No. 14-10218

In The
Supreme Court of the United States

NANCY SEAMAN,

Petitioner,

v.

STATE OF MICHIGAN,

Respondent.

On Petition For Writ Of Certiorari To The Michigan Court Of Appeals

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BRIEF OF *AMICI CURIAE* MICHIGAN WOMEN'S JUSTICE AND CLEMENCY PROJECT AND THE MICHIGAN COALITION TO END DOMESTIC AND SEXUAL VIOLENCE IN SUPPORT OF PETITIONER

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BOOKS, ARTICLES, AND OTHER AUTHORITIES

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Ellen Leesfield & Mary Ann Dutton-Douglas, *"Faith and Love": Use of Battered Women's Syndrome to Negate Specific Intent*, 13 Champion Magazine 9, Apr. 1989 8

Erich Andersen & Anne Read-Andersen, *Constitutional Dimensions of the Battered Woman Syndrome*, 53 Ohio St. L.J. 363 (1992) 8, 10

Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. Pa. L. Rev. 379 (1991)..4

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Janet Parrish, National Institute of Justice, U.S. Dep't of Just., *Trend Analysis: Expert Testimony on Battering and Its Effects in Criminal Cases, The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials: Report Responding to Section 40507 of the Violence Against Women Act*, NCJ 160972 1 (May 1996), https://www.ncjrs.gov/txtfiles/batter.txt 4, 17

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Regina A. Schuller & Patricia A. Hastings, *Trials of Battered Women Who Kill: The Impact of Alternative Forms of Expert Evidence*, 20 Law & Hum. Behavior 167 (1996) 20

Regina A. Schuller, Vicki L. Smith & James Olson, *Jurors' Decisions in Trials of Battered Women Who Kill: The Role of Prior Beliefs and Expert Testimony*, 24 J. Applied Soc. Psych. 316 (1994) 19

INTERESTS OF THE *AMICI CURIAE*[1]

Amicus Curiae Michigan Women's Justice and Clemency Project (MWJCP) is an organization committed to bringing justice to women who were convicted of murder but who acted in self-defense against domestic abusers and did not receive due process or fair trials.

MWJCP has extensive experience working with survivors of domestic violence who have killed their abusers to save their own lives, and has substantial knowledge about the physical, emotional, and psychological effects of domestic violence on victims of abuse. MWJCP understands that when a history of abuse is relevant to other issues in a criminal case, including the defendant's conduct and state of mind, a jury

[1] All parties were given timely notice of the intention to file this Brief, and Petitioner has consented to the filing of this Brief. A letter of consent from Counsel for Petitioner which includes a statement of authorized consent from Counsel for Respondent accompanies this Brief. No counsel for any party has authored this Brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this Brief. The following people other than the *Amici Curiae* and their counsel made monetary contributions to the preparation or submission of this Brief: Lisa Connelly, Doug Brown, Michael Bullerman, Lynn Babbitt, Dan Babbitt, Elizabeth Pyden, Tricia Sarrazin, Janelle Filson, Antonio Mazzaro, Kathy Constantinides, Emily Kemper, Carrie Groulx, Nicole Shannon, Denise Dilley, Stormy Humphrey, Lisa Genn, Donna Lazarus, David Stannard, Lavine Douglas, Jim Sorensen, Joanne Leonard, Alyssa Gale, Mary Macpherson, Becky Luchsinger, Allison Johnson, Souha Al-Samkari, and three anonymous donors.

must fully understand that history, the cumulative effects of the abuse, and its relationship to the legal issues. Otherwise, as happened in Petitioner Seaman's case, the jury operates without the necessary contextual information with which to evaluate the evidence presented. Therefore, the jury is unable to reach a fair or reliable verdict.

Amicus Curiae Michigan Coalition to End Domestic and Sexual Violence (MCEDSV) is a statewide membership organization whose members represent a network of more than 70 domestic and sexual violence programs and over 200 allied organizations and individuals. MCEDSV has provided leadership as the statewide voice for survivors of domestic and sexual violence and the programs that serve them since 1978. MCEDSV is dedicated to the empowerment of all the state's survivors of domestic and sexual violence. MCEDSV's mission is to develop and promote efforts aimed at the elimination of all domestic and sexual violence in Michigan.

Neither MWJCP nor MCEDSV advocate for special legal rules for battered-women defendants. Rather, MWJCP and MCEDSV seek to ensure that they have the same rights and protections as all other criminal defendants. Among the most fundamental is the right to have the jury consider all relevant evidence, including evidence necessary to challenge the state's case. In the case of a battered woman, this often includes expert and lay testimony about the intimate partner abuse, the dynamics of the abuse experienced in the relationship, and the cumulative

psychological impact of the abuse as it pertains to the facts of the case.

SUMMARY OF ARGUMENT

When a domestic violence victim is a criminal defendant and the abuse she suffered is relevant to the crime charged, the admission of expert testimony on Battered Woman Syndrome and how it impacted the defendant ("BWS") is crucial to ensuring fairness of the jury's verdict. Without specific expert testimony connecting the history of abuse to the defendant's mental state and assessment of risk, juries are left to evaluate a battered-woman defendant's actions using incomplete and unbalanced evidence. Battered women have been precluded from presenting defensive expert testimony due to limits on admissibility that violate their rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution. Absent this critical fact-specific and connective expert testimony, juries will continue – as did the jury in Petitioner Seaman's case – to convict battered-women defendants of murder even where evidence exists that casts reasonable doubt on her *mens rea* and the reasonableness of her assessment of risk.

As long as trial courts keep BWS-related expert testimony away from juries, battered-women defendants will suffer unfair trials. This unfortunate statement is true because BWS-related expert testimony – when fully admitted and connected by the

expert to the facts of the case – can negate a prosecutor's evidence on *mens rea* and on the assessment-of-risk aspect of a self-defense argument. The lay and expert testimony together provide the *context* necessary for the jury to understand and evaluate the battered woman's legal claim, whatever that may be in the case at hand.[2]

The questions presented in this case are of exceptional importance in the administration of federal criminal justice for battered women. In 1995, an estimated 80 to 85 percent of women in prison were incarcerated as a result of their affiliation with an

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[2] *See* Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. Pa. L. Rev. 379, 426 (1991) (expert testimony on battering and its effects is introduced in criminal trials to "show the trier of fact the context of a defendant's actions."). Recently, in response to passage of the Violence Against Women Act (Pub.L. 103-322, Title IV), the National Institute of Justice, part of the U.S. Department of Justice, reported on and confirmed the validity and importance of evidence about battering in criminal trials. Janet Parrish, National Institute of Just., U.S. Dep't of Justice, *Trend Analysis: Expert Testimony on Battering and Its Effects in Criminal Cases, The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials: Report Responding to Section 40507 of the Violence Against Women Act*, NCJ 160972 1 (May 1996), https://www.ncjrs.gov/txtfiles/batter.txt. This report concluded, in part, that "[e]vidence and testimony about battering and its effects provide information germane to factfinders' deliberations in criminal cases involving battered women." *Id*. at § 2. In particular, "an extensive body of scientific and clinical knowledge" strongly supports the validity and relevance of battering as a factor in the reactions and behavior of victims of domestic violence. *Id.*, Foreword, at ii.

abusive partner.[3] Currently, there are approximately 370 women serving time in Michigan prisons for Murder I, II or felony murder. MWJCP estimates that at least one-third of these are women who acted in self-defense against an abusive partner but did not receive due process or fair trials based on the facts of their cases; and many have served 20 or more years. This case provides the Court with an opportunity to address this systemic and institutionalized problem which, unfortunately, sustains the larger, structural pattern of violence against women.

ARGUMENT

I. BY DENYING RELEVANT, FACT-SPECIFIC BATTERED WOMAN SYNDROME-RELATED EXPERT TESTIMONY, COURTS ARE VIOLATING THE FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS OF BATTERED-WOMEN DEFENDANTS.

Across the country, as discussed *infra*, numerous courts have refused to permit battered-women defendants to present detailed, case-specific BWS-related expert testimony. By doing so, those courts are violating those women's rights guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United

[3] Elizabeth M. Schneider, *Battered Women and Feminist Lawmaking* 264 (1st ed. 2000), citing National Clearinghouse for the Defense of Battered Women, *Statistics Packet* (3d ed. 1995).

States Constitution. For women like Petitioner Seaman who are precluded from presenting relevant BWS-related expert testimony, this constitutional violation can sadly result in lifetime incarceration.

The time is right for this Court to review the issue of the limitations on admissibility of relevant, fact-specific BWS-related expert testimony presented by battered-woman defendants.[4] This Court last considered doing so in 1984, when Petitioner Betty Moran sought this Court's intervention. Moran's Petition for a Writ of Certiorari was denied.[5] In dissent, Justice Brennan stated:

> According to petitioner, the Due Process Clause forbids the State to punish her for murder when the jury that convicted her may well have thought it as likely as not that she acted in self-defense. I would grant certiorari to consider the substantial constitutional question raised by this petition – a question that this Court has labeled as

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[4] Patricia Tjaden & Nancy Thoennes, U.S. Dep't of Just., NCJ 183781, *Full Report of the Prevalence, Incidence, and Consequences of Intimate Partner Violence Against Women: Findings from the National Violence Against Women Survey* (2000). (Although men can also be the victims of domestic violence, this Brief refers to "battered women" as the overwhelming majority of domestic violence involves men abusing women. 92.6 percent of surveyed women reported they were physically assaulted by a current or former spouse, cohabitating partner, boyfriend, girlfriend, or date in their lifetime, while only 7.4 percent of men reported such abuse.)

[5] *Moran v. Ohio*, 469 U.S. 948 (1984).

> "colorable" and "plausible" in previous decisions and that has for years divided state courts and lower federal courts.[6]

The past three decades have demonstrated the prescience of Justice Brennan's dissent. As noted in Petitioner Seaman's Brief, the state of confusion and contradiction in state courts and lower federal courts on the question of the contours of the admissibility of BWS-related expert testimony has only increased as time has passed. Without intervention from this Court, battered-woman defendants such as Petitioner Seaman will remain quite arbitrarily at the mercy of their jurisdiction in terms of whether they will be permitted to present a full defense, and those denied that right will face continued tragic consequences.

This Court has long recognized that the exclusion of logically relevant evidence necessary to present a defense, including a foundation for reasonable doubt, may violate the protections of the Due Process Clause and the Sixth Amendment.[7] A defendant such as Petitioner Seaman has a constitutional right to raise a reasonable doubt as to her specific intent to commit any of the offenses with which she was charged. This is the key question for the jury in many cases

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[6] *Id*. at 949.

[7] *See, e.g.*, *Holmes v. South Carolina*, 547 U.S. 319 (2006); *Gilmore v. Taylor*, 508 U.S. 333 (1993); *Rock v. Arkansas*, 483 U.S. 44 (1987); *Crane v. Kentucky*, 476 U.S. 683 (1986); *Chambers v. Mississippi*, 410 U.S. 284 (1973); *Webb v. Texas*, 409 U.S. 95 (1972); *Washington v. Texas*, 388 U.S. 14 (1967).

involving battered-woman defendants.[8] This right is denied when relevant expert testimony on BWS and its impacts on a defendant is excluded from presentation to a jury.

A. The right to present relevant Battered Woman Syndrome-related expert evidence is part of a defendant's due process right to present a full and fair defense under the Fifth and Sixth Amendments.

Battered-women defendants have a constitutionally-protected right to defend themselves by proffering BWS-related expert evidence. In *Washington v. Texas*,[9] this Court spoke to the breadth of a defendant's right to defend herself in court, and said it included:

> the right to present the defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right

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[8] Ellen Leesfield & Mary Ann Dutton-Douglas, *"Faith and Love": Use of Battered Women's Syndrome to Negate Specific Intent*, 13 Champion Magazine 9, Apr. 1989; *see generally* Erich Andersen & Anne Read-Andersen, *Constitutional Dimensions of the Battered Woman Syndrome*, 53 Ohio St. L.J. 363 (1992).

[9] 388 U.S. 14 (1967).

to present his own witnesses to establish a defense.[10]

This Court has recognized that the right to a defense includes the right to introduce expert testimony helpful to understand or make out the theory of the defense.[11] In *Crane v. Kentucky*, the exclusion of psychiatric testimony offered by the defense to show the "physical and psychological environment"[12] of the interrogation of the accused was found to deprive the accused of his "fundamental constitutional right to a fair opportunity to present a defense."[13]

The exclusion of fact-specific, connective expert testimony in Petitioner Seaman's case had the effect of denying her constitutional right to present a valid defense – the raising of a reasonable doubt as to her specific intent to commit murder and as to the reasonableness of her claim of self-defense. A defendant's right to present logically relevant evidence which casts reasonable doubt on the state's case is a bedrock principle of due process.[14] These same principles

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[10] *Id*. at 19.

[11] *Crane v. Kentucky*, 476 U.S. 683 (1986).

[12] *Id.* at 687.

[13] *See also Boykin v. Wainwright*, 737 F.2d 1539 (11th Cir. 1984) (Psychiatrist's testimony about defendant's sanity); *U.S. v. Roarke*, 753 F.2d 991 (11th Cir. 1985)

[14] *Rock v. Arkansas*, 483 U.S. 44 (1987); *Crane v. Kentucky*, 476 U.S. 683 (1986); *Chambers v. Mississippi*, 410 U.S. 284 (1973); *Webb v. Texas*, 409 U.S. 95 (1972) (per curiam); *Washington v. Texas*, 388 U.S. 14 (1967).

would require the trial court to allow the more expansive admission of expert testimony in Petitioner Seaman's case.[15]

The introduction of expert testimony has largely developed through cases involving the government's attempts to use such evidence in the prosecution's case. As a result, the constraints and limitations on admissibility that have grown from these cases prove to be sorely ill-fitting – and, indeed, unconstitutional – when it is the defendant seeking to introduce the evidence. Criminal defendants are given trial rights which the state does not share. Indeed, the criminal justice system is set up with a recognition that a "tactical advantage to the defendant is inherent in the type of [criminal] trial required by our Bill of Rights."[16]

> A criminal prosecution, unlike a civil trial, is in no sense a symmetrical proceeding. The prosecution assumes substantial affirmative obligations and accepts numerous restrictions, neither of which are imposed on the defendant . . . [I]n the context of criminal investigations and criminal trials, where the accuser and the accused have inherently different roles, with entirely different powers

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[15] *See* Erich Andersen & Anne Read-Andersen, *supra*.

[16] *Williams v. Florida*, 399 U.S. 78, 111 (1970) (Black, J., concurring in part and dissenting in part).

> and rights, equalization is not a sound principle. . . ."[17]

The development of BWS jurisprudence has unfortunately created a situation where the defensive use of BWS-related expert testimony is constricted to generalities.[18]

These ill-fitting and unconstitutional limits on the defensive use of BWS expert evidence work a particular injustice for victims of domestic violence. Indeed, BWS-related expert testimony is particularly necessary to explain the experiences of battered women because their circumstances are often poorly understood by the general public, including typical jurors. Fact-specific expert testimony that addresses the specifics of a defendant's experience is necessary in criminal cases to help juries understand a defendant's conduct and state of mind, as jurors often harbor myths and misconceptions about domestic

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[17] *U.S. v. Turkish*, 623 F.2d 769, 774-775 (2d Cir. 1980).

[18] *See, e.g.*, *U.S. v. Taylor*, 820 F.Supp. 124, 128-129 (2d Cir. 1993) ("As illustrated by the *Arcoren* case, the battered woman syndrome may, in appropriate circumstances, be offered to counter attacks upon a witness's credibility. . . . To some extent, *Arcoren* and the other battered woman's syndrome cases cited *supra*, are distinguishable from the case at bar. In most cases where such testimony is offered, the victim turns on her abuser, and the battered woman's syndrome is offered as a defense to criminal charges. In *Arcoren*, testimony of the syndrome was essential for the government to explain away the victim's recantation, since it lay at the heart of Arcoren's defense to the charges of sexual abuse against him.").

violence. "The law cannot be allowed to be mired in antiquated notions about human responses when a body of knowledge is available which is capable of providing insight."[19] As Petitioner Seaman's case demonstrates and as several state and federal jurists stated over the course of her direct and collateral appeals, expert testimony that explains the coping strategies used by battered women is of vital importance in explaining to jurors exactly why a battered woman might attack her abuser, and why she may not perceive risk or threat in the same way a person who had not been subject to thirty years of abuse would. Research has shown that jurors find it difficult to make use of information if it is not directly linked to the individual.[20]

Thus, the constraints on the introduction of BWS-related expert testimony that work effectively

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[19] *Thomas v. Arn*, 728 F.2d 813, 815 (6th Cir. 1984) (Jones, J., concurring), aff'd, 474 U.S. 140 (1985).

[20] Regina A. Schuller & Neil Vidmar, *Battered woman syndrome evidence in the courtroom: A review of the literature*, 16 Law & Hum. Behavior 16 (1992). Moreover, as Petitioner Seaman's case demonstrates, a major obstacle to achieving a claim of self-defense is that jurors harbor a host of misconceptions regarding the causes and effects of intimate partner abuse (i.e., that battered women could leave if they wanted to and that battered women are weak and meek). Jurors need expert assistance to understand how a woman's experience of being abused influences her state of mind, including her understanding of the level of danger she faces. Carol Jacobsen, Kammy Mizga & Lynn D'Orio, *Battered Women, Homicide Convictions, and Sentencing: The Case for Clemency*, 18 Hastings Women's L.J. 31, 41 (2007).

to curb prosecutorial power unduly restrict battered-women defendants from exercising their constitutional right to present a complete defense. Petitioner Seaman's Petition provides the Court with a timely and appropriate mechanism for addressing the constitutionality of the restrictions on the defensive use of BWS-related expert testimony by victims of domestic violence.

B. Precluding admission of relevant Battered Woman Syndrome-related expert testimony by battered-women defendants violates their right to equal protection under the law.

By precluding battered women from presenting relevant expert testimony in a manner equal to non-battered-women defendants, courts violate these women's Fourteenth Amendment guarantee of Equal Protection. The Equal Protection Clause of the Fourteenth Amendment "commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike."[21] While criminal defendants have a constitutional right to present behavioral evidence critical to their defense, this constitutional promise is delivered unequally to a defendant depending on whether they

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[21] *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (citing *Plyler v. Doe,* 457 U.S. 202, 216 (1982)).

are within the protected class of battered women or if they are fortunate enough to fall outside of it.[22]

Denial of fact-specific, relevant expert testimony on the experience of domestic violence and how individuals cope with that experience denies the class of battered women the same access to that constitutional right as other, non-battered-woman defendants who may present behavioral evidence about their mental health, medical diagnoses, or substance abuse issues for example. As the cases below illustrate, far greater evidentiary leeway is given to experts presenting testimony on the behavioral evidence and clinical diagnoses of non-battered-woman defendants. The witnesses in the cited cases were permitted to opine about the defendant's state of mind and present behavioral evidence regarding the effects of Post-Traumatic Stress Disorder ("PTSD"), a close psychological cousin of BWS, as well as other behavioral issues, upon a defendant at the time of the offense in question. This full embodiment of these defendants' right to defend themselves stands in stark contrast to the limitations placed upon experts testifying about

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[22] Bur. J. Stat., U.S. Dep't of Just., *Violence Between Intimates*, NCJ 149259 (Nov. 1994), http://www.bjs.gov/content/pub/pdf/vbi.pdf. (Women far outnumber men as victims of domestic violence, and thus "victims of domestic violence" falls within the protected class of gender. The great majority of victims of serious domestic violence and sexual assault are women. In over 90 percent of the violence by intimates recorded in the National Crime Victimization Survey from 1987 to 1991, the victim was female.)

BWS in state and federal jurisdictions around the country. Petitioner Seaman and other similarly situated battered-women defendants have been denied the right to have their experts make these fact-specific connections regarding state of mind, diagnoses, and behavioral evidence as defendants who were not battered women.

In Michigan alone, there are countless examples of non-battered-woman defendants being allowed to present expert testimony going directly to their state of mind. For example, a defense expert witness was permitted to testify that a male defendant suffered from PTSD and Paranoid Personality Disorder in *People v. Moulton*.[23] In *People v. Merkel*, an arson case, a defense expert witness testified that the defendant's prolonged alcoholism caused him to be unable to control his behaviors.[24] In *People v. Bernaiche*, an expert witness testified that the defendant's violent urges were caused by the effects of Prozac and impacted his behavior at the time of the crime.[25]

Outside of Michigan, the scope of permissible expert testimony not related to BWS, particularly in cases involving PTSD, is similarly expansive. In

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[23] *People v. Moulton*, No. 168693, 1996 WL 33323965 (Mich. Ct. App. July 9, 1996).

[24] *People v. Merkel*, 714 N.W.2d 300 (Mich. 2006).

[25] *People v. Bernaiche*, No. 261498, 2008 WL 2627600 (Mich. Ct. App. July 3, 2008).

Simmons v. State, for example, the Court of Appeals of Maryland found that the exclusion of expert testimony by the trial court regarding the defendant's subjective belief that self-defense was necessary to avoid imminent death or serious bodily injury due to his psychiatric state in a second degree murder case was improper.[26]

As these cases demonstrate, in recent decades courts have taken an expansive view of the admissibility of expert testimony to issues of state of mind

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[26] 542 A.2d 1258 (Md. Ct. App. 1998). *See also U.S. v. Rezaq*, 918 F.Supp. 463 (D.C. Cir. 1996) (expert witness testimony regarding defendant's PTSD, major depression, and fragile mental state properly admitted related to *mens rea*); *People v. Cortes*, 121 Cal.Rptr.3d 605 (Ct. App. 2011) (finding abuse of discretion where trial court excluded expert testimony linking defendant's PTSD-caused dissociative state to lack of *mens rea*); *State v. Mizzell*, 773 So.2d 618 (Fla. Dist. Ct. App. 2000) (expert evidence regarding Vietnam veteran defendant's PTSD relevant to self-defense on charge of attempted second degree murder); *State v. Bottrell*, 14 P.3d 164 (Wash. Ct. App. 2000) (finding abuse of discretion in trial court's exclusion of defense expert testimony connecting defendant's PTSD generally and PTSD-related flashbacks specifically with defendant's ability to act with intent necessary for premeditated murder); *Simmons v. State*, 542 A.2d 1258 (Md. Ct. App. 1998) (exclusion of expert testimony regarding defendant's subjective belief that self-defense was necessary to avoid imminent death or serious bodily injury was improper); *State v. White*, 943 P.2d 544 (N.M. Ct. App. 1997) (preclusion of defensive use of expert evidence regarding defendant's PTSD found to be error); *State v. Hines*, 696 A.2d 780 (N.J. Super. Ct. App. Div. 1997) (finding reversible error in trial court's refusal to permit defensive use of PTSD expert testimony in aggravated manslaughter and theft case).

and self-defense.[27] To comport with the promise of the Equal Protection Clause, battered-women defendants must be granted the same opportunity to present critical expert testimony on their state of mind and motivations as similarly situated non-battered-woman defendants.

II. THE LIMITATIONS ON THE DEFENSIVE USE OF RELEVANT BATTERED WOMAN SYNDROME-RELATED EXPERT TESTIMONY HAVE A DEVASTATING IMPACT ON BATTERED WOMEN AT EVERY STAGE OF A CRIMINAL PROSECUTION AND EVADE REVIEW ON DIRECT AND COLLATERAL APPEAL.

The issues of injustice raised by Petitioner Seaman permeate every stage of battered-women defendants' development of their defense case. Indeed, the admissibility of relevant BWS-related expert testimony shapes strategy decisions by a defense attorney long before the matter ever gets to trial. Because lawyers are making strategy decisions in line with these unconstitutional limitations on evidence, their decisions are unassailable on ineffective assistance of counsel claims and unassailable on direct appeal because their perceptions of the limitations act as a prior restraint on what they present at trial. Thus, defense attorneys choose not to attempt to introduce

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[27] Parrish, *supra*.

the evidence, they choose not to make objections and they, ultimately, fail to protect the trial record for appeal. If this Court does not grant Seaman's Petition, it risks letting these constitutional inequalities go unrecognized and it risks the continuation of injustice for victims of domestic violence.

In Petitioner Seaman's case, for example, her defense attorney did not even attempt to introduce anything more than the most basic introductory information about BWS due to his understanding of Michigan's severe limitations on BWS evidence. Thus, at a pretrial conference, the defense attorney and the judge agreed *in limine* that the defense attorney would not probe beyond the introductory and general information on BWS and that he would not elicit exactly the kind of information necessary for the jury to evaluate Petitioner Seaman's culpability of first-degree murder and the reasonableness of her self-defense claim.[28]

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[28] Petitioner Seaman's attorney's agreement with the judge not to ask case-specific questions of the expert reflects the significant misunderstandings of the contours of admissibility of the defensive use of expert testimony, and the dire need for this Court to speak on this issue. Both the defense attorney and the judge appeared to have misapplied the holding of *People v. Christel*, 537 N.W.2d 194 (Mich. 1995), in which the state offered expert testimony to help the jury understand the behavior of the complainant who was a battered woman. The court stated "if relevant and helpful, testimony regarding specific behavior is permissible" and can "include an explanation of the complainant denying or minimizing the abuse, delays in reporting, or subsequently recanting the abuse." Despite this ruling, Petitioner's

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The jury in Petitioner Seaman's case was asked to infer specific intent from testimony about her conduct before and after the crime. This is, after all, the standard way that juries are able to find intent in criminal cases. Yet, a correct inference always depends on the facts of the particular case.[29] It thus follows that the jury is entitled to have the benefit of testimony that will protect it against readily anticipated misunderstandings of that conduct, especially since lay jurors often harbor numerous myths and misconceptions regarding domestic violence.[30] A layperson's notions of the impact and dynamics of intimate partner abuse differ significantly from those of an expert.[31] When combined with legal hurdles and systemic bias, that lack of knowledge by a layperson amounts to a "deep societal resistance to perceiving the circumstances of battered women."[32] Expert testimony that explains how typical coping strategies used by individuals to withstand domestic abuse

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trial judge and defense attorney misunderstood the limits of her ability to use case-specific expert testimony.

[29] *See generally Sandstrom v. Montana*, 442 U.S. 510 (1979).

[30] *People v. Brown*, 94 P.3d 574, 583 (Cal. 2004); *see generally* Alana Bowman, *A Matter of Justice: Overcoming Juror Bias in Prosecutions of Batterers Through Expert Witness Testimony of the Common Experiences of Battered Women*, 2 S. Cal. Rev. L. & Women's Stud. 219, 235 (1992).

[31] *See* Regina A. Schuller, Vicki L. Smith & James Olson, *Jurors' Decisions in Trials of Battered Women Who Kill: The Role of Prior Beliefs and Expert Testimony*, 24 J. Applied Soc. Psych. 316, 317 (1994).

[32] *See* Schneider, *supra*, at 113.

provides the fact finder with the framework necessary to assess the reasonableness and perception of danger common to battered women.[33]

In this case, the jury heard some testimony about Petitioner Seaman's history of abuse. Of dire consequence, however, the jury had no way to relate the evidence of domestic violence to her actions after the killing. As Dr. Lenore Walker, her putative expert and a nationally recognized expert on BWS,[34] explained in testimony subsequent to trial, Petitioner Seaman's post-killing behavior made sense in light of her history of abuse: it was logical, based on her history, that Petitioner Seaman would "overkill" her husband through multiple blows. Dr. Walker would have testified that Petitioner Seaman, throughout the course of her marriage of over twenty years, had covered up bruises and violence with makeup and excuses, and, based on the repetitive abuse, had come to believe that she would never escape her abuser. Dr. Walker would have testified that it was therefore in line with her coping mechanisms during the marriage that Petitioner Seaman would attempt to cover up the killing and act as if everything was normal. Because Dr. Walker was not permitted to testify about Petitioner Seaman's state of mind and behavior, and how they resulted from her years of suffering

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[33] Regina A. Schuller & Patricia A. Hastings, *Trials of Battered Women Who Kill: The Impact of Alternative Forms of Expert Evidence*, 20 Law & Hum. Behavior 167, 168 (1996).

[34] *See* Lenore Walker, *The Battered Woman* (1st ed. 1979).

violence at the hands of her husband, the jury was precluded from making those connections. Without Dr. Walker's critical testimony, the jury could make the only inference presented to it, the inference from the prosecutor that these post-killing behaviors reflected murder in cold blood. It could not understand the significance of the lay testimony about abuse without also hearing more fully from the expert.

As Petitioner Seaman's case further proves, the knowledge that admissibility of expert evidence is severely limited not only dissuades defense attorneys from trying to introduce it, it also shapes the entire presentation of their case. The lack of relevant expert BWS evidence determines the extent to which defense counsel will introduce factual evidence of the defendant's history of abuse, including whether to bring in third-party observers of the abuse, whether to mention the abuse in opening argument, whether to argue about its effects in closing argument, and – most importantly – whether to put the defendant on the stand in her own defense.

Further, as demonstrated by Petitioner Seaman's trial, the exclusion of critical expert testimony can provide the state with an opportunity to distort and mischaracterize the evidence that a battered woman was able to present. When a battered woman is on trial, prosecutors may perpetuate jurors' misconceptions

in their presentation of the case.[35] For instance, at the beginning of her cross examination of Dr. Walker, the prosecutor stated in open court that she was the head of the domestic violence unit, suggesting to the jury that she had a higher level of knowledge about domestic violence and battered women than an average person. Later, during her closing arguments, the prosecutor stated to the jury directly that Petitioner Seaman was "not a battered woman." Without fact-specific expert testimony connecting the abuse to the defendant's thinking, the prosecution in Petitioner Seaman's case asked jurors to evaluate her reasonableness without the necessary context and with the implicit suggestion that the prosecutor herself was the most knowledgeable person in the room on the topic of domestic violence and its effects.

As shown above, these injustices easily fly below the judicial radar because they are often addressed before trial in ways that evade appellate review. Here, Petitioner Seaman presents a timely and appropriate vehicle for this Court to address these systemic unconstitutional inadequacies and to make a significant difference in the administration of justice for victims of domestic violence.

[35] Jacobsen, Mizga and D'Orio, *supra*, at 41.

CONCLUSION

Without critical and relevant BWS-related expert witness testimony, juries will continue to render first-degree murder convictions of battered women who kill their abusers without planning or forethought. Further, juries will continue to reject claims of self-defense even where the woman reasonably believed her use of deadly force was necessary. The tragic result of such exclusion, therefore, is that victims of domestic violence will continue to be sentenced – as is the case in Michigan and as is Petitioner Seaman's future – to spend the rest of their lives in prison with no chance for parole.

Courts across the country have refused to permit battered-women defendants to present case-specific BWS-related expert testimony relevant to their defense, in stark contrast to the scope of expert evidence allowed when presented by non-battered-woman defendants. These courts are violating women's rights guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution. Petitioner Seaman presents one such case, and it is critical to the fairness of the criminal justice system that this Court address the issue.

For the foregoing reasons and in addition to the reasons set forth in the Petitioner's Brief, the *Amici Curiae* respectfully request that this Court grant the Petitioner's Petition for a Writ of Certiorari to the Michigan Supreme Court.

Respectfully submitted,

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