

Appellate Division, First Judicial Department Case No. 2023-03054
New York County Family Court Docket No. NN-15499/18

Court of Appeals
State of New York

In the Matter of

LUKAS B.,

A Child Under Eighteen Years of Age Alleged to Be Neglected Pursuant to Article
10 of the Family Court Act

JOE B.,

Respondent-Appellant,

-against-

NEW YORK CITY ADMINISTRATION FOR CHILDREN'S SERVICES,

Petitioner-Respondent.

BRIEF FOR AMICI CURIAE SANCTUARY FOR FAMILIES ET AL.
IN SUPPORT OF RESPONDENT-APPELLANT

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STATUS OF RELATED LITIGATION

Pursuant to the Rules of Practice of the New York Court of Appeals, 22 N.Y.C.R.R. § 500.13(a), *Amici Curiae* state that they are not aware of any related litigation as of the date of filing this brief.

CORPORATE DISCLOSURE STATEMENT

Pursuant to the Rules of Practice of the New York Court of Appeals, 22 N.Y.C.R.R. § 500.1(f), *Amici Curiae* state that no such corporate parents, subsidiaries or affiliates exist.

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INTEREST OF AMICI CURIAE

Amici curiae are non-profit organizations, advocacy groups, and experts that support survivors¹ of domestic violence and related forms of gender-based violence (together, “*Amici*”). *Amici* include: Sanctuary for Families, Garden of Hope, Lawyers Committee Against Domestic Violence, National Network to End Domestic Violence, National Organization for Women Foundation, New York State Coalition Against Domestic Violence, Safe Horizon, Sakhi for South Asian Survivors, Women’s Law Project, Lansner & Kubitschek, and Dr. Veronica Ades. *Amici* are gravely concerned that the First Department’s holding—which is consistent with precedent in two of the other three Appellate Divisions—will empower abusers and further endanger victims of domestic violence, including intimate partner violence, and related forms of gender-based violence in New York.

Amici believe their understanding of the dynamics of intimate partner violence and the law can assist this Court in considering the issues presented on appeal. Each of the *Amici* is dedicated to eradicating gender-based violence in all its forms and ensuring that survivors receive the full protection of the laws of this State. These organizations and experts are united in their opposition to the dangerous precedent established in the Appellate Division, because it will disproportionately and

¹ Both “survivor” and “victim” can be used to describe someone who is subjected to intimate partner violence, and many advocates prefer the term “survivor.” This brief primarily uses “victim” as that is the term most often used in the cited studies and referenced materials.

materially harm the communities and individuals they are committed to serving, who are among the most vulnerable populations in New York.

PRELIMINARY STATEMENT

Nearly one in six pregnant women in the United States is subjected to intimate partner violence. Pregnancy can both be a trigger for the onset of violence and intensify violence in an already abusive relationship. In the United States, pregnancy can be one of the most dangerous times for an individual—and for individuals in an abusive relationship it can be a death sentence.

The First Department’s holding that Article 10 of the Family Court Act permits a finding of neglect against a father for failing to prevent his partner from using drugs during pregnancy will have devastating consequences for pregnant people in the State of New York—especially for victims of intimate partner violence and related forms of gender-based violence. Victims of gender-based violence already experience compromised bodily and reproductive autonomy. The First Department’s holding, which is consistent with precedent of two other Departments of the Appellate Division, will further infringe upon that autonomy and put victims at increased risk of harm, up to and including death. This dangerous precedent empowers abusers and effectively creates a State-sanctioned license for prospective fathers to control the actions of their pregnant partners.

Creating a State-sanctioned duty to monitor and control a pregnant person, as the First Department has here, provides abusers with a legal justification—if not an imperative—to exert coercive control over their partners during pregnancy and reverses decades of legislative, judicial, and social progress toward gender equality. The challenged doctrine turns back the clock on women’s rights in this State, violates fundamental constitutional protections, and puts the most vulnerable New Yorkers at further risk of injury and death.

ARGUMENT

The First Department’s holding establishes a duty for prospective fathers to control the actions of their pregnant partners, which will exacerbate intimate partner violence and related forms of gender-based violence in New York.² Providing a potential father with this type of coercive control over a pregnant person is precisely the overreach warned against in the plurality opinion in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992) (“*Casey*”), *overruled on other grounds by Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (“*Dobbs*”), where the United States Supreme Court struck down a Pennsylvania abortion statute’s spousal notice requirement. Although the Supreme Court reversed *Casey* on other grounds, the plurality’s admonition remains every bit as salient today

² While this Amicus Brief focuses on the role of potential fathers and the ruling’s impact on women, *anyone* can be a victim of domestic violence or IPV, regardless of gender, race, sexual orientation, or age.

that “[a] State may not give to a man the kind of dominion over his wife that parents exercise over their children.” *Casey*, 505 U.S. at 898. Yet this kind of dominion is precisely what the First Department has granted putative fathers—to the detriment of all people in this State who may become pregnant, but especially for victims of intimate partner violence and other forms of abuse. Now that the Supreme Court’s ruling in *Dobbs* has returned the issue of abortion to the states, it is up to this Court to take up the issue, correct this dangerous and outdated doctrine, and ensure that every individual enjoys the full protections of the New York State Constitution, including the fundamental right to bodily autonomy.

I. THE FIRST DEPARTMENT’S HOLDING CREATES A DANGEROUS INCENTIVE TO CONTROL PREGNANT PEOPLE, WHICH WILL INCREASE THEIR RISK OF SUFFERING FROM VIOLENCE, HARM, AND DEATH

a. *Domestic violence is a pattern of abusive behavior used to exert power and control*

Domestic violence is a pattern of abusive behavior in which an abuser exerts power and control over another individual in an intimate partner, dating or family relationship. Domestic violence can be physical, sexual, psychological or emotional, reproductive, technological, legal and/or economic in nature. Abusive behavior is rarely an isolated incident and often escalates in both frequency and severity over time. Different forms of abuse often overlap and compound to control or influence

an individual’s behavior in the relationship.³ Intimate partner violence (“IPV”) is domestic violence perpetrated by a current or former intimate partner.

Reproductive abuse can lead to both unintended and non-consensual (or even forced) pregnancies. Reproductive abuse may include efforts to impregnate an individual against their will, including by forcing or coercing an individual to have unprotected sex, sabotaging birth control, interfering with access to healthcare, and other types of reproductive abuse.⁴ Reproductive abuse can render victims of IPV unable to prevent pregnancy. Unintended pregnancies are highly correlated with IPV, both as cause and effect—while IPV or reproductive coercion may lead to unintended pregnancies, unintended pregnancies can also lead to IPV (as discussed further in section (c) below).⁵

³ The “Power and Control Wheel,” used by many anti-violence advocates and organizations, is a helpful tool to understand the interrelated patterns of abusive and violent behaviors. *See, e.g., Power & Control Wheel*, Sanctuary For Families, <https://sanctuaryforfamilies.org/wp-content/uploads/sites/18/2015/07/Power-Control-Wheel.pdf> (last visited Feb. 23, 2025); *What is Domestic Violence?*, Sanctuary For Families, <https://sanctuaryforfamilies.org/gender-violence/domestic-violence/> (last visited Feb. 23, 2025).

⁴ *See generally*, Am. Coll. of Obstetricians & Gynecologists, *Committee Opinion No. 554: Reproductive and Sexual Coercion*, 121 *Obstetrics & Gynecology* 411 (Feb. 2013, reaffirmed 2022).

⁵ *See e.g.,* Kathleen Basile et al., *Rape-Related Pregnancy and Association With Reproductive Coercion in the U.S.*, 55(6) *Am. J. Preventive Med.* 770, 774 (2018); Elizabeth Miller & Jay G. Silverman, *Reproductive coercion and partner violence: implications for clinical assessment of unintended pregnancy*, 5(5) *Medscape* 1, 1 (Sept. 2010); Am. Coll. of Obstetricians & Gynecologists, *Committee Opinion No. 518: Intimate Partner Violence*, 119(2) *Obstetrics & Gynecology* 1, 1 (Feb. 2012, reaffirmed 2022), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2012/02/intimate-partner-violence>.

IPV and related abuse can trap victims in unsafe relationships and make it difficult—if not impossible—to exercise bodily and reproductive autonomy before, during, and after pregnancy. Victims of IPV may be unable to access abortion services and/or prenatal care during their pregnancies, including care related to substance use or abuse. Abusers may also force victims to continue their pregnancies against their will.⁶ For pregnant people who suffer from or are at risk for IPV and related forms of abuse, the First Department’s holding creates a perverse incentive for their current or former partners to exert coercive control over them—putting them at increased risk of harm.

b. Intimate partner violence is pervasive in New York

Domestic violence, including IPV, remains pervasive in New York. In 2023 (the most recent year for which data is available), the New York State Division of Criminal Justice Services (“DCJS”), which collects information on domestic violence incidents reported through the Uniform Crime Reporting program, recorded 42,550 victims of domestic violence in New York City counties alone (29,372 of whom were victims of IPV), and 52,643 victims of domestic violence across the rest of the State (35,947 of whom were victims of IPV).⁷ These numbers are extreme

⁶ See *Committee Opinion No. 518: Intimate Partner Violence*, *supra* note 5, at 1; Miller & Silverman, *supra* note 5, at 1.

⁷ See Domestic Violence Victim Data by County: 2023, Division of Criminal Justice Services (last visited Feb. 25, 2025), <https://www.criminaljustice.ny.gov/crimnet/ojsa/domesticviolence2023/index.htm> (“DCJS 2023 Data”).

undercounts, as they include only reports for certain offenses,⁸ and domestic violence and related forms of gender-based violence are consistently and drastically underreported. Indeed, it is estimated that “less than half (41%) of violent victimizations were reported to police.”⁹ In fact, rates of domestic violence continue to increase in New York each year, even as other crime rates decrease. Between 2020 and 2023, domestic violence reports across the State increased overall by more than 20% according to data reported by the DCJS.¹⁰ Reports of IPV increased by approximately 18%.¹¹ As the leading nonprofit in New York State dedicated exclusively to serving victims, Sanctuary alone serves more than 8,500 survivors of domestic violence, sex trafficking, and related forms of gender-based violence each year.

Domestic violence frequently turns lethal. From 2014 through 2023, domestic violence homicides accounted for approximately 16.5% of all homicides that occurred in New York City.¹² In recent years, the number of domestic violence

⁸ Specifically, aggravated assault, simple assault, sex offenses, and violations of protective orders for non-New York City counties and felony assault, assault three and related offenses, sex offenses, and violations of protective orders in New York City counties. *See id.*

⁹ *See, e.g.,* Rachel E. Morgan & Jennifer L. Truman, *Criminal Victimization, 2019*, U.S. Dep’t of Just., Bureau of Just. Stats. 1 (Sept. 2020), <https://bjs.ojp.gov/content/pub/pdf/cv19.pdf>.

¹⁰ *See* DCJS 2023 Data, *supra* note 7; Domestic Violence Victim Data by County: 2020, Division of Criminal Justice Services (last visited Feb. 25, 2025), <https://www.criminaljustice.ny.gov/crimnet/ojsa/domesticviolence2020/index.htm> (“DCJS 2020 Data”).

¹¹ *Id.*

¹² *New York City Domestic Violence Fatality Review Committee: 2024 Annual Report*, Mayor’s Office to End Domestic and Gender-Based Violence, 3

homicides has increased in New York City. From 2021 to 2022, domestic violence homicides increased by nearly 30%, even as homicides decreased by 11% citywide.¹³ In 2023, the number of IPV homicides was similarly high, with only one fewer homicide reported.¹⁴ Women of color, who are disproportionately subjected to IPV, are also being killed at higher rates. According to the 2023 New York City Domestic Violence Fatality Review Committee Report, Black women “accounted for 31.2% of intimate partner homicides, while accounting for 13.0% of the population in New York City,” and Hispanic women “accounted for 27.3% of intimate partner homicides, while accounting for 14.6% of the population in New York City.”¹⁵ The New York City Mayor’s Office to End Domestic and Gender-Based Violence, which conducts annual analyses of New York City’s domestic violence homicides, has reported that it is “clear that communities of color are disproportionately affected, with Black females being particularly adversely impacted.”¹⁶

<https://www.nyc.gov/assets/ocdv/downloads/pdf/2024-Annual-FRC-Report.pdf> (“2024 DVFRC Report”).

¹³ Brittany Kriegstein, *Domestic violence deaths are rising in NYC, especially among women of color*, GOTHAMIST (Apr. 1, 2024), <https://gothamist.com/news/domestic-violence-deaths-are-rising-in-nyc-especially-among-women-of-color>. See also New York City Domestic Violence Fatality Review Committee: 2023 Annual Report, Mayor’s Office to End Domestic and Gender-Based Violence, 4, <https://www.nyc.gov/assets/ocdv/downloads/pdf/2023-Annual-FRC-Report.pdf> (“2023 DVFRC Report”) (finding that IPV homicides increased from 24 in 2021 to 31 in 2022, with an annual average of 33 from 2010-2022).

¹⁴ 2024 DVFRC Report, *supra* note 12, at 3.

¹⁵ 2023 DVFRC Report, *supra* note 13, at 8.

¹⁶ *Id.* at 1.

This scourge is not unique to New York—nationwide, at least one in four women will be subjected to domestic violence in her lifetime.¹⁷ According to a recent report on IPV based on the National Intimate Partner and Sexual Violence Survey (“NIPSVS”), nearly one in five women reported experiencing some kind of sexual violence by an intimate partner, while more than two in five women reported experiencing physical violence by an intimate partner in their lifetime.¹⁸ According to that same report, in the twelve months immediately preceding the survey, 3.2% of women—representing four million women across the country—reported experiencing some kind of sexual violence and 4.5% of women—representing 5.6 million women across the country—reported experiencing physical violence perpetrated by an intimate partner.¹⁹ Safe Horizon, as the largest victim service agency in the country, assists approximately 250,000 individuals experiencing domestic violence and related forms of abuse each year.

According to the CDC, approximately one in five victims of homicide nationwide are killed by an intimate partner, and more than half of female victims

¹⁷ Centers for Disease Control & Prevention, *Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence—United States, 2005*, 57(5) *Morbidity & Mortality Wkly. Rep.* 113, 115 (Feb. 8, 2008), <http://www.cdc.gov/mmwr/PDF/wk/mm5705.pdf>.

¹⁸ Ruth W. Leemis et al., *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Intimate Partner Violence*, Ctrs. For Disease Control & Prevention (Oct. 2022), 4-5, https://www.cdc.gov/nisvs/documentation/NISVSReportonIPV_2022.pdf.

¹⁹ *Id.* at 4.

are killed by a male intimate partner or former intimate partner.²⁰ In one study that analyzed more than 10,000 homicides between 2003 and 2014, the CDC found that, where circumstances were known, more than half of homicides involving a female victim were IPV-related and that “[a]mong IPV-related homicides, 79.2% and 14.3% were perpetrated by a current or former intimate partner, respectively.”²¹ In 2020, men killed more than 2,000 women—in cases where the victims knew the perpetrator, *at least* 60 percent were killed by their current or former intimate partner.²²

c. Pregnancy is an especially dangerous time for victims of IPV

Pregnant women are at increased risk of domestic violence and more than 300,000 pregnant women are abused each year in the United States.²³ A woman’s odds of experiencing IPV increase by 10% with each pregnancy.²⁴ Women with unintended pregnancies are more than twice as likely to experience abuse than

²⁰ *About Intimate Partner Violence*, Ctrs. for Disease Control & Prevention (May 16, 2024), <https://www.cdc.gov/intimate-partner-violence/about/index.html> (last visited Feb. 28, 2025).

²¹ Emiko Petrosky et al., *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003–2014*, 66(28) *Morbidity & Mortality Wkly. Rep.* 741, 743 (July 21, 2017), <https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm6628a1.pdf>.

²² *When Men Murder Women: An Analysis of 2020 Homicide Data*, Violence Pol’y Ctr., <https://vpc.org/when-men-murder-women-section-one/> (last visited Feb. 28, 2025). This figure is likely an undercount, as the FBI Supplemental Homicide Report does not include “ex-boyfriend” or “ex-girlfriend” among relationship categories.

²³ *Committee Opinion No. 518: Intimate Partner Violence*, *supra* note 5, at 2.

²⁴ Rebekah E. Gee et al., *Power over Parity: Intimate Partner Violence and Issues of Fertility Control*, 201 *Am. J. Obstetrics & Gynecology* 148, 148 (2009).

women who have intended pregnancies.²⁵ The risk of physical violence increases further still for women who have *unwanted* (as opposed to simply *unintended*) pregnancies.²⁶

Pregnancy is not only a trigger for the onset of IPV—it can also intensify the violence in an already abusive relationship. This leaves pregnant and postpartum people at heightened risk of severe harm and even death. Homicide is one of—if not the—leading cause of death for pregnant and postpartum people in the United States.²⁷ During 2018 and 2019, the homicide rate for pregnant and postpartum women was 16% higher than the homicide rate for women of reproductive age who were not pregnant or postpartum.²⁸ That rate rose further still to 35% in 2020.²⁹ As the New York Times recently reported, “a woman’s risk of being killed grows when she becomes pregnant and after giving birth – by about 20 percent, on average” in

²⁵ Mary M. Goodwin et al., *Pregnancy Intendedness and Physical Abuse Around the Time of Pregnancy: Findings From the Pregnancy Risk Assessment Monitoring System, 1996-1997*, 4(2) *Maternal and Child Health J.* 85, 89 (June 2000); Heidi D. Nelson et al., *Associations of Unintended Pregnancy With Maternal and Infant Health Outcomes: A Systematic Review and Meta-analysis*, 328(17) *JAMA* 1714, 1721 (Nov. 1, 2022) (finding that unintended pregnancy was significantly associated with higher odds of interpersonal violence (14.6% vs. 5.5%)).

²⁶ Julie A. Gazmararian, et al., *The Relationship Between Pregnancy Intendedness and Physical Violence in Mothers of Newborns*, 85(6) *Obstetrics & Gynecology* 1031, 1034 (June 1995); see also Denise V. D’Angelo, et al., *Differences Between Mistimed and Unwanted Pregnancies Among Women Who Have Live Births*, 36(5) *Perspectives on Sexual and Reproductive Health* 192 (2004).

²⁷ See Maeve Wallace et al., *Homicide During Pregnancy and the Postpartum Period in the United States, 2018-2019*, 138(5) *Obstetrics & Gynecology* 762, 762 (Nov. 2021).

²⁸ *Id.* at 764.

²⁹ Maeve E. Wallace, *Trends in Pregnancy-Associated Homicide, United States, 2020*, 112(9) *Am. J. Pub. Health* 1333, 1334 (2022).

the United States.³⁰ This is especially true for women under 25 who become pregnant, as “their odds of death by homicide more than double.”³¹

d. Victims of IPV are more likely to use alcohol, marijuana or other substances during pregnancy

IPV is also correlated with higher risk for anxiety, post-traumatic stress disorder (PTSD), depression, and substance abuse.³² In fact, many victims turn to alcohol or other intoxicating substances to escape mentally from painful or traumatic situations, or to self-medicate in order to treat symptoms of PTSD or other mental health conditions caused by the abuse. This is particularly true when the victim is constrained in their ability to access medical treatment, whether due to surveillance and control by the abuser, financial limitations, or a combination of these and other factors. Victims who abuse drugs or alcohol may also fear judgment or legal consequences, particularly if they are pregnant and in an abusive relationship.

A recent study conducted using Pregnancy Risk Assessment Monitoring System data found that all types of IPV were associated with substance use during pregnancy, along with delayed or no prenatal care, low birth weight and/or having a

³⁰ Sara Chodosh, *The Killings of Young Mothers*, N.Y. Times (Dec. 9, 2024), <https://www.nytimes.com/interactive/2024/12/09/opinion/pregnant-women-homicide.html>.

³¹ *Id.*

³² See Mayumi Okuda Benavides et al., *Intimate Partner Violence: A Guide for Psychiatrists Treating IPV Survivors*, Am. Psychiatric Ass’n, <https://www.psychiatry.org/psychiatrists/diversity/education/intimate-partner-violence> (last visited Feb. 27, 2025).

preterm birth.³³ Substance use included cigarette smoking, alcohol use, marijuana or illicit substances, such as opioids. Deaths from drug overdose have consistently increased for pregnant and postpartum people in recent years.³⁴ One recent study found that:

[m]ental health-related deaths, including deaths by manner of suicide, overdose or poisoning related to substance use disorder, and other deaths determined to be related to a mental health condition, are the leading cause of pregnancy-related deaths.³⁵

Victims are both more likely to use illicit substances during pregnancy and to be prevented from accessing the healthcare they need—whether to support (or terminate) their pregnancy or to get treatment for addiction or withdrawal. As a result, they are at increased risk both of criminalization by the State for substance use during pregnancy and death—whether by IPV or overdose.

The First Department’s holding will therefore disproportionately impact this already vulnerable population, creating further barriers to health and safety for victims while simultaneously empowering their abusers. In fact, victims of IPV may be even less likely to seek medical care for substance abuse if doing so could subject

³³ Megan Steele-Baser, et al., *Intimate Partner Violence and Pregnancy and Infant Health Outcomes — Pregnancy Risk Assessment Monitoring System, Nine U.S. Jurisdictions, 2016–2022*, 73(48) *Morbidity & Mortality Wkly. Rep.* 1093, 1096 (Dec. 5, 2024).

³⁴ See, e.g., Beth Han, et al., *Pregnancy and Postpartum Drug Overdose Deaths in the US Before and During the COVID-19 Pandemic*, 81(3) *JAMA Psychiatry* 270, 274 (2024).

³⁵ Steele-Baser, *supra* note 33, at 1096.

their abuser to a neglect finding, which could lead the abuser to retaliate against the victim.

II. PREGNANCY IS OFTEN A TOOL OF CONTROL FOR ABUSERS

Like other forms of IPV, reproductive abuse is premised on the abuser's exertion of power and control over their partner. As argued by pioneering domestic violence researchers Dr. Evan Stark and Dr. Anne Flitcraft, the driving force behind IPV can be better understood as not physical violence but a campaign of physical and psychological strategies to bend the victim to the abuser's will.³⁶ Coercive control, an aspect of domestic violence that "refers to a systemic pattern of behavior that establishes dominance over another person through intimidation, isolation, and [other methods]"³⁷ is estimated to affect over 50 million people during their lifetimes.³⁸ All of these behaviors can work together to inflict reproductive abuse, and ultimately serve to further entrap victims in dangerous relationships.

a. IPV is highly correlated with rape, sexual assault, and reproductive abuse

Abuse within an intimate partner relationship takes on many forms, including physical and sexual violence, isolation, emotional abuse, financial control, threats, and surveillance. Physical violence against intimate partners is closely connected

³⁶ See Evan Stark & Anne Flitcraft, *Women and Children at Risk - A Feminist Perspective on Child Abuse*, 10:1 Int'l J. of Health Services (1988).

³⁷ Dichter et al., *Coercive Control in Intimate Partner Violence: Relationship with Women's Experience of Violence, Use of Violence, and Danger*, 8 Psychol. Violence 596, 597 (2018).

³⁸ Leemis, *supra* note 18, at 25.

with reproductive abuse.³⁹ Women who have suffered IPV are nearly three times more likely to report that their partner made it difficult for them to use birth control.⁴⁰ Abusers may coerce victims into stopping their use of birth control or forcefully prevent them from doing so.⁴¹ Indeed, some victims may acquiesce to reproductive coercion to escape further violence.⁴² According to a nationally representative study conducted by the CDC, nearly three million American women have experienced rape-related pregnancy—nearly one in six victims of rape.⁴³ The vast majority of these women (77.3%) reported the assault was committed by a current or former intimate partner.⁴⁴

For example, RH⁴⁵ faced extensive reproductive abuse prior to seeking services at Sanctuary for Families. Her abuser actively sought to prevent her from obtaining an abortion during their relationship, including by calling clinics and other organizations to ask if he had any legal rights to stop her. He also disclosed to her family that she had undergone an abortion in an effort to coerce her into returning to

³⁹ See Miller & Silverman, *supra* note 5, at 2-3 (Sept. 2010).; *Committee Opinion No. 518: Intimate Partner Violence*, *supra* note 5, at 1.

⁴⁰ Miller & Silverman, *supra* note 5, at 2-3.

⁴¹ See e.g., Ann Moore et al., *Male reproductive control of women who have experienced intimate partner violence in the United States*, 70(11) *Social Science Medicine* 1737, 1740-41 (2010) (For example, one woman described her partner “act[ing] out” if she took birth control pills and pulling out her NuvaRing (a hormone-releasing ring inserted into the vagina).).

⁴² Basile, *supra* note 5, at 774.

⁴³ *Id.* at 772.

⁴⁴ *Id.*

⁴⁵ For the purpose of maintaining confidentiality, names of Sanctuary clients have been anonymized throughout this brief.

the relationship. RH's story is distressing, but her experience is far from unique—14% of men who acknowledged perpetrating IPV report that they attempted to prevent their partner from obtaining an abortion.⁴⁶

Many abusers attempt to impregnate their partner to force them to stay in the relationship, and to make them more vulnerable to coercive control. Pregnancy itself is a powerful tool for abusers seeking to exacerbate power imbalances in a relationship. Abusers may utilize a variety of forms of abuse, such as sexual violence and coercive control, to impregnate their partners. Unplanned and non-consensual pregnancies, both of which commonly occur within abusive relationships, can increase a victim's feelings of helplessness and powerlessness. When legal restrictions on reproductive healthcare access are in place, or when a victim is unaware of their rights or unable to access reproductive healthcare, this power imbalance is compounded further. Victims who are isolated or facing financial abuse may feel an increased sense of dependence on the abuser.

Pregnant victims are faced with a series of decisions, such as whether to continue with their pregnancies, where they want to receive medical care, and how they want to raise a child. Abusers often interfere with the pregnant victim's decision-making process through manipulation, intimidation, force, and other forms

⁴⁶ Jay G. Silverman et al., *Male Perpetration of Intimate Partner Violence and Involvement in Abortions and Abortion-Related Conflict*, 100(8) Am. J. Pub. Health 1415, 1416 (Aug. 2010).

of pressure. For example, when Sanctuary client TI became pregnant after her abuser ejaculated inside her without her consent, her abuser kicked her stomach and threatened to kill himself if TI did not end the pregnancy.

During pregnancy, victims fear the impact of physical violence on not only their own health but also the health of their pregnancy. Physical violence during pregnancy frequently causes emergency medical conditions, resulting in increased suffering and pain for victims along with the risk of injury, miscarriage, and death. Complications resulting from physical abuse during pregnancy can require stabilizing treatment, including abortion care.⁴⁷ Restrictions on reproductive healthcare, the criminalization of pregnancy outcomes,⁴⁸ and misinformation regarding reproductive healthcare restrictions increase victims' fear and may deter them from seeking help or medical attention. Victims who do not speak English or who recently moved to New York are particularly vulnerable to misinformation regarding healthcare options and susceptible to fears regarding the criminalization of pregnancy outcomes, which abusers use to their advantage to maintain power and control.

⁴⁷ See e.g., Ariel Sklar et al., *Maternal Morbidity After Preterm Premature Rupture of Membranes at <24 Weeks' Gestation*, 226 Am. J. Obstetrics & Gynecology 558.e1, 558.e7 (Apr. 2022), <https://pubmed.ncbi.nlm.nih.gov/34736914/>.

⁴⁸ See generally Purvaja S. Kavattur, et al., *The Rise of Pregnancy Criminalization: A Pregnancy Justice Report*, Pregnancy Justice (Sept. 2023), <https://www.pregnancyjusticeus.org/wp-content/uploads/2023/09/9-2023-Criminalization-report.pdf>.

b. Pregnancy and co-parenting with an abuser make it significantly more difficult for IPV victims to escape abuse.

Co-parenting entangles a victim's life with the life of their abuser socially, legally, and financially. Abusers commonly leverage pregnancy and children to inflict further psychological, physical, and verbal abuse on victims. An abuser may threaten to extend their physical violence to the child, threaten to take the child away from the victim, verbally degrade the victim to the child, and withhold funds necessary for the child's care, among other control tactics. In relationships involving financial abuse, pregnancy and parenting can increase a victim's financial dependence on the abuser, further restricting a victim's ability to achieve financial independence. Additionally, a child increases the many barriers a victim already faces when trying to flee an abusive relationship: fears for the safety of themselves and their child, concern for the psychological and emotional well-being of their child, increased difficulty being financially independent and securing adequate housing, shame and guilt, and cultural or familial pressures.

Even if the victim manages to leave the abuser, the abuser can use the child to track the victim's whereabouts and communicate with the victim, make frivolous reports to child protective services, and entangle the victim in years-long court proceedings over matters such as custody and visitation. Co-parenting with an abusive partner presents its own challenges, as most victims must continue to communicate with their abusers about parenting schedules as well as major

decisions, including medical, educational, and religious aspects of their child(ren)'s upbringing.⁴⁹

- c. *Creating a legal duty for prospective fathers to control their pregnant partners' actions ignores the power and control dynamic of IPV and amplifies the power imbalance in abusive relationships*

Victims often face physical, emotional, and financial abuse if they attempt to access healthcare services independently. Abusers have a strong interest in limiting their partners' access to medical care to hide the abuse and frequently exercise coercive tactics to inhibit such access. In addition to outright restricting and monitoring a victim's access to healthcare, abusers often track victims' phone and Internet usage.⁵⁰ These tactics further isolate victims as they seek safety and necessary medical care. In order to access any services during pregnancy—including any treatment for substance abuse—victims may need to take extra precautions to evade surveillance and interference by the abuser.

In some cases, victims may be unable to access services no matter what precautions they take to combat the abuser's control. CC came to Sanctuary for

⁴⁹ Although the Court of Appeals has held that joint legal custody (i.e., shared decision making) “is insupportable when parents are severely antagonistic and embattled,” *Braiman v. Braiman*, 44 N.Y.2d 584, 587 (1978), including where domestic violence is present, in practice, many victims continue to share joint legal custody with their abusers.

⁵⁰ See, e.g., *A Glimpse From the Field: How Abusers are Misusing Technology*, Nat'l Network to End Domestic Violence (2014), 2, https://static1.squarespace.com/static/51dc541ce4b03ebab8c5c88c/t/54e3d1b6e4b08500fcb455a0/1424216502058/NNEDV_Glimpse+From+the+Field+--+2014.pdf. Approximately 71% of domestic abusers monitor victims' computer activities and 54% of abusers track victims' cellphones with stalking apps. *Id.*

Families after her abuser monitored a health app on her phone, using it to track her menstrual cycle and impregnate her. Once she was pregnant, the abuser isolated her—restricting her communications with others, preventing her from leaving the house, and requiring his pre-approval and supervision for any medical appointments. The abuser limited CC’s access to postnatal care so severely that she suffered from untreated issues more than a year after giving birth.

These coercive tactics and controlling behaviors employed by abusers similarly impede victims’ ability to access other services during pregnancy—including those that might enable them to flee domestic violence, engage in mental health treatment, and address issues related to substance use both privately and confidentially. For many victims, the abuser’s extensive control forces them to cope with their trauma alone, without the ability to access any outside support. This results in victims turning to self-help methods, including substance use. Imposing a legal duty on prospective fathers to stop their current or former partners from using drugs during pregnancy ignores the reality that too many victims of IPV face and subjects them to further coercive control.

III. THE CHALLENGED DOCTRINE EMPOWERS PROSPECTIVE FATHERS TO COERCIVELY CONTROL THEIR PREGNANT PARTNERS

- a. Imposing a legal duty on prospective fathers to control their partners during pregnancy empowers abusers and imperils victims*

Pregnancy exacerbates the power imbalance inherent in abusive relationships, and the doctrine affirmed by the First Department in *Lukas B.* increases the peril faced by pregnant IPV victims. This is particularly true for pregnant people who struggle with substance abuse and addiction. Not only does the doctrine provide abusers with a legal justification to abuse and control their partners during pregnancy, in some cases, it creates a legal duty to do so. For this reason, the doctrine may even introduce abuse and control into a relationship where it had not previously existed. In relationships that were already beset by domestic violence, the doctrine may exacerbate the severity or frequency of abuse by imbuing the abuse with a veneer of legal legitimacy.

These risks are far from speculative. For example, in one case in Maryland, a husband was charged with physically abusing and falsely imprisoning his pregnant wife. *Marquardt v. Maryland*, 882 A.2d 900, 913 (Md. Ct. Spec. App. 2005). He asserted the defense of necessity, arguing that he was compelled to commit the brutal assault to protect the fetus from his wife's use of crack cocaine. This defense was rightly rejected, but the case demonstrates the complex dynamics of IPV, substance abuse, and pregnancy. It also illustrates why requiring prospective fathers to control

their pregnant partner’s drug use can cause and exacerbate IPV, to the detriment of both maternal and fetal health.

b. The challenged doctrine impermissibly deprives pregnant people of their bodily autonomy by virtue of being pregnant—precisely when they face the greatest risk of IPV

As providers of services to victims of IPV, *Amici* know firsthand how critically important it is to promote victims’ agency and autonomy. When providing services—whether legal, clinical or otherwise—to victims, *Amici* must be constantly mindful of the need to empower their clients, rather than deplete their already-diminished sense of autonomy. Those who are subjected to IPV—much like those struggling with substance abuse—often feel that they have little to no control over their lives. This perceived absence of agency prevents countless victims from seeking help to escape their abusive relationships, just as it prevents many who are struggling with addiction from obtaining treatment. Indeed, a patient’s desire to recover is a key component of successful substance abuse treatment,⁵¹ and the same is true for domestic violence interventions. The individual must *want* to change their circumstances and, at some level, believe in their ability to achieve that goal. The doctrine reaffirmed in *Lukas B.* thwarts that agency, sending a clear message to pregnant people struggling with substance abuse that they are subject to their

⁵¹ See generally D. Werb et al., *The Effectiveness of Compulsory Drug Treatment: A Systematic Review*, 28 Int’l J. Drug Policy 1 (Dec. 2015).

partner's control. Particularly when that partner is abusive, depriving the pregnant person of this critical autonomy may negate any realistic chance of recovering from substance abuse or escaping their abusive relationship and building a life free from violence.

IV. THE CHALLENGED DOCTRINE CONFLICTS WITH NEW YORK DOMESTIC VIOLENCE LAWS AND PROMOTES A MISOGYNISTIC AND PATRIARCHAL IDEOLOGY THAT FACILITATES IPV

The doctrine in question undermines decades of legislative, judicial and social progress in recognizing and addressing gender equality and domestic violence in New York, nationally, and globally. Reminiscent of the laws of coverture and marital rape, it promotes a dangerously misogynistic and patriarchal ideology that facilitates IPV.

The common law doctrine of coverture held that a married woman's "very being or legal existence" was subsumed into that of her husband, "under whose wing, protection, and cover she performs everything."⁵² Under coverture, "husbands [held] rights in their wives' property and earnings, and prohibited wives from contracting, filing suit, drafting wills, or holding property in their own names."⁵³ While this doctrine has been largely dismantled over time, the holding in *Lukas B.*, illustrates how the vestiges of coverture continue to plague New York jurisprudence.

⁵² William Blackstone, *Commentaries on the Laws of England*, 442 (1765-1769).

⁵³ Reva B. Siegel, *The Modernization of Marital Status Law*, 82 *Geo. L.J.* 2127, 2127 (1993).

This remains true, despite many laudable advancements in laws pertaining to gender equality and domestic violence in New York over more than a century. Historically, domestic violence had been viewed as a private matter in which the legal system ought not interfere. Gradually, New York laws have evolved to recognize the need to legally redress domestic violence, but many of the most pernicious relics of coverture persisted until quite recently. For instance, it was not until 1984 that this Court recognized that rape could occur in the context of marriage.⁵⁴

The New York State legislature has taken great steps toward recognizing gender equality under the law and modernizing legislation to grapple with the complexities of domestic violence. For example, in 1996, the legislature amended the Domestic Relations Law to require courts to consider proven domestic violence when making decisions about child custody and visitation.⁵⁵ In 1998, the legislature amended the Domestic Relations Law and Family Court Act to prohibit granting custody or visitation to a person convicted of murdering the subject child's parent.⁵⁶ In 2001, New York created Integrated Domestic Violence Courts. In 2002, when passing New York's version of the Uniform Child Custody Jurisdiction and Enforcement Act, the New York State legislature added several provisions not

⁵⁴ *People v. Liberta*, 64 N.Y.2d 152 (1984).

⁵⁵ N.Y. Dom. Rel. Law § 240(1)(a).

⁵⁶ N.Y. Dom. Rel. Law § 240(1-c)(a); N.Y. Family Ct. Act § 1085.

contained in the model code, specifically to ensure “that victims of domestic violence and child abuse are protected.”⁵⁷ Since then, New York has enacted countless laws, *inter alia*, strengthening victims’ abilities to obtain orders of protection, expanding access to victim services, amending the Penal Code to recognize stalking and technology-facilitated abuse as crimes, and otherwise recognizing that domestic violence is a crime, not merely a private, family matter outside the reach of the courts.

The doctrine employed in *Lukas B.* erodes this progress, reverting to the days of coverture, when husbands were not merely allowed but expected to control every aspect of their wives’ existence. For instance, in the *Matter of Orlando R.*, the First Department noted that the father had “placed [his pregnant girlfriend] in the home of a friend who he knew was a drug user.” 112 A.D.3d 525, 525, 977 N.Y.S.2d 30 (1st Dep’t 2013). The notion that a pregnant woman could be “placed” in a home implicitly equates her to a child “placed” in foster care, revealing the misguided, patriarchal assumptions underlying the challenged doctrine.

Upholding this doctrine would send a dangerous message to abusers, and one that conflicts with the principled convictions underlying the progress New York has made in relation to domestic violence laws over many decades. To show that New York takes IPV seriously, this Court must abolish the dangerous, misogynistic

⁵⁷ N.Y. Dom. Rel. Law § 75.

doctrine that legally justifies abusers' exertion of power and control over their pregnant partners.

CONCLUSION

For the foregoing reasons, this Court should grant Respondent-Appellant's motion for leave to appeal the First Department's decision and reverse the dangerous misinterpretation of Article 10 of the Family Court Act as adopted by the First, Second, and Third Departments of the Appellate Division.

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CERTIFICATE OF COMPLIANCE

Pursuant to Court of Appeals Rules of Practice 500.1(j) and 500.13(c)(1), the undersigned certifies that the foregoing brief uses a proportionally spaced typeface (Times New Roman) in 14-point type and contains 6,183 words, exclusive of the contents listed in Rule of Practice 500.13(c)(3).

Dated: March 4, 2025

Sarah B. Gutman, Esq.