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WASHINGTON STATE COURT OF APPEALS
DIVISION III

MARY E. JONES,
Appellant,

v.

MICHAN T. CARTER,
Respondent.

AMICUS CURIAE BRIEF OF
SEXUAL VIOLENCE LAW CENTER and LEGAL VOICE
IN SUPPORT OF THE APPELLANT

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	IDENTITY AND INTEREST OF AMICI	2
III.	STATEMENT OF THE CASE	3
IV.	ARGUMENT	3
	A. Harmful and Inaccurate Rape Myths Appear in The Legal System and Society at Large.....	4
	1. Rape Myth: Rape requires force and resistance.....	5
	2. Rape Myth: It’s just two, consenting adults	11
	3. Rape Myth: Hue and cry, and delayed reporting.....	19
	4. Rape Myth: The victim is responsible for the rape	22
	B. The Threat of Negative Repercussions Deters People from Reporting Sexual Assault.....	28
V.	CONCLUSION	34
VI.	CERTIFICATION	35

TABLE OF AUTHORITIES

CASES

<i>Pennsylvania v. Carlos Alberto Funes Coreas</i> , 178 MDA (2023).....	11
<i>People v. Clark</i> , 33 Mich. 112, 114 (1876).....	24
<i>State v. Dacke</i> , 59 Wash. 238, 109 P. 1050 (1910).....	23, 24
<i>State v. Hill</i> , 121 N.J. 150, 158, 578 A.2d 370 (1990).....	4
<i>State v. Martinez</i> , 196 Wn.2d 605, 617, 476 P.3d 189 (2020)	3, 4, 19
<i>State v. Muratovic</i> , 22362-1-III (2005).....	11
<i>U.S. v. Kennedy</i> , 890 F.2d 1056 (1989).....	11
<i>U.S. v. Roberts</i> , 86 F.4th 1183 (2023).....	11

STATUTES

Laws of 2013, ch. 94, § 1.....	8
Laws of 2019, ch. 87, § 1.....	22
RCW 4.105.901.....	34
Unif. Pub. Expression Prot. Act prefatory note intro., 13 pt. 2	
U.L.A. 30.....	33

OTHER AUTHORITIES

Ailyn Aguilar Quinonez & Tamara Kuennen, <i>Turning The Tables: How Those Who Are Accused Deny, Attack, And Reverse</i> , 38 Wis. J.L. Gender & Soc’y 64, 74 (2023).....	30
Alyssa Leader, <i>A “SLAPP” in the Face of Free Speech: Protecting Survivors’ Rights to Speak Up in the “Me Too” Era</i> , 17 First Amend. L. Rev. 441, 447-48 (2019).....	30

Charlotte Alter, *Todd Akin Still Doesn't Get What's Wrong With Saying 'Legitimate Rape,'* TIME (July 17, 2014), <https://time.com/3001785/todd-akin-legitimate-rape-msnbc-child-of-rape>..... 6

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DG Kilpatrick et al., *Drug-facilitated, incapacitated, and forcible rape: A national study*. Nat'l Crime Victims Research & Treatment Ctr. (2007), <https://nij.ojp.gov/library/publications/drug-facilitated-incapacitated-and-forcible-rape-national-study>..... 5

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Rebecca Hopkins, *Some Churches Call Clergy Sexual Misconduct an ‘Affair.’ Survivors Are Fighting to Make It Against the Law*, Christianity Today (June 10, 2024), <https://www.christianitytoday.com/2024/06/clergy-sex-abuse-consent-law-crime>..... 12, 13, 14

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Sarah Harsey & Jennifer Freyd, *Defamation and DARVO*, 23(5) J. of Trauma & Dissociation 481-489 (2022), <https://doi.org/10.1080/15299732.2022.2111510>..... 31

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I. INTRODUCTION

Survivors of sexual violence face significant barriers to coming forward, two of those barriers being especially relevant in this case. First, they fear not being believed if their response doesn't align with societal stereotypes. Second, reporting exposes them to potential retaliation, including abusive litigation and defamation threats, designed to punish and silence them.

Trauma from sexual violence is complex and manifests differently based on the person, but societal expectations are often unrealistic. Victims are expected to fight back, immediately disclose, and show visible signs like injuries or torn clothes—stereotypes reinforced by media and outdated legal history.

Society's harmful ideas about sexual assault are founded on centuries-old beliefs that identified women as property and rape was treated as seduction. These ideas insidiously developed into ill-informed expectations of what rape looks like

and how victims should behave during and after an assault. In reality, just as sexual assault victims are diverse, their trauma manifests in many different ways. By better understanding sexual assault and actual trauma responses, the legal system can provide improved responses and remedies to victims, which benefits our communities and contributes to the true administration of justice.

I. IDENTITY AND INTEREST OF AMICI

The interests and identities of Amici are set forth in the Motion for Leave to File Brief of Amici Curiae, filed herewith.

II. STATEMENT OF THE CASE

Amici adopt and incorporate herein the statement of the case from the Appellant's opening brief.

III. ARGUMENT

Societal attitudes toward gender, sexuality, and power are deeply intertwined and have shaped the legal system's approach

to sexual violence, structuring the legal system to protect those in power. As far back as the 1200s, legal scholars expected that “‘when a virgin has been so deflowered and overpowered’ she should ‘hue and cry’ ‘whilst the act is fresh’ and show ‘honest men the injury done to her, the blood and her dress stained with blood, and the tearing of her dress.’” *State v. Martinez*, 196 Wn.2d 605, 617, 476 P.3d 189 (2020), (citing Henrici de Bracton, *De Legibus et Consuetudinibus Angliae* 483 (Travers Twiss ed., trans., 1879)).

“Rape” at that time meant the violent rape of a virgin woman, and did not include women who were not virgins or women who did not sustain bloody physical injuries. *Martinez*, 196 Wn.2d at 618 (citing *State v. Hill*, 121 N.J. 150, 158, 578 A.2d 370 (1990)).

Any justice for a victim “‘depend[ed] more on the power of the victim than the quality of the event,’ rendering the ‘**least powerful[] those most likely to be victimized** in the first instance, [**and**] **also the least likely to obtain any redress.**’”

Martinez, 196 Wn.2d at 617–18 (citing Roger D. Groot, *The Crime of Rape temp. Richard I and John*, 9 J. Legal Hist. 324, 330 (1988)) (emphasis added).

A. Harmful and Inaccurate Rape Myths Appear in The Legal System and Society at Large.

Sexual assault laws have evolved to reflect and reinforce harmful societal norms, often excusing violence and prioritizing perpetrators’ rights over victims’ safety. These legal approaches have created “rape myths”—misinformed beliefs that distort the reality of sexual assault. These legal approaches have formed “rape myths”—prejudiced or uninformed beliefs about rape that do not align with the reality of sexual assault.

1. Rape Myth: Rape requires force and resistance.

One harmful norm is the requirement of force and resistance. This imposes on victims the duty to prove their assault was committed through violent force, and that they physically fought off the perpetrator or screamed for help. The myth of force and resistance perpetuates victim blaming by

implying that a victim who does not physically resist is complicit in their assault.

Expectation of “force and resistance” is a narrow viewpoint that fails to account for the different ways rape actually occurs, such as incapacitated rape,¹ where a victim becomes too intoxicated from voluntarily consumed drugs or alcohol to give consent; intoxicant-facilitated rape,² where substances are deliberately administered without the victim’s knowledge to incapacitate the victim; and sexual coercion,³ where a perpetrator uses pressure, manipulation, or threats to coerce the victim into sexual conduct. Sexual coercion often involves abuse of the perpetrator’s influence, power, or

¹ DG Kilpatrick et al., *Drug-facilitated, incapacitated, and forcible rape: A national study*. Nat’l Crime Victims Research & Treatment Ctr. (2007), <https://nij.ojp.gov/library/publications/drug-facilitated-incapacitated-and-forcible-rape-national-study>.

² *Id.*

³ *Sexual Coercion*, Office on Women’s Health, <https://womenshealth.gov/relationships-and-safety/other-types/sexual-coercion> (last visited Jan. 23, 2025).

authority, for instance by an employer or supervisor, a teacher, or a member of the clergy.

The expectation of force and resistance is not an archaic ideology from long ago—even today, people, including legislators and lawmakers, still believe that only “forcible” rape is true rape. U.S. Representative Todd Akin, who sat on the House Science, Space, and Technology Committee, publicly declared, “If it’s a legitimate rape, the female body has ways to try to shut [conception] down.”⁴ Approximately 5.9 million women in America become pregnant from a sexual assault in their lifetimes.⁵ While Representative Akins was widely criticized for his statement—especially given his role on a

⁴ Charlotte Alter, *Todd Akin Still Doesn’t Get What’s Wrong With Saying ‘Legitimate Rape,’* TIME (July 17, 2014), <https://time.com/3001785/todd-akin-legitimate-rape-msnbc-child-of-rape>.

⁵ Denise D’Angelo et al., *Rape and Sexual Coercion Related Pregnancy in the United States*, 66(3) Am. J. of Preventative Med. 389-398 (2024), [https://www.ajpmonline.org/article/S0749-3797\(23\)00442-7/pdf](https://www.ajpmonline.org/article/S0749-3797(23)00442-7/pdf).

federal committee spearheading science—it reflected the still prevalent idea that some rapes are valid while others are not.

Like many states, Washington codified harmful concepts such as a spousal rape exemption, which made rape between married partners legal. If a rapist could prove he was married to the victim at the time of the assault, it served as a complete defense. Marital rape—not considered “legitimate” rape since women had few civil rights—was not made completely illegal in Washington until 2013.⁶ While there have been advances to align the law with more modern understandings of consent, there is still more to be done to address rape myths embedded in society and legal theories.

It is a myth that rape requires violent force and that all victims fight, and hue and cry. The reality for a victim often is the “fight or flight” response, a well-known psychological reaction to perceived danger, where the body prepares to either

⁶ Laws of 2013, ch. 94, § 1.

confront the threat (fight) or escape it (flight) in order to survive.⁷ This instinctual mechanism, rooted in our evolutionary biology, is designed to help individuals respond quickly to life-threatening situations. However, further research suggests that these are not the only biological responses available when humans face extreme stress.

In addition to fighting or fleeing, there are at least two other critical survival responses—freezing and fawning.⁸ The freeze response occurs when a person becomes immobilized, either due to fear or a sense of helplessness. The fawn (or appease) response involves trying to appease or please others to avoid escalation of violence or further harm.

⁷ See, e.g., Victoria Wilson, *Neuroscience Shows Why Sex Assault Victims “Freeze.” It’s Not Consent*, Duke Research Blog (July 6, 2023), <https://researchblog.duke.edu/2023/07/06/neuroscience-shows-why-sex-assault-victims-freeze-its-not-consent>.

⁸ Pete Walker, *The 4 F’s: A Trauma Typology in Complex PTSD*, https://pete-walker.com/fourFs_TraumaTypologyComplexPTSD.htm (last visited Jan. 1, 2025).

A person responding to trauma by fawning seeks “safety by merging with the wishes, needs and demands of others” and fawning can manifest in gravitation toward narcissistic personalities, codependency, and poor boundaries.⁹ Some liken it to Stockholm Syndrome, where a victim can develop powerful emotional attachments to their abuser and effectively adapt their behavior, including treating their abuser like a friend or lover in attempt to calm the perpetrator and deescalate a situation.¹⁰ “The ability to appease when in an activated state requires sufficient regulation to appear to the perpetrator as being calm.” *Id.* Fawning is similar to appeasement and Stockholm syndrome—it is “the use of people-pleasing to diffuse conflicts and earn approval.” Fawning is a “maladaptive way of creating safety in our connections with others by

⁹ *Id.*

¹⁰ Rebecca Bailey et al., *Appeasement: replacing Stockholm syndrome as a definition of survival strategy*, 14(1) Eur. J. Psychotraumatol (2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9858395>.

essentially mirroring the imagined expectations and desires” of the perpetrator. *Id.*

The Ninth Circuit first recognized the “fight or flight” response in 1989, while Washington State, specifically this court, acknowledged this behavioral response for victims first in 2005. *See U.S. v. Kennedy*, 890 F.2d 1056 (1989), *State v. Muratovic*, No. 22362-1-III (Sept. 2, 2005), unpublished.

Courts have affirmed use of an expert witness to testify about fight, flight, freeze, and fawn response in a sexual assault case. *See U.S. v. Roberts*, 86 F.4th 1183 (8th Cir. 2023). The Superior Court of Pennsylvania (Pennsylvania’s appellate court) noted an expert witness’s testimony regarding the four trauma reactions, noting in particular that “fawning is doing what a person is asking you to do, even if you do not want to, because you think it will make you safer in the long run.” *Pennsylvania v. Carlos Alberto Funes Coreas*, No. 178 MDA 2023 (Dec. 21, 2023) (remanded on other grounds). Together, these four reactions—fight, flight, freeze, and fawn—represent

a range of ways the human body may respond to threat, each shaped by the context and nature of the danger.

2. Rape Myth: It's just two, consenting adults.

Accompanying the force and resistance myth lies the misconception that any adult can freely consent to sexual relations with any other adult. While generally true, there are critical exceptions to this. As previously mentioned, sexual assault can occur through coercion. This is especially true in relationships where there is an imbalance of power, such as between a boss and an employee, a teacher and a student, a corrections officer and an inmate, or a clergy member and a parishioner.

David Pooler, PhD, a licensed clinical social worker, published author, and professor at Baylor University, says that people assume any person can consent once they are 18 years old. Yet, his research found that “there is no ability to consent (to a relationship with a priest) because of the dependence that

the parishioner or congregant had on this priest.”¹¹ Dr. Natalia Imeratori-Lee, Ph.D., a professor of religious studies at Manhattan College, agrees: “[T]he priest, when viewed as superhuman, is always already in a position of power vis-à-vis a layperson. Thus, if a sex act occurs or is initiated by either party, the person with the power is responsible—in this case, the priest.”¹²

In truth, there can never be consensual sex in a clergy-parishioner relationship. While some churches call “clergy sexual misconduct” an affair, survivors across the nation are exposing why it should be unlawful.¹³ Sexual relations between

¹¹ Jack Jenkins, *Can a parishioner consent to a relationship with their priest? New scandal raises question*, America Magazine (June 6, 2019), <https://www.americamagazine.org/politics-society/2019/06/06/can-parishioner-consent-relationship-their-priest-new-scandal-raises>.

¹² *Id.*

¹³ Rebecca Will, *Some Churches Call Clergy Sexual Misconduct an ‘Affair.’ Survivors Are Fighting to Make It Against the Law*, Christianity Today (June 10, 2024), <https://www.christianitytoday.com/2024/06/clergy-sex-abuse-consent-law-crime>.

clergy members and the adults they are spiritually guiding is a crime in 13 states, plus the District of Columbia.¹⁴ Many states already have laws codifying the fact that some professionals, such as doctors and therapists, cannot have consensual sex with clients because the power imbalance makes the client so vulnerable to manipulation.¹⁵

Lucy Huh, a Baylor University researcher who studies clergy sexual abuse, found that sexual conduct between clergy and parishioners looks “**very** different than what happens to people who have affairs.”¹⁶ [Emphasis added.] She points out that “[c]onsensual relationships don’t result in trauma and lifelong suffering.”¹⁷ Research out of Baylor University showed that survivors of adult clergy sex abuse suffered rates of trauma that far exceeded even war veterans.¹⁸ Victims in these cases

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

suffer harm to their reputation, relationships, communities, and even their faith itself, resulting in most remaining silent.¹⁹ One study showed that “only about 10 percent of victims who reported their abuse to their church” received a positive response—some suffered the ultimate consequence of being kicked out their church.²⁰ One victim shared, “When you’ve depended on the institution your whole life to guide the way you live—decisions that you make, how you raise a family—and then suddenly that church just kicks you out and says you’re helping Satan essentially, it is soul destroying.”²¹

Professor Pooler explains that churches often “view women who have been victimized by the pastor as evil. That is a complete turnaround and reversal. [That is] DARVO—deny, accuse, reverse victim and offender—but the entire system can pull a DARVO on someone who has been victimized by a

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

pastor sexually.”²² He describes a subset of Christian communities that put a “huge burden on the woman to maintain sexual purity for the church,” thus the women are responsible for ensuring the “sexual purity of the men in the church . . . [t]hat is a real setup for abuse to happen.”²³ This is a part of “purity culture,” which paints men as being “instinctually lustful” with a sexuality that has to be tamed and managed, who have to “battle” their lust—while an “excessive burden [is placed] on the women in their environment so as not to tempt men and to not cause men’s eyes to stray.”²⁴

Professor Pooler observed in his research that clergy members argue in their defense that the sexual contact was consensual, that the victim wanted it too, and that the victim

²² Scott Douglass Jacobsen, *Professor David K. Pooler, Ph.D., LCSW-S on Consent and Power*, The Good Men Project (Aug. 13, 2024), <https://goodmenproject.com/featured-content/david-pooler-consent-power-sjbn>.

²³ *Id.*

²⁴ *Id.*

was flirtatious, coming after and targeting the clergy person.²⁵

Blaming the woman “becomes a false redemption: ‘She was the one who made me do it.’”²⁶ However, it is the duty of the person with more power to set boundaries.²⁷ That tactic “...gaslights the person being victimized....”²⁸ He says, “The fact is, even if there were a woman who was flirtatious . . . at the end of the day, the professional with power, which people are trusting in a congregation, is the one responsible for navigating that relationship and keeping **everyone** safe and protected.”²⁹

[Emphasis added.]

Reverend Stephen Towles, now retired, expounded on this further in an article for the Seattle Post-Intelligencer: “It is troubling enough that a clergy member might engage in and be accused of [sexual misconduct]. But it is also troubling that

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

there is any perception that a sexualized relationship between a member of the clergy and an adult member of their congregation can be consensual.”³⁰ Reverend Towles wrote that there can *never* be a consensual sexual relationship between a minister and a congregant “because there is a built-in power imbalance that puts the parishioner at a disadvantage.”³¹ The relationship between a clergy member and their parishioner “is a sacred relationship that lives between parties. That puts the responsibility directly on the priest/minister to assure that appropriate, safe boundaries are present.”³² Further, “a consensual sexualized relationship between clergy and congregant cannot exist because it is inappropriate for a minister to even ask for consent.”³³

³⁰ Stephen Towles, *Clergy-parishioner sex is never consensual*, Seattle Post-Intelligencer (June 14, 2002), <https://www.seattlepi.com/news/article/clergy-parishioner-sex-is-never-consensual-1089390.php>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

Professor Pooler expounds on this further. “It is complicated because it is not just the need to please an authority figure; this person is a proxy for God. It is so complicated in that arrangement where the survivor feels that if they were to try to say no or express concern[,] They are going against God.”³⁴

3. Rape Myth: Hue and cry, and delayed reporting.

The Washington State Supreme Court recently recognized that expectation of an immediate “hue and cry” after an assault is based on “deeply sexist expectations” and “ignored some victims of sexual violence and treated others with unfortunate skepticism and demanded that they all behave in a like manner.” *Martinez*, 196 Wn.2d at 609-610. “While society has arguably developed a greater understanding that sexual assault victims **often** do not report their experience, many

³⁴ Jacobsen, *supra* note 22.

jurors still mistakenly believe myths about how victims should act after they are assaulted.” *Id.* at 612.

Under common law, sexual assault victims were expected to immediately raise an alarm—the “hue and cry” — and failure to do so was fatal to any attempt at holding the perpetrator accountable. *See id.* at 609. While it was generally eliminated as a legal factor in the mid-18th century, it was still used in Washington courts for two purposes: to corroborate the victim’s disclosures and to provide further evidence that an assault had occurred. *Id.* at 609-610.

In analyzing whether to abolish use of this doctrine, the Washington Supreme Court acknowledged the problematic foundation of the “hue and cry” doctrine, but continued to allow the introduction of it for a limited purpose because many jurors have bias against victims who delay reporting and cling to the myth that “real” victims promptly report. *Id.* at 611-612. This limited purpose is not to prove the “truth of the matter asserted,” but to show that the victim reported the assault to

someone, thereby addressing issues of credibility in cases where “juror bias . . . has already called the victim’s credibility into question.” *Id.* at 611, 613.

The Court made clear that “hue and cry” evidence—or lack thereof—is not to be used against the victim. The Court recognized that the expectation of a hue and cry is based on “misogynistic myths,” and while society has “arguably developed a greater understanding that sexual assault victims often do not report their experience,” it could still be introduced for good—namely, to “protect[] victims.” *Id.* at 609, 612, 614.

Delayed reporting is a common and understandable response among victims of sexual assault, yet it is often misunderstood or dismissed. Many victims need time to process their experience, recognize that what happened to them was assault, or find the emotional, physical and psychological support to process what happened before coming forward. Some may need time to reach a safe place away from the perpetrator, while others fear they will not be believed, or are

not sure whom to trust. In many cases, victims may experience denial or confusion about the assault, further delaying their ability to report.

Recognizing this reality, the Washington Legislature removed the statute of limitations for most sex crimes, acknowledging that victims often need time to come forward and seek justice. Laws of 2019, ch. 87, § 1. The Legislature found that “[t]here are many different reasons why victims of sexual assault delay or even choose to never report the crime that has been committed against them. Advances in the field of neurobiology have demonstrated how sexual assault trauma and trauma responses may contribute to delayed victim reporting.” *Id.* The Legislature also noted that reporting can be delayed when the victim is in a relationship with the perpetrator, especially one with “supervisory power” over the victim. *Id.*

4. Rape Myth: The victim is responsible for the rape.

Victim blaming is the harmful belief that the victim who has experienced the crime or injury is responsible for the very

crimes or injuries committed against them. This happens when the victim is portrayed as deserving of the mistreatment or as having somehow caused or contributed to the injury through their own actions or behavior. In sexual assault, victim blaming can present itself as judging the victim's choice in clothing at the time of the rape or blaming them for being intoxicated before the sexual assault.

Victim blaming perpetuates social inequalities and discourages people from coming forward about their experiences, as they fear being judged or blamed for what happened to them. Historically, victim blaming has been institutionalized in laws and cultural norms, particularly in cases of sexual violence.

For instance, historically in Washington a rape was only legally recognized if the victim was "chaste," i.e., a virgin. *See, e.g., State v. Dacke*, 59 Wash. 238, 109 P. 1050 (1910). This legal requirement reinforced the idea that a woman's worth and credibility were tied to her sexual purity, further victimizing

those who experienced assault and blaming them based on their perceived moral character. Deeply-rooted, this cultural mindset continues to influence attitudes toward victims of sexual violence today. The requirement framed sexual assault less as a violation and more as a moral lapse on the part of the victim, particularly if the victim was deemed “promiscuous.”

In 1909, for example, the Washington criminal code was amended to make it a crime to “carnally know a female child between the ages of 15 and 18 years **and of previous chaste character.**” *Dacke*, 59 Wash. at 239 (emphasis added). The amendment included a new requirement that the minor victim first prove she was a virgin prior to the sexual assault.

Laws related to rape and sexual assault have not existed in a vacuum—they have been shaped by and continue to reflect cultural, religious, and social beliefs about gender and sexuality. Rape trials, even today, put the burden of proof on the victim’s word and actions, reflecting community attitudes that blame victims for their assault based on their race, gender

expression, socioeconomic class, perceived sexuality, past sexual history, and more. Yet the fact is, many rape victims do not conform to the myth of the “chaste” victim who fights. It has even been documented and Amicus Sexual Violence Law Center have worked on cases where the victims can experience an orgasm during a sexual assault.³⁵ Much like laughing is wholly involuntary as a nervous response or when one is being tickled against their will, orgasm is a horrifying betrayal of one’s body during a traumatic experience, but it is one of many ways our bodies can betray us in times of fear or panic.

³⁵ Roy J. Levin & Willy van Berlo, *Sexual arousal and orgasm in subjects who experience forced or non-consensual sexual stimulation – a review*, 11(2) J. of Clinical Forensic Med. 82-88 (2004), <https://www.sciencedirect.com/science/article/abs/pii/S1353113103001536> (last visited Dec. 31, 2024); *You Asked It: Do Victims Sometimes Orgasm During Sexual Assault?*, Mount Sinai, <https://www.teenhealthcare.org/blog/sexual-assault-orgasm> (last visited Dec. 31, 2024); *see, also*, Jenny Morber, *What Science Says About Arousal During Rape*, Popular Science (May 31, 2013), <https://www.popsci.com/science/article/2013-05/science-arousal-during-rape> (last visited Dec. 31, 2024).

Historically, legal systems have often framed victims as responsible for their own victimization. To counter this, states enacted “rape shield laws” to prevent defendants from using a victim’s sexuality or history against them. Despite these protections, defendants often challenge these laws in attempt to sway the fact-finder’s sympathies and play on implicit biases to conclude that a rape was not really rape because of the victim’s character.

This victim blaming approach, embedded in legal jurisprudence, means that many survivors face significant barriers to seeking justice. They feel ashamed, fear being disbelieved, or believe that the legal system will not protect them. This not only discourages reporting, it also undermines justice for survivors, perpetuating a cycle where sexual violence is excused and perpetrators are not held accountable.

Statistics from the Department of Justice highlight one reason that victims of sexual violence hesitate to report or choose not to report at all: for every 1,000 sexual assaults, 310

are reported to the police, 50 lead to an arrest, and only 25 perpetrators will spend a day or more in jail.³⁶ In a study spanning five years, the Department of Justice interviewed victims and found that at least 1 out of 5 feared retaliation, and fifteen percent believed the police could not or would not be able to help them.³⁷ It is no surprise that victims seek other methods of healing and accountability that do not involve the criminal legal system.

Focusing on the perpetrator, rather than blaming the victim, is crucial for creating a responsive system that holds offenders accountable and promotes public safety, not only for survivors, but for the community at large. Victim blaming only serves to perpetuate the cycle of trauma, silence, and injustice. Shifting the focus to the actions of the perpetrator will ensure that they are held accountable for their wrongdoing.

³⁶ *The Criminal Justice System: Statistics*, RAINN, <https://rainn.org/statistics/criminal-justice-system> (last visited Dec. 29, 2024).

³⁷ *Id.*

B. The Threat of Negative Repercussions Deters People from Reporting Sexual Assault.

Disclosing a sexual assault carries significant personal and professional risk and requires bravery by the survivor. In addition to the damaging rape myths perpetuated about sexual assaults, survivors must also contend with threats to their well-being, safety, relationships, jobs, and finances when they speak up about an assault.

Sexual assault survivors may hesitate or decide not to report an assault when they have a relationship with the perpetrator, especially if the perpetrator is in a position of power or authority. Sexual assault is more likely to go unreported if the victim knew the perpetrator, often because the victim does not think that she will be believed or be taken seriously, because she does not want to carry the stigma of being a victim, or because she does not want further contact

with her rapist in the criminal justice system.³⁸ When a survivor discloses an assault to informal support networks, such as friends or family, the survivor can be met with unsympathetic responses and even disbelief, leading to self-blame and silence.³⁹

As a result, workplace sexual assault and harassment are significantly underreported, due to the above concerns when a survivor knows the perpetrators as well as fear of job-related retaliation.⁴⁰ The risk of sexual assault in a workplace is greater when there is a power imbalance, especially in settings with

³⁸ Sophie Stewart et al., “*I thought I’m better off just trying to put this behind me*” – a contemporary approach to understanding why women decide not to report sexual violence, 35(1) *J. of Forensic Psychiatry & Psych.* 85-101 (2023), <https://doi.org/10.1080/14789949.2023.2292103>.

³⁹ Courtney Ahrens, *Being silenced: the impact of negative social reactions on the disclosure of rape*, 38(3-4) *Am. J. Community Psych.* 263-74 (2006), <https://pmc.ncbi.nlm.nih.gov/articles/PMC1705531>.

⁴⁰ Gordon Dahl & Matthew Knepper, *Why is Workplace Sexual Harassment Underreported? The Value of Outside Options Amid the Threat of Retaliation* (Nat’l Bureau of Econ. Rsch., Working Paper No. 29248, 2021), <https://www.nber.org/papers/w29248>.

significant power differentials where well-recognized senior individuals, such as well-known figures or “rainmakers” may “feel they do not need to comply with the rules that govern other employees.”⁴¹ Sexual assault survivors who are raped by a colleague or other authority figures in their community must overcome fear of disbelief, retaliation, and harm to their personal relationships and social networks when they come forward.

When sexual violence victims speak up, they also put themselves at risk of retaliatory litigation such as defamation lawsuits. The cost of defending against such a claim, even when it lacks merit, is significant. Defamation defendants face steep financial costs to defend against the lawsuit and must commit significant time to finding representation and litigating the

⁴¹ *Sexual Harassment and Assault at Work: Understanding the Costs*, Inst. for Women’s Pol’y Rsch., <https://iwpr.org/sexual-harassment-and-assault-at-work-understanding-the-costs> (last visited Jan. 6, 2025).

case.⁴² There are also significant emotional costs, as survivors are forced to relive and publicly retell the details of their traumatic sexual assault.⁴³

Increasingly, perpetrators are turning to defamation lawsuits as a way to silence people who accuse them of sexual violence and to deter others from coming forward.⁴⁴ One attorney who works with campus sexual assault victims has reported that defamation lawsuits had previously been filed against only a small fraction of her clients, around five percent, but grew to about fifty percent of cases following the #MeToo

⁴² Alyssa Leader, *A “SLAPP” in the Face of Free Speech: Protecting Survivors’ Rights to Speak Up in the “Me Too” Era*, 17 First Amend. L. Rev. 441, 447-48 (2019).

⁴³ See generally Ailyn Aguilar Quinonez & Tamara Kuennen, *Turning The Tables: How Those Who Are Accused Deny, Attack, And Reverse*, 38 Wis. J.L. Gender & Soc’y 64, 74 (2023).

⁴⁴ Chelsea Whynot, *Retaliatory Defamation Suits: The Legal Silencing of the #MeToo Movement*, 94 Tul. L. Rev. Online 1, 11 (2020); Aguilar Quinonez et al., *supra* note 43.

movement.⁴⁵ Amici also have similar anecdotal experience in working on sexual assault cases.

Defamation claims are a tool that perpetrators use to carry out DARVO, a long-established strategy of victim blaming: Denying that they committed wrongdoing; Attacking the victim's credibility; Reversing by framing the Victim as the wrongdoer and the Offender as the actual victim.⁴⁶ The rise in defamation claims against survivors of sexual assault not only silences the individual survivor who spoke up, it also adds to existing systemic barriers that deter survivors generally from coming forward.⁴⁷ The chilling effect of retaliatory defamation claims harms individual survivors and communities as a whole.

Anti-SLAPP laws, including Washington's Uniform Public Expression Protection Act (UPEPA), play an important

⁴⁵ Sarah Harsey & Jennifer Freyd, *Defamation and DARVO*, 23(5) J. of Trauma & Dissociation 481-489 (2022), <https://doi.org/10.1080/15299732.2022.2111510>.

⁴⁶ *Id.*

⁴⁷ Whynot, *supra* note 44.

role in limiting abusive litigation tactics when a victim speaks out about sexual assault. UPEPA allows courts to efficiently resolve non-meritorious lawsuits that are filed “not to seek redress or relief for harm or to vindicate one’s legal rights, but rather to silence or intimidate citizens by subjecting them to costly and lengthy litigation.” Unif. Pub. Expression Prot. Act prefatory note intro., 13 pt. 2 U.L.A. 30, 31-32 (2022).

UPEPA’s protections are particularly important for sexual assault survivors facing abusive litigation in light of the serious emotional and financial costs to the survivor, as well as the harmful chilling effects against all victims of sexual violence. For this reason, UPEPA’s instruction that it shall be “broadly construed and applied to protect the exercise of the right of freedom of speech” is essential in cases that have been filed against sexual assault survivors. *See* RCW 4.105.901.

IV. CONCLUSION

Rape myths undermine the experiences of survivors and perpetuate harmful stereotypes that obscure the true nature of sexual violence. These myths often fuel disbelief and victim blaming, and distract from the real issue: the horrendous actions of the perpetrator.

Courts must resist these myths and focus on the respondent's conduct. A victim's hesitation or choice of healing method is part of a complex trauma response and should not discredit them. Victims deserve justice without fear of further persecution.

V. CERTIFICATION

Undersigned counsel certify this brief of Amici contains 4,995 words and is in compliance with RAP 18.17(b).

DATED this 24th day of January, 2025.

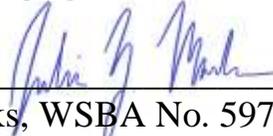
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CERTIFICATE OF SERVICE

I hereby certify that on the date listed below I electronically filed the foregoing with the Clerk of the Court by using the Washington State Appellate Court's portal, which will send a notice and copy of the electronic filing to all counsel of record.

Dated this 24th day of January, 2025.



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