

State of Minnesota  
In Supreme Court

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David Smits, as trustee for  
the next of kin for Brian Short,  
Karen Short, Madison Short,  
Cole Short, and Brooklyn Short,

*Plaintiff/Respondent,*

vs.

Park Nicollet Health Services, et al.,

*Defendants/Appellants.*

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**BRIEF OF *AMICUS CURIAE***  
**EVERYTOWN FOR GUN SAFETY SUPPORT FUND & BATTERED WOMEN'S JUSTICE**  
**PROJECT**

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FAEGRE DRINKER BIDDLE & REATH LLP  
Aaron Van Oort (#315539)  
Emily Zambrana (#397772)  
Hannah Leiendecker (#399361)  
90 South Seventh Street, Suite 2200  
Minneapolis, MN 55402  
Telephone: (612) 766-7000

LARSON KING, LLP  
Mark A. Solheim (#213226)  
Anthony J. Novak (#351106)  
Kevin T. McCarthy (#0399327)  
30 East Seventh Street, Suite 2800  
St. Paul, MN 55101  
Telephone: (651) 312-6500

*Attorneys for Appellants*

ROBINS KAPLAN LLP  
Ronald J. Schutz (#130849)  
Patrick M. Arenz (#386537)  
Brenda L. Joly (#386791)  
Jason L. DePauw (#392150)  
800 LaSalle Avenue, Suite 2800  
Minneapolis, MN 55402  
Telephone: (612) 349-8500

STANLEY LAW GROUP  
Marc R. Stanley (#19046500)  
Scott Kitner (TX#24065563)  
6116 N. Central Expressway, Suite 1500  
Dallas, TX 75206  
Telephone: (214) 443-4300

*Attorneys for Respondents*

QUINLIVAN & HUGHES, P.A.  
Dyan J. Ebert (#0237966)  
Steven R. Schwegman (#161433)  
Ryan L. Paukert (#0401890)  
1740 W. St. Germain Street  
St. Cloud, MN 56302-1008  
Telephone: (320) 251-1414

and

BURKE AND THOMAS, PLLP  
Richard J. Thomas (#137327)  
3900 Northwoods Drive, Suite 200  
St. Paul, MN 55112  
Telephone: (651) 789-2208

*Attorneys for Amicus Curiae Minnesota  
Defense Lawyers Association*

JEFF ANDERSON & ASSOCIATES, P.A.  
Patrick Stoneking (#0348569)  
366 Jackson Street, Suite 100  
St. Paul, MN 55101  
Telephone: (651) 227-9990

*Attorney for Amicus Curiae Minnesota for  
Justice*

Bassford Remele  
Mark R. Bradford (#335940)  
Stephen O. Plunkett (#203932)  
100 South 5<sup>th</sup> Street, Suite 1500  
Minneapolis, MN 55402  
Telephone: (612) 333-3000

*Attorneys for Amicus Curiae Minnesota  
Hospital Association, Minnesota Medical  
Association, and American Medical  
Association*

NICHOLS KASTER, PLLP  
Brock J. Specht (#0388343)  
Robert L. Schug (#0387013)  
4700 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
Telephone: (612) 256-3200

and

WEIL, GOTSHAL & MANGES LLP  
Jessie B. Mishkin  
Sarah M. Sternlieb  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000

*Attorneys for Amicus Curiae Everytown for  
Gun Safety Support Fund & Battered  
Women's Justice Project*

OLSON, REDFORD & WAHLBERG, P.A.  
Shaun D. Redford (#390127)  
7401 Metro Boulevard, Suite 575  
Edina, MN 55439  
Telephone: (952) 224-3644

*Attorney for Amicus Curiae The Scientists  
and Clinicians for Ethical Mental Health  
Treatment*

MESHBESHER & SPENCE, LTD.  
Genevieve M. Zimmerman (#0330292)  
1616 Park Avenue  
Minneapolis, MN 55404  
Telephone: (612) 339-9121

*Attorney for Amicus Curiae The American  
Association of Suicidology*

SCHWEBEL, GOETZ & SIEBEN, P.A.  
Matthew J. Barber (#0397240)  
80 South 8th Street, Suite 5120  
Minneapolis, MN 55402-2246  
Telephone: (612) 377-7777

*Attorney for Amicus Curiae Dr. Frederic  
G. Reamer and Dr. Ofer Zur*

FALSANI, BALMER, PETERSON & BALMER  
James W. Balmer (#4376)  
1200 Alworth Building  
306 W. Superior Street  
Duluth, MN 55802-1800  
Telephone: (218) 723-1990

*Attorney for Amicus Curiae David Healy,  
M.D., DataBasedMedicine, WoodyMatters  
and Kim Witczak*

KUBACKI LAW PLLC  
Christopher Kubacki (#0400520)  
11437 1st Street East  
Treasure Island, FL 33706  
Telephone: (813) 434-0176

*Attorney for Amicus Curiae Brady United  
Against Gun Violence*

MADDEL PA  
Christopher W. Madel (#230297)  
Matthew J.M. Pelikan (#393065)  
800 Pence Building  
800 Hennepin Avenue  
Minneapolis, MN 55402  
Telephone: (612) 605-0630

*Attorneys for Scholars Regarding Mental  
Health Care and Harm to Family and  
Community*

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## I. INTEREST OF AMICUS CURIAE<sup>1</sup>

### A. *Interest and Identity of Everytown for Gun Safety Support Fund*

Everytown for Gun Safety Support Fund is the education, research, and litigation arm of Everytown for Gun Safety (“Everytown”), the nation’s largest gun violence prevention organization. Everytown has nearly six million supporters across all 50 states, including over 200,000 in Minnesota. Everytown was founded in 2014 as the combined effort of Mayors Against Illegal Guns, a national, bipartisan coalition of mayors combating illegals guns and gun trafficking, and Moms Demand Action for Gun Sense in America, an organization formed after the murders of twenty children and six adults at an elementary school in Newtown, Connecticut. Mayors of twenty-three cities in Minnesota are members of Mayors Against Illegal Guns.

Everytown also includes a large network of gun violence survivors who are empowered to share their stories and advocate for responsible gun laws.

Everytown’s mission includes filing amicus briefs that provide context and doctrinal analysis that might otherwise be overlooked in a broad swath of cases concerning issues of gun violence. *E.g.*, *Jones v. Becerra*, No. 20-56174 (9th Cir. filed Jan. 26, 2021) (Second Amendment challenge to California law prohibiting sale of firearms to individuals under 21); *Easterday v. Vill. of Deerfield, Ill.*, No. 126849 (Ill. Sup. Ct. filed Jun. 29, 2021) (state

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<sup>1</sup> Pursuant to Minn. R. Civ. App. P. 129.03, the undersigned certify that they authored this brief in its entirety. No person or entity, other than Everytown for Gun Safety Support Fund, Battered Women’s Justice Project, and the undersigned’s law firms, made any monetary contribution to the preparation or submission of this brief.

preemption of local firearms law); *Love v. State of Fla.*, No. SC18-747 (Fl. Sup. Ct. filed Oct. 29, 2018) (challenging the constitutionality of Florida’s “stand your ground” law).

Everytown also works to prevent domestic violence, including by advocating for state and federal legislation that protects victims of domestic violence (including closing loopholes in the federal background check laws for purchasing guns), and publishing research and reports on domestic violence and firearms. To that end, Everytown has brought litigation seeking to invalidate a law requiring businesses, including domestic violence shelters, to allow guns in their parking lots. *W. Va. Coal. Against Domestic Violence, Inc. v. Morrissey*, No. 19-cv-00434 (S.D. W. Va. filed Jun. 6, 2019).

*B. Interest and Identity of Battered Women’s Justice Project*

Battered Women’s Justice Project (“BWJP”) has a public interest. Battered Women’s Justice Project (BWJP) serves as a national resource center on the civil and criminal legal responses to gender-based violence and promotes systemic change within these systems to create an effective and just response to victims, perpetrators, as well as the children exposed to gender-based violence. BWJP provides resources and training to advocates, victims, legal system personnel, policymakers, and others engaged in the justice system response to gender-based violence.

BWJP’s National Center on Full Faith and Credit supports the implementation of the Full Faith and Credit provision of the federal Violence Against Women Act, the effective enforcement of protection orders, protection-order related issues, and to address legislation on firearms prohibitions related to domestic violence. BWJP’s National Resource Center on Domestic Violence and Firearms provides technical assistance and



training on the development and implementation of domestic violence related firearms prohibitions, and a unified voice on issues surrounding domestic violence and firearms. BWJP is an affiliated member of the Domestic Violence Resource Network, a group of national resource centers primarily funded by the U.S. Department of Health and Human Services since 1993. BWJP also serves as a designated technical assistance provider for the Office on Violence Against Women.

## II. INTRODUCTION

This appeal is before the Court because of an act of domestic violence, made lethal by the presence of guns. An understanding of the interconnected epidemics of domestic violence and gun violence should be integral to any discussion of this case.

Domestic violence<sup>2</sup> is devastatingly common: it affects millions of people in the United States each year and occurs in all communities.<sup>3</sup> Risk factors for the perpetration of domestic violence, such as alcohol and drug use, depression, poor impulse control, isolation, and strict gender roles, do not discriminate among demographics or socio-

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<sup>2</sup> “Domestic violence” and “intimate partner violence” are both terms used to describe abuse perpetrated within intimate relationships and other close family or household relationships. Some researchers, service providers, and other stakeholders use the terms interchangeably. Others use the terms in slightly different ways, depending on the scope of the abuse. *See Guns and Violence Against Women: America’s Uniquely Lethal Intimate Partner Violence Problem*, Everytown for Gun Safety Support Fund (Apr. 27, 2021), <https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem/>. For purposes of this brief, Amici use the term “domestic violence” inclusively to cover all abuse perpetrated within intimate partner, close family, and household relationships.

<sup>3</sup> Martin R. Huecker, *Domestic Violence*, Nat’l Ctr. for Biotechnology Information (July 25, 2021), <https://www.ncbi.nlm.nih.gov/books/NBK499891/>.

economic levels. And, the presence of a firearm in domestic violence scenarios is a further risk factor that greatly increases the likelihood that domestic violence will turn deadly.

The statistics are staggering: a domestic abuser's access to a gun makes it five times more likely that his female partner will be killed.<sup>4</sup> According to a recent study published by amicus Everytown, at least 53 percent of mass shootings between 2009 and 2020 involved a perpetrator shooting a current or former intimate partner or a family member, and nearly 3 in 4 children and teens killed in mass shootings died in a domestic violence-related incident.<sup>5</sup> The story of the Short family, and the stories of other survivors of domestic gun violence shared herein, bring these statistics into sharp focus while also shedding light on the human costs and suffering that flows from gun violence in domestic settings.

The prevalence of domestic violence, however, does not mean that preventative steps cannot be taken. These statistics and stories make clear that fatalities at the hands of domestic violence perpetrators can be foreseeable. Indeed, some of the most important risk factors for domestic violence, including depression and other mental health crises, antisocial personality traits, and substance abuse, can put potential perpetrators directly in the hands of healthcare professionals who have the opportunity to help prevent future

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<sup>4</sup> Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089 (2003).

<sup>5</sup> *Mass Shootings in America: Twelve Years of Mass Shootings in the United States*, Everytown for Gun Safety Support Fund (Jun. 4, 2021), <https://everytownresearch.org/maps/mass-shootings-in-america-2009-2019/>.

violence.<sup>6</sup> Healthcare practitioners owe a duty of care to those for whom harm is foreseeable, and as explained in further detail below, the presence of a critical mass of risk factors and access to a gun can make harm from domestic violence foreseeable. In particular, when a patient exhibits a cluster of risk factors that a reasonable mental healthcare practitioner would recognize as indicating that the patient is at risk of perpetrating domestic violence, the practitioner should ask about access to guns and, if appropriate, develop a safety plan with that patient.

Everytown and BWJP respectfully submit that this Court should uphold the decision and order of the Court of Appeals and find that the issue of whether harm to the Short family was foreseeable was properly a question for a jury.

## **ARGUMENT**

### **III. DOMESTIC VIOLENCE AND GUN VIOLENCE CAN BE FORESEEABLE AND PREVENTABLE**

Domestic violence can be difficult for family and friends to detect. It generally occurs behind closed doors, and part of the cycle of this violence is that abusers exercise coercive control that prevents victims from disclosing the abuse. But, this dynamic does *not* mean that acts of domestic violence are unforeseeable. Rather, there are well-

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<sup>6</sup> See *Violence Prevention: Risk and Protective Factors for Perpetration*, Centers for Disease Control and Prevention, <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/riskprotectivefactors.html> (last visited Sep. 23, 2021).

established risk factors for domestic violence.<sup>7</sup>

These factors include, *inter alia*, an abuser's low self-esteem, poor behavioral control/impulsiveness, isolation, depression, generalized anxiety, antisocial behavior, desire for power and control in relationships, mood instability, adverse childhood experiences such as being a victim of abuse or witnessing domestic violence, economic stress, and traditional gender attitudes and gender inequality.<sup>8</sup> Other risk factors at the relationship level also make domestic violence more likely. These include marital conflict, marital instability, association with antisocial/aggressive peers, unhealthy family relationships and interactions, one partner's dominance and control, and economic stress.<sup>9</sup> One factor, however, plays an outsize role in turning domestic violence from dangerous to deadly: access to a gun.

A. *It Is Foreseeable That Domestic Violence Will Become Deadly When The Perpetrator Has Access To A Firearm*

Most lethal domestic violence does not occur out of the blue, but is instead the end result of escalating non-lethal abuse. And, non-lethal domestic violence is far more likely to become lethal when the perpetrator has access to a firearm than when he does not.

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<sup>7</sup> *E.g.*, *Violence Prevention*, Centers for Disease Control and Prevention, *supra* n.6; Lily Gleicher, *Understanding Intimate Partner Violence: Definitions and Risk Factors*, Illinois Criminal Justice Information Authority (Feb. 5, 2021), <https://icjia.illinois.gov/researchhub/articles/understanding-intimate-partner-violence-definitions-and-risk-factors>.

<sup>8</sup> *Violence Prevention*, Centers for Disease Control and Prevention, *supra* n.6; *see also* Gleicher, *Understanding Intimate Partner Violence*, *supra* n.6.

<sup>9</sup> *Id.*

Four and a half million women have reported being threatened with a gun by an intimate partner, and almost one million women have survived being shot or shot at by an intimate partner.<sup>10</sup> An average of 57 women are shot and killed by an intimate partner every month in the United States.<sup>11</sup> At least one study has found that over 65% of the women in the study killed in a domestic violence situation had experienced physical abuse by the perpetrator prior to the fatal event.<sup>12</sup> Tragically, the rate at which women are killed by violent partners with a firearm has accelerated in recent years, despite a reduction in intimate partner homicides of women involving other weapons.<sup>13</sup> In one researcher's interviews with fourteen male perpetrators who had shot and killed their partners, eleven indicated that they would not have committed their murders if they had not had access to a gun.<sup>14</sup>

Firearm ownership and access specifically are associated with an increased risk of fatalities in a domestic violence situation. The states with the highest rate of firearm ownership have a 65% higher rate of domestic violence homicides than states with the

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<sup>10</sup> *Guns and Violence Against Women*, Everytown for Gun Safety Support Fund, *supra* n.2.

<sup>11</sup> *Supplementary Homicide Reports, 1976-2019, Jacob Kaplan concatenated files*, Inter-university Consortium for Political and Social Research [distributor] (Jan. 16, 2021), <https://doi.org/10.3886/E100699V10>.

<sup>12</sup> Judith M. McFarlane et al., *Stalking and Intimate Partner Femicide*, 3 *Homicide Studies* 300 (1999).

<sup>13</sup> *Guns and Violence Against Women*, Everytown for Gun Safety Support Fund, *supra* n.2.

<sup>14</sup> *Hearing on Gun Control Legislation before the Joint Comm. on Pub. Safety & Homeland Security*, 2013 Leg., 188th Sess. (Mass. 2013) (David Adams, Co-Executive Director, Emerge).

lowest rates of gun ownership.<sup>15</sup> In contrast, in states that encourage or require abusers under a domestic violence restraining order to relinquish their firearms or otherwise restrict access to guns, the domestic violence firearm homicide rate is 14-16% lower.<sup>16</sup> At bottom, state laws restricting prior domestic violence perpetrators from accessing firearms “save lives.”<sup>17</sup>

Moreover, the use of firearms in domestic violence situations increases the risk that the abuse will result in multiple fatalities.<sup>18</sup> When a male perpetrator uses a gun in a domestic homicide, he is nearly twice as likely to kill at least one additional victim. *Id.* There is a correlation between multiple fatalities and domestic or family violence. Fifty-three percent of mass shootings between 2009 and 2020 were domestic-violence related.<sup>19</sup> Seventy-two percent of children and teens killed in mass shootings from 2009 to 2020 “died in an incident connected to intimate partner or family violence.”<sup>20</sup> “The presence of

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<sup>15</sup> *Guns and Violence Against Women*, Everytown for Gun Safety Support Fund, *supra* n.2.

<sup>16</sup> April M. Zeoli et al., *Analysis of the Strength of Legal Firearms Restrictions for Perpetrators of Domestic Violence and Their Associations with Intimate Partner Homicide*, 187 *Am. J. of Epidemiology* 2365 (2018).

<sup>17</sup> *Id.*

<sup>18</sup> Aaron K. Kivisto & Megan Porter, *Firearm Use Increases Risk of Multiple Victims in Domestic Homicides*, 48 *J. Am. Acad. Psychiatry and L.* 26 (2020), <https://pubmed.ncbi.nlm.nih.gov/31753965/>.

<sup>19</sup> *Mass Shootings in America*, Everytown for Gun Safety Support Fund.

<sup>20</sup> *Id.*

a gun allows the offender to quickly and easily kill a greater number of victims.”<sup>21</sup> When a gun is used in a fatal domestic violence incident, the risk that suicide follows also increases.<sup>22</sup>

Additionally, in a recent study of intimate partner homicide-suicide incidents in Dallas, Texas, researchers found that almost 70% of the perpetrators showed signs of premeditation.<sup>23</sup> In short, the well-established social science research regarding the risk factors and patterns of domestic violence undermines any claim that domestic violence is *per se* unforeseeable, and further establishes the likelihood that domestic violence will become lethal when a perpetrator has access to a gun.

*B. Stories Of Survivors Exemplify How Access To Firearms Makes Acts Of Domestic Violence Foreseeably Deadly*

As described above, the twin epidemics of domestic violence and gun violence have a disproportionate and devastating impact on women and children. Many of those affiliated with Everytown and BWJP have been affected by abusers who turn guns on their own intimate partners and families. These survivors are particularly qualified to provide context

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<sup>21</sup> *American Roulette: Murder-Suicide in the United States*, Violence Policy Ctr. 7 (Jul. 2020) <https://vpc.org/studies/amroul2020.pdf>.

<sup>22</sup> April M. Zeoli, *Multiple Victim Homicides, Mass Murders, and Homicide-Suicides as Domestic Violence Events*, Battered Women’s Justice Project, 4 (Nov. 2018), <https://www.preventdvgunviolence.org/multiple-killings-zeoli-updated-112918.pdf> (“Two studies found that when intimate partner homicides were committed by men with guns, suicide followed in 46% to 56% of cases, but when it was committed by men without guns, suicide followed in only 7% to 13% of cases”) (internal citations omitted).

<sup>23</sup> James L. Knoll & Susan Hatters-Friedman, *The Homicide-Suicide Phenomenon: Findings of Psychological Autopsies*, 60 J. Forensic Sci. 1253 (2015).

and information the danger of foreseeable gun violence in the home. Two members of the Everytown Survivor Network have agreed to share their stories here to acquaint the Court with the lifelong effects that gun violence and domestic abuse have inflicted on them, and the important opportunities that mental health providers can have to disrupt the link between firearms access and foreseeable acts of domestic violence. The third story is that of Karen, Cole, Madison, and Brooklyn Short.

1. Jane Doe<sup>24</sup>

Jane Doe became a survivor of domestic violence in 1993, when her sister Lucy's husband killed Lucy with a gun in their home. After the murder, Jane learned that her sister's death was the result of ongoing, escalating abuse that Lucy's husband had been committing against her and her children, including at gunpoint.

Jane and Lucy were always close, not just with one another, but with the rest of their large, loving family. Lucy was a warm, quiet soul who lit up the room and left lasting impressions on everyone she met. Nick was one of those people. Nick and Lucy were high school sweethearts who reconnected after relationships and children with other people, eventually married, and added another daughter to their family.

At some point during Lucy and Nick's marriage, Jane noticed a shift. Lucy, so close with her family, stopped coming around often, and had to call Nick to check in when she did. Lucy sometimes seemed afraid. Nick was controlling and often stressed. He did not want Lucy to work outside the home, so she quit her job, and then slowly stopped doing

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<sup>24</sup> For safety reasons, Jane Doe's story uses pseudonyms.



other things she loved, such as attending school and going to church. Jane also recalls that Nick attended therapy, and dealt with anger and abandonment issues.

At the time, Jane did not know these and other changes in her sister's life were warning signs of domestic violence, and Lucy never expressly told Jane that she and the children were experiencing abuse. Still, one day she called Jane to ask that "if anything happened," Jane would take care of her girls. Jane said "of course," but did not understand then the veiled warning behind the request.

During this time, it became hard for the sisters to have time alone, so Jane and Lucy instituted weekly Sunday night movie dates, where they would watch a movie together and chat on the phone after Lucy had put her daughters to bed. One summer night while Lucy and Jane were on the phone having one of their movie nights, Lucy said, "I hear something. I'm going to call you back." It was the last time Jane would ever hear her sister's voice.

Around 3 a.m., Nick began calling Jane's family to say that Lucy was missing, but they knew Lucy would never go out at night and leave her daughters home alone. The police found Lucy's body locked in a storage bin at her apartment building. She had been shot four times, stabbed, and subject to blunt force trauma. Her daughters were found locked in their apartment closet – Nick had threatened to kill them too if they revealed what had happened. They were 8 and 3 years old.

Jane and her family later learned that Lucy had worked up the courage to ask Nick to leave; he told her that if he could not have her, no one could. He premeditated her killing and took several steps to cover it up. They later learned that Nick had also sexually assaulted Lucy's 8-year-old daughter (his stepdaughter), brutally beaten Lucy on multiple

occasions, and threatened Lucy and her daughters with a gun repeatedly before the night he carried out the threats to their lethal endpoint.

Nick was convicted of Lucy's homicide and sentenced to imprisonment for 20 years to life. Jane's family attend his parole hearings, and so far his requests for parole have been denied. He has never admitted to his crime and never apologized. For Jane and her family, 29 years have not taken away the pain of Lucy's murder; it is an "agony" she lives with every day. Jane and Lucy's older brother never recovered from his sister's death, and eventually died by suicide. Lucy's oldest daughter was deeply traumatized. Her youngest daughter lived with her mother's killer's family.

In the years since, Jane has come to recognize the red flags of Nick's abuse, including his desire for control, restriction of Lucy's activity outside the home, history of non-lethal abuse, anger, and other mental health issues. Similarly, it is only in hindsight that she understands that Nick had access to a gun during the course of his abuse, and she still does not know how he acquired it.

Jane has channeled some of her pain into advocacy against domestic and gun violence. Based on her personal experience and her further training as an advocate, she wants mental health providers and other community members to understand that domestic violence has no single profile—it affects families of all backgrounds, including close-knit, educated, economically-advantaged families like her own. And it is important that people learn the signs of potential abuse and gun violence. As Jane and her family learned to their deep sorrow, the chance of someone being murdered by a domestic abuser escalates

exponentially in two common scenarios: when a person takes steps to take their power back from their abuser, and when the abuser has access to a gun.

## 2. Doreen

Doreen survives her sister-in-law, Laura, and her three nieces. The family was shot and killed in 1995 by Laura's husband and the girls' father, Dave, in front of Laura's mother, who was also shot.

Doreen's sister-in-law Laura was a "tender soul," a brilliant and loving mom to three beautiful, curious daughters. Laura was raised in and involved with a conservative church. She internalized its values, and strongly believed that her role was to submit to the leadership of her husband, who was a known pastor's son in their small, rural community. In public, Dave maintained a devout and loving persona, but for Doreen, who was both a dedicated aunt to her nieces and a trained psychologist, there were warning signs regarding Dave—symptoms of anxiety in the children, hints of Dave's intimidation of his family, and his impulsivity. And, as Doreen later learned, Laura's private journals detailed threats of physical violence, and her fear that Dave would kill her.

The couple met with church counselors and pastors, who encouraged Laura to stay with her husband. Dave agreed to see a medically-trained mental health professional once, but then refused to return. Still, with the help of her brother and Doreen, Laura worked up the courage to leave Dave, move herself and her daughters to live with her mother, Margaret, and seek a restraining order against Dave. One night when Margaret was out, Dave talked his way into the house and sexually assaulted Laura, resulting in pregnancy and the birth of their youngest daughter.

Five months after Laura gave birth to their youngest daughter and on the eve of her oldest daughter's first day of kindergarten, Doreen's family gathered at Margaret's home, where Laura and her daughters continued to live, to celebrate the big day with gifts of new school supplies. Doreen recalls a joyful evening. That night, Doreen and her husband looked forward to hearing from their niece about her first day of school.

Instead, the next afternoon, Doreen came home to a voicemail: Laura and all three children were dead. Margaret had been shot and was in the hospital. Doreen and her husband raced there; he had to stop to vomit at a gas station along the way, where Doreen overheard the gas station attendants already talking about the murders of her family. Despite having two restraining orders against him, Dave had been able to access a shotgun and bring it across state lines to commit the ultimate act of domestic violence against his entire family. Dave had shot his wife and young daughters in their faces, and Margaret was shot and wounded. After killing Laura and the girls, he threw his gun at Margaret's feet and begged her to shoot him, which she had refused to do. At the hospital, Doreen learned that Dave had shot Margaret as she tried to protect one of her grandchildren, who died in her arms. Later, Doreen would wash her niece's blood from Margaret's hair. The children were 5, 3, and 5 months old when their father shot them to death.

Twenty-six years later, Laura's family and community still suffer from their loss. Margaret experienced immediate severe physical and mental trauma, was retraumatized by her grand jury testimony following Dave's arrest, and experienced trauma-related disabilities for the rest of her life. Laura's siblings experienced long-lasting and severe mental health challenges. Doreen, who cared for Margaret after her shooting, experienced

caregiver trauma, and her own children were deeply affected. Many of the children in their small town's class of kindergarteners, who lived and learned in the shadow of their young classmate's murder by her own father, suffered from their loss and fear.

Today, Doreen advocates to educate people that what happened to her family is not an outlier—domestic violence can and does happen in any community. She now understands that the ability to procure a firearm significantly increases the risk that domestic violence will become deadly; in her family's case, she believes that Dave would not have had the nerve to commit the murders if he had not had access to a firearm. She understands that shame, stigma, and even denial can hinder the ability of abused persons to come forward and believes that providers have a role to play in interrupting domestic violence. As a practicing psychologist, Doreen believes that mental health practitioners must investigate whether a patient has issues with control, impulsivity, and other markers that, when tied to gun access, are risk factors that can indicate that a perpetrator has both the means, and the inclination, to act lethally.

### 3. *The Short Family*

Karen Short's life revolved around her family and taking care of her three children, Minnetonka High Schoolers Cole (17), Madison (15), and Brooklyn (14). Plaintiff's Opposition to Defendants' Motion for Summary Judgment ("Opp. to MSJ") at 3-4. Their husband and father, nurse and entrepreneur Brian Short, was also known by his community as a man who lived and worked for his family. *Id.* Yet what should be a happy story of a family that supported each other and grew up whole and healthy ended with a horrific act of domestic violence by Brian, made deadly by his use of a gun.

In 2015, Brian began to experience a severe mental health crisis that became apparent to everyone around him. Concerned about his increasing anxiety, he sought mental health treatment at Park Nicollet. *Id.* at 10. Over time, his mental health struggles became painfully evident: he was severely depressed, lost a significant amount of weight, and had difficulty sleeping. *Id.* at 14-15. Karen reported to her sister that Brian had changed anti-depressants, leaving him in an agitated state, pacing around, sometimes following her as he did so. Er. Ex. 45 at 47:10-48:12. He experienced delusions that left his family and friends confused and concerned. Opp. to MSJ at 16. Despite his expressing suicidal ideation to the mental health professionals treating him, Karen and the rest of their family were never engaged by the providers in his treatment. *Id.* at 14. Nor did the treatment team develop a safety plan or ask about firearm access. Resp. Add.46-50. The Saturday before her murder, Karen reported that she was not completely comfortable leaving Brian alone to attend an event by herself; she began to make plans to bring him to a hospital if the need arose. Er. Ex. 45 at 61:2-62:14.

Unfortunately, Karen was unable to carry out those plans in time. In the midst of a mental health crisis involving severe depression and suicidal ideation, Brian Short had access to multiple guns. Resp. Add.10. Despite Park Nicollet’s own internal policy—which directed that providers encountering patients with “passive thoughts of suicide” should “[a]ssess for availability of firearms” and “have [firearms] removed from [the] patient’s possession”—none of the multiple providers who treated Brian Short asked about his access to firearms. *Id.* at 46-50; Er. Ex. 22 at PL484-485. One September day, he used a shotgun to kill each of his three children as they slept. He shot Karen to death in or near

their bedroom. Then, he shot himself to death in their garage. *See* Resp. Add.10; *see also* Liz Collin, *Lake Minnetonka Murder-Suicide Still Weighs Heavy on Small Town Police*, CBS Minnesota (Feb. 9, 2016), <https://minnesota.cbslocal.com/2016/02/09/lake-minnetonka-murder-suicide-still-weighs-heavy-on-small-town-police/>.

While these needless deaths correctly have been framed in the public and judicial narratives as tragic, they have not necessarily been recognized as something else—the result of acts of domestic violence, made fatal by Brian Short’s access to a gun. Brian Short disclosed to his Park Nicollet providers that he was suffering worsening depression, generalized anxiety, unstable moods, emotional dysregulation, issues with substances like his anti-depressants, self-reported economic stress, and thoughts of self-harm. Resp. Add.46-50. As set forth above, all of those are factors relevant to the assessment of risk that a person will perpetrate domestic violence. *See supra* III(A). And, as also discussed above, Brian’s easy access to guns made it far more likely that the domestic violence would be fatal.

#### **IV. HEALTHCARE PROVIDERS CAN AND SHOULD ASK ABOUT PATIENTS’ ACCESS TO FIREARMS WHERE THERE ARE SIGNS THAT A PATIENT MAY BE A PERPETRATOR OF DOMESTIC VIOLENCE**

##### *A. Mental Health Practitioners Owe A Duty Of Care To Those For Whom Harm Is Foreseeable*

Park Nicollet owed Brian a duty of reasonable medical care. *Becker v. Mayo Found.*, 737 N.W.2d 200, 216 (Minn. 2007). Whether Park Nicollet also owed a duty to the members of Brian Short’s family depends on the foreseeability of harm. *See Warren v. Dinter*, 926 N.W.2d 370, 377 (Minn. 2019) (a provider may have a duty of care to a third

party “based on the foreseeability of harm”). Where harm is foreseeable, it triggers a duty of care to non-patients, here, Karen, Cole, Madison, and Brooklyn Short. *See, e.g., id.; Molloy v. Meier*, 679 N.W.2d 711, 719-20 (Minn. 2004) (imposing a duty of reasonable medical care on doctors of a disabled child for failure to perform accepted genetic tests where parents later had another child with the same condition); *Skillings v. Allen*, 143 Minn. 323, 325-27, 173 N.W. 663, 664 (Minn. 1919) (holding doctor who negligently advised parents that their child was not contagious could be liable because doctor would have known the parents would follow his advice). As this Court has recognized, “ultimately, the question [of duty] is one of policy.” *Erickson v. Curtis Inv. Co.*, 447 N.W.2d 165, 169 (Minn. 1989). “Preservation” of “the health of the people” is “a matter of importance to the state.” *Skillings*, 173 N.W. at 664.

Here, the question of whether Mr. Short presented a sufficient critical mass of risk factors to put a reasonable mental health practitioner on notice that he was at risk for causing severe physical harm to himself and his immediate family – and therefore trigger a duty to inquire about firearms access – is properly an issue of fact for the jury. As detailed in the Respondent’s Brief, the factual record includes expert testimony and testimony from Park Nicollet’s practitioners regarding the connection between Mr. Short’s severe depression, suicidal thoughts, and other symptoms and the heightened risk that he would harm himself or others.<sup>25</sup> Resp. Br. at 19-25. For the reasons set forth in Section III(A)

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<sup>25</sup> Although Respondent does not refer to Mr. Short’s violence as domestic violence, his brief highlights record evidence of risk factors that are relevant to the foreseeability of domestic violence.



above, the likelihood that any such harm would be deadly increased because of Mr. Short's ability to access firearms. Whether gun access made the harm to the Short family foreseeable was also a factual question properly left for a jury to decide.

*B. Reasonable Mental Healthcare Should Include Screening For Firearms Access When Patients Present A Critical Mass of Risk Factors For Domestic Violence*

Amici agree that, on its own, a mental health crisis is not an indicator that someone is at risk of harming themselves or others. At the same time, it is not true that acts of domestic violence are unforeseeable by trained mental health professionals. Trained mental health professionals should recognize risk factors of domestic violence perpetration, along with risk factors for self-harm. Mental health professionals who encounter a critical mass of risk factors should, as part of the provision of reasonable medical care and in line with Park Nicollet's own policy, conduct a safety assessment that includes asking about whether the patient has access to or the ability to access a gun.

Screening for firearms access in the course of domestic violence perpetration and conducting a safety assessment by mental health professionals is particularly important because mental healthcare providers are more likely to be in contact with individuals experiencing depression or other mental health crises that, when combined with other risk factors, may put individuals at risk of perpetrating harm. Mental health practitioners can play an integral role in reducing the likelihood of harm.<sup>26</sup> Thus, "it is imperative for

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<sup>26</sup> See Polly Cheng and Peter Jaffe, *Examining Depression Among Perpetrators of Intimate Partner Homicide*, J. Interpersonal Violence 14 (2019) ("mental health professionals are likely the first point of contact with perpetrators of intimate partner violence").

frontline workers to be aware of the risk factors and conduct assessments so that clients may be referred to more appropriate services or be provided with more integrated services.”<sup>27</sup>

The record before the Court of Appeals supports a conclusion that Brian Short was experiencing a severe mental health crisis and was exhibiting numerous risk factors for domestic violence perpetration, and there was significant evidence that harm was foreseeable months before tragedy occurred. Resp. Br. at 5, 23, 24; Smits’ Court of Appeals Brief (“COA Brief”) at 33; Er. Ex. 52 at PL961 (“When a severely depressed, suicidal person has access to a firearm, not only do their chances of successfully killing themselves increase, but they are also a danger to others in the home or at work, where suicides or violent acts are likely to occur.”). Although Appellants emphasized in internal documents the need to facilitate removal of firearms from patients like Mr. Short, its providers never took any steps to do so in this case. Resp. Br. at 11, 13, 14, 33; Resp. Add.46-50; Er. Ex. 22 at PL484-485. If Appellants had screened for access to firearms and risk factors for perpetration of domestic violence, would Mr. Short and his family be alive today? Respondent’s brief highlights evidence in the record indicating that Mr. Short would likely have cooperated with Park Nicollet providers if they had followed Park Nicollet’s own policy regarding firearm access and safety planning for patients like Mr. Short. *See* Resp. Br. at 54. In any event, that fact-intensive question properly creates fact

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<sup>27</sup> *Id.*; *id.* at 5 (“It is important to examine depression as a risk factor because health care practitioners are likely to come into contact and have an opportunity to identify risk factors and provide support to prevent future IPHs.”).

issues precluding summary judgment for the Appellants in this case. Finally, as a broader policy question, the Court should decline to issue any decision that would make it less likely that mental health practitioners will adopt reasonable firearms and domestic violence screening procedures in this State.

### CONCLUSION

For the foregoing reasons and those set forth by Respondents, the Court should affirm the judgment of the Court of Appeals below.

Dated: September 27, 2021

**Nichols Kaster, PLLP**

*/s/Brock J. Specht*

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Brock J. Specht, #0388343  
Robert L. Schug, #0387013  
4700 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
Telephone: (612) 256-3200  
bspecht@nka.com  
schug@nka.com

**Weil, Gotshal & Manges LLP**

Jessie B. Mishkin  
Sarah Sternlieb  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Fax: (212) 310-8007  
jessie.mishkin@weil.com  
sarah.sternlieb@weil.com

*Attorneys for Amicus Curiae Everytown  
for Gun Safety Support Fund & Battered  
Women's Justice Project*

## CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that Everytown for Gun Safety Support Fund and Battered Women's Justice Project's *Amicus Curiae* Brief complies with the requirements of Minn. R. App. P. 132.01 in that it is printed in 13-point, proportionately spaced typeface using Microsoft Word 2016 and contains 5,591 words, exclusive of the caption, tables, and signature block.

Dated: September 27, 2021

**Nichols Kaster, PLLP**

/s/Brock J. Specht

Brock J. Specht, #0388343  
Robert L. Schug, #0387013  
4700 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
Telephone: (612) 256-3200  
bspecht@nka.com  
schug@nka.com

**Weil, Gotshal & Manges LLP**

Jessie B. Mishkin  
Sarah Sternlieb  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Fax: (212) 310-8007  
jessie.mishkin@weil.com  
sarah.sternlieb@weil.com

*Attorneys for Amicus Curiae Everytown  
for Gun Safety Support Fund & Battered  
Women's Justice Project*