim-myth-johnny-depp/> (discussing how TikTok videos “were cut and memed and paired with disinformation to paint Heard as a harlot, a drunk, a liar” and how a viral post on TikTok with hundreds of thousands of likes wrote over Heard’s bruised face, “He could have killed you....He had every right”).

⁶¹ Dockterman, *supra* note 60 (“Some of the most viral videos on TikTok pointed to every lip quiver and sigh as some sort of actorly ruse.”); *see also* Deborah Tuerkheimer, *This Was Never About Amber Heard*, MS. (June 2, 2022), <https://msmagazine.com/2022/06/02/amber-heard-sexual-abuse-domestic-violence-believe-women/> (noting how “Heard has also been widely skewered for her demeanor on the witness stand” and that victims may be perceived as not credible where they are “overly upset” or alternatively “don’t show obvious signs of emotional distress”).

and victim.⁶² Staying with an abuser does not indicate a person is being untruthful about abuse that has occurred. Similarly, domestic violence victims “can respond to overwhelming trauma by becoming emotionally numb,” which may impact whether they are viewed as credible if they don’t demonstrate outwards signs of trauma.⁶³ Other victims may suffer from “hyperarousal—that is, an anxious posture of alertness and reactivity to an imminent danger” which may cause victims to be subject to “unexpected outbursts” and lead to victims being perceived as “out of control, even a bit crazy.”⁶⁴ The highly-publicized failure in this case to understand how survivors may respond to abuse perpetuates harmful misconceptions about victim credibility that have long since been debunked by domestic violence experts.

The verdict, if upheld, will further contribute to an environment in which victims’ actual experiences of, and reactions to, abuse (even when supported by uncontroverted evidence and credible testimony) may be discounted or second-guessed, both in and out of the courtroom. Such “credibility discounting may

⁶² Michael A. Anderson et al., ‘*Why Doesn’t She Just Leave?*’: *A Descriptive Study of Victim Reported Impediments to Her Safety*, 18 J. FAM. VIOLENCE 151, 154-155 (2003) (noting that victims may stay with their abusers for multiple reasons, including a lack of financial resources to escape, internalization of blame by the victim, and fear of the abuser).

⁶³ Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 421 (2019).

⁶⁴ *Id.*

discourage women from continuing to pursue justice or other forms of support.”⁶⁵ It is already well-known that victims may shy away from seeking legal and police assistance when they experience domestic violence out of fear of being disbelieved, and this verdict threatens to exacerbate that barrier to relief.⁶⁶

CONCLUSION

For all of the foregoing reasons, *Amici* respectfully request that this Court set aside the trial court verdict and deny Mr. Depp’s claims for relief in their entirety and with prejudice.

⁶⁵ *Id.* at 451.

⁶⁶ *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses*, NAT’L DOMESTIC VIOLENCE HOTLINE (2015), <https://www.thehotline.org/wp-content/uploads/media/2020/09/NDVH-2015-Law-Enforcement-Survey-Report-2.pdf> (surveying 637 women and noting that more than two-thirds said they were afraid the police would not believe them or do nothing if they reported domestic violence). This belief by victims is well-founded. For example, studies have shown that victims “who allege intimate partner violence” in custody disputes “are actually *more* likely to lose custody than mothers who do not make such assertions,” indicating that issues with victim credibility may have an effect on custody determinations. Epstein & Goodman, *supra* note 63, at 431 (emphasis in original).

Respectfully submitted:

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APPENDIX A – LIST OF AMICI

Sanctuary for Families is one of the nation’s leading nonprofit service providers and advocates for survivors of domestic violence, sex trafficking and other related forms of gender violence. Founded in 1984, Sanctuary for Families is committed to assisting survivors holistically to achieve legal representation, safety, economic self-sufficiency and empowerment while improving the response of systems to survivors’ complex and multifaceted needs. Each year, Sanctuary for Families helps more than 7,000 adults and children move from fear and abuse to safety and stability through comprehensive services and advocacy.

The Virginia National Organization for Women (NOW) has thousands of members and supporters in the Commonwealth and is a state chapter of National NOW which was founded in 1966 to take action through intersectional grassroots advocacy to promote feminist ideals, lead societal change, eliminate discrimination, end violence against women and achieve and protect the equal rights of all women and girls in all aspects of social, political and economic life.

The DC Coalition Against Domestic Violence (DCCADV) is the federally-recognized statewide coalition of domestic violence programs, organizations and individuals organized to ensure the elimination of domestic violence in the District of Columbia.

Equality Now is an international human rights NGO with ECOSOC status at the United Nations with the mission to achieve legal and systemic change that addresses violence and discrimination against all women and girls around the world. Founded in 1992, Equality Now is a global organization with partners and members in every region. Over the past ten years, Equality Now has witnessed a global trend of defamation lawsuits used to retaliate against and silence women who have spoken out denouncing gender-based violence. Examples of this can be seen all around the world, including in India, Russia, the Netherlands, the USA, France, and Kazakhstan. Among its advocacy efforts, Equality Now submitted an amicus brief to the Supreme Court of Georgia (the country) in June 2021, arguing that the emerging use of defamation lawsuits against survivors to silence and retaliate against them is in violation of international human rights law, and that the right to speak about the experiences of violence, harassment, and discrimination is integral to the right to live free from violence and encourages societal change.

Esperanza United mobilizes Latinas and Latin@s communities to end gender-based violence. Formerly Casa de Esperanza, Esperanza United was founded in 1982 by a small group of persevering Latinas as an emergency shelter in St. Paul, Minnesota. Esperanza United continues to ground its work in community strengths and wisdom, as it serves Latin@s locally and nationwide through a robust training and technical assistance program.

The Feminist Majority Foundation (FMF), founded in 1987, is a cutting-edge non-profit national organization dedicated to equality, reproductive health, and non-violence in all spheres, nationally and globally. FMF uses research and action to empower women economically, socially and politically. FMF believes that feminists are the majority, but this majority must be empowered.

BWJP (Battered Women's Justice Project)'s mission is to promote change within the civil and criminal legal systems to enhance their effectiveness in providing safety, security and justice for survivors of gender-based violence (GBV), their families, and communities. BWJP has a thirty year history as an industry leader, and is a collection of national policy and practice centers at the intersection of GBV and legal systems. BWJP provides educational activities, including training, technical assistance, and consulting to advocates, nonprofit service providers, community leaders and systems professionals.

The Women's Equal Justice Project provides advocacy services to sexual assault survivors as they navigate the criminal justice process; and partners with survivors to improve the justice system's response to sexual assault.

National Crime Victim Law Institute (NCVLI) is a nonprofit educational and advocacy organization located at Lewis and Clark Law School in Portland, Oregon. NCVLI actively promotes victims' rights and voices in the justice system through crime victim-centered legal advocacy, education and resource sharing.

NCVLI accomplishes its mission through education and training; promoting the National Alliance of Victims' Rights Attorneys & Advocates; researching and analyzing developments in crime victim law; and participating as *amicus curiae* in select civilian and military cases when a victims' rights issue of broad importance is presented.

The Coalition Against Trafficking in Women (CATW) is a non-governmental organization that promotes women's human rights. It works internationally to combat trafficking and sexual exploitation in all its forms and to empower victims and survivors of this brutal global criminal industry.

C.A. Goldberg PLLC is a victims' rights law firm.

Fearless! Hudson Valley, Inc. has a mission to build an informed, just and accountable society so all people can experience supportive and safe relationships free from abuse, exploitation, and oppression. Fearless! Hudson Valley, Inc. does this by education, prevention, advocacy, and providing comprehensive services, including shelter, to victims and survivors of interpersonal violence, human trafficking, sexual violence and other types of crime victimization.

Hope's Door is based in Westchester County, New York. Domestic violence victims suffer abuse in lethal and non-lethal ways, leaving wounds seen and unseen, living in fear and confronting danger – physical, sexual, financial, psychological, and emotional. They feel hopeless and alone, living with shame and fear. Too often,

they do not reveal abuse, report offenses, seek medical care, pursue orders of protection, or access the trauma-informed services that would foster healing. Hope's Door stands ready to help. Its mission is to end domestic violence and to empower survivors to achieve safety, independence, and healing from the trauma of abuse.

Media Watch has been a nonprofit since 1989, organized in 1985, to improve women's image in the media. Media Watch teaches media literacy and works on creating more critical consumers of commercial media.

Movement of Mothers advocates for scientific research to formulate biopsychosocial, trauma-informed models of the family court and child welfare systems.

The New York State Coalition Against Domestic Violence (NYSCADV), established in 1978, is designated by the U.S. Department of Health and Human Services as the information clearinghouse, primary point of contact and resource center on domestic violence for the State of New York. NYSCADV is a statewide non-profit membership organization comprised of local domestic violence service providers and allied organizations who are committed to preventing and ending domestic violence. NYSCADV provides education, support and technical assistance to the network of primary purpose domestic violence service providers statewide, and supports the development of policies, protocols and procedures to enhance domestic violence intervention and prevention.

One Mom's Battle (Tina Swithin) works to raise awareness and educate family court professionals on post-separation abuse in the family court system (divorce, paternity and child custody battles). Education on high-conflict individuals and post-separation abuse will allow family court professionals to recognize the abusive dynamics that play out in the family court system so they can make decisions that are in the best interest of victims and children.

The Pixel Project is a completely virtual, volunteer-led global 501(c)3 non-profit organization whose mission is to raise awareness, funds and volunteer power for the cause to end violence against women at the intersection of social media, online communities, new technologies and popular culture/the Arts.

Possibility Seeds is a Canadian social change consultancy dedicated to gender justice, equity, human rights and inclusion. Possibility Seeds believes safer and more equitable workplaces, organizations and institutions are possible.

WeSpoke collects data from litigants on their experiences in the family court system and brings together women who have been victims of the system and denied due process and the right to parent. Through linking up, transparency and alliances are formed so that we can become one united force with a strong, collective voice to demand change.

The following individuals⁶⁷ are professors, scholars, victim advocates and professionals around the world dedicated to scholarship on domestic violence, raising awareness and/or advancing the safety and well-being of survivors of domestic violence:

Catharine A. MacKinnon, Elizabeth A. Long Professor of Law, University of Michigan Law School, The James Barr Ames Visiting Professor of Law (since 2009), Harvard Law School (affiliations for identification only).

Michele Landis Dauber, Frederick I. Richman Professor of Law, Stanford Law School (all titles and affiliations for identification purposes only).

Deborah Epstein, Agnes Williams Professor of Gender, Violence, and Law at Georgetown University Law Center, where she has directed the Domestic Violence Clinic for over 30 years, represented hundreds of survivors in protection order litigation, and written extensively in the field.

Lisa A. Sales, President of the Virginia Chapter of the National Organization for Women, Member of the Fairfax County Council to End Domestic Violence and the Virginia Sexual and Domestic Violence Action Alliance Policy Committee. As a survivor who was fired from a decade-long job at one of the nation's largest global defense companies for speaking out about sexual violence,

⁶⁷ Unless otherwise noted, the affiliations of the individual Amici are listed for identification only.

Ms. Sales believes it is critical that judges making decisions in the lives of survivors be mandated to take continuing legal education in trauma-informed handling of sexual and domestic violence. Ms. Sales helped drive legislation to change three laws in Virginia on behalf of survivors.

Renée B. Adams, University of Oxford, expert on gender inequality and governance and investigator on topics related to open justice.

Lindsey C. Boylan is a lifelong advocate for women and career urban planner who has spent nearly two decades in New York working in and around the highest levels of government.

Elizabeth Blackney, Survivor and Activist involved in projects supporting the rights of women and girls in 29 countries, including reparations for Survivors, reproductive health access (including abortion), and vocational training, among other projects.

Dr. Stephanie Ann Brandt, MD, Forensic Evaluator in Child-Focused Litigation and Clinical Assistant Professor of Psychiatry, Weill Cornell Medical College, New York, New York.

Cheryl Bratt, Associate Professor of the Practice, Boston College Law School.

Nancy Chi Cantalupo, Associate Professor of Law at Wayne State University and nationally recognized expert on sexual harassment and gender-based violence as discrimination in violation of federal civil rights laws.

Lauren B. Cattaneo, Professor of Psychology at George Mason University, who has done research on intimate partner violence for 25 years, focusing on the interactions between survivors of intimate partner violence and the institutions that are meant to protect them.

Professor Gillian Chadwick, JD, LLM, Professor of Law and Associate Director of the Children and Family Law Center at Washburn University School of Law, academic and lawyer who has represented hundreds of survivors of domestic violence, sexual assault, stalking, and human trafficking and published research in the field of gender-based violence.

Dr. Andrew Thomas Cicchetti, Ph.D. LCSW-R, Domestic Violence and Trauma-Informed Gestalt Therapist.

Julia Devanthéry is a Senior Lecturer on Law and the Founding Director of the Housing Justice for Survivors Project at the Legal Services Center of Harvard Law School. She is an expert on the intersection of gender-based violence and housing instability.

Margaret Drew is an associate professor of law at the University of Massachusetts School of Law where she teaches the Human Rights at Home

Clinic. Professor Drew has represented survivors of gender violence for over forty years, with an interest in assuring that survivors, their advocates, and the courts recognize that domestic abuse includes a range of behaviors, only a small portion of which are physical. Emotional, verbal, and mental abuse are significant tools of abuse, leading to coercion of the target. Professor Drew is considered an expert in the field.

Kate Hugill, Survivor, Advocate and Award-winning domestic abuse speaker for law enforcement training.

Dr. Holly Jacobs, Founder & Board Member, Cyber Civil Rights Initiative (CCRI); survivor of nonconsensual pornography (also known as “revenge porn”) and supporter of hundreds of NCP victims in sharing their stories of victimization in order to take back their power.

Dr. Emma Katz, Ph.D. Senior Lecturer at Liverpool Hope University and internationally respected academic expert on coercive control and domestic abuse.

Aisha Ali-Khan, Women’s Rights Campaigner, UK.

Dr. Saira Khan, PsyD, LCSW, Visiting Lecturer at City University and Counselling Psychologist with expertise in trauma recovery from coercive control.

Professor Laurie S. Kohn, Associate Dean of Jacob Burns Community Legal Clinics, Director, Family Justice Litigation Clinic and Director, Civil Access to Justice Clinic at George Washington University Law School.

Dr. Ingeborg Kraus, Clinical Psychologist, Traumatherapist, and Supervisor in Germany, and expert witness in court in cases of sexual violence.

Tammy Kuennen, Professor of Law and Attorney, University of Denver Sturm College of Law, where she has directed the Civil Litigation Clinic since 2004 representing hundreds of survivors. Professor Kuennen has trained attorneys and judges on issues related to gender-based violence for fifteen years, and has written fifteen articles or book chapters on the topic of how the law might better address the issue of intimate partner violence.

Julia Lee, Clinical Assistant Professor of Law, University of Michigan Law School, focused on clinical teaching and representing domestic violence survivors in protection order, family law and immigration matters.

Julia R. Livingston, Esq., Member of the New York City Bar Association Subcommittee on Domestic Violence.

Lisa McDonald, founder of Live Live Revolution in Australia, Arts Psychotherapist and activist in the field of sexual violence, domestic violence, coercive control, trauma and neuroscience. Ms. McDonald founded Live Live Revolution to support, educate and raise awareness of the effects of sexual violence as a gendered crime and works with women and members of the LGBTQIA+ community and within a feminist intersectional, trauma informed framework.

Dr. Belinda McIntosh, MD, Psychiatrist.

Natalie Nanasi, Associate Professor, Director, Judge Elmo B. Hunter Legal Center for Victims of Crimes Against Women.

Judith G. Olin is Clinical Professor of Law at The University at Buffalo School of Law where she has directed The Family Violence and Women's Rights Clinic for nearly seven years. Olin is a former domestic violence prosecutor and legal services family law attorney where she exclusively represented intimate partner violence survivors.

Tashmia Owen, Artist, Writer and Survivor Advocate in UK family courts.

Alexa Polar, Writer, Director, Producer and Founder of Female Filmmakers Fuse, formed to advocate for the safety of victims of assault, sexual assault and harassment in the entertainment industry.

Dr. Charlotte Proudman, Ph.D. Research Associate at the University of Cambridge on gender inequality under the law and Barrister in family law.

Dr. Lily Kay Ross, PhD, Gender and Ethics Fellow at Psymposia, creator, producer and host for New York Magazine's Cover Story: Power Trip podcast, and expert in gendered and sexual violence.

Rita Smith, International Expert on Violence Against Women with over 40 years' experience in domestic violence and sexual assault.

Roslyn Talusan, Culture Journalist and Anti-Rape Activist.

Camille Waring, Feminist Author, PhD Candidate at University of Westminster, Research in Sexual Violence, Feminism.

Merle H. Weiner, Philip H. Knight Professor of Law at University of Oregon (title and institutional affiliation for identification purposes only). Professor Weiner teaches Torts, Advanced Torts (including defamation), and Gender-based Violence and the Law; she also founded and was the faculty director of the University of Oregon's Domestic Violence Clinic for twenty years.

Sarah Yacoub, Attorney, Founder and Executive Director of Equal Justice Inc., a non-profit that provides pro bono legal representation for trauma survivors, including domestic abuse and sexual assault.

Amy Ziering, Filmmaker focusing on films dealing with issues of sexual assault, family courts and trauma.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of November, 2022, pursuant to Rules 5A:1 and 5A:19, an electronic copy of the Brief of *Amici Curiae* in Support of Appellant Amber Laura Heard has been filed with the Clerk of the Court of Appeals of Virginia, via VACES. On this same day, an electronic copy of the Brief of *Amici Curiae* in Support of Appellant Amber Laura Heard was served, via email, upon:

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I further certify that this Brief contains 10,570 words, excluding those portions that by rule do not count toward the word limit.

/s/ Geoffrey Schmelkin

Geoffrey Schmelkin