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CITY BAR**

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**TESTIMONY OF ANNA OGNIBENE, MEMBER,  
DOMESTIC VIOLENCE COMMITTEE OF THE NEW YORK CITY BAR  
ASSOCIATION, IN SUPPORT OF RES. NO. 1064**

**NEW YORK CITY COUNCIL  
COMMITTEE ON WOMEN'S ISSUES HEARING  
FEBRUARY 27, 2012**

Thank you for the opportunity to present testimony in support of Resolution Number 1064, calling upon Congress to reauthorize the Violence Against Women Act. The Committee on Domestic Violence of the New York City Bar Association writes in support of the Violence Against Women Reauthorization Act of 2011 (S. 1925), which continues the current protections given to victims of domestic violence and sexual assault, and expands the protections in certain key ways. The Committee on Domestic Violence engages in policy and legal analysis, and attorney and public education on issues relating to domestic violence and other forms of gender-based violence. Our committee members are employed in a variety of arenas, including legal and social service agencies, district attorneys' offices, law firms, policy positions and academia. We share a joint goal of advocating for improvements in our laws, policies, and services that impact survivors of domestic and sexual violence and their families.

As the Centers for Disease Control recently confirmed, domestic and sexual violence continues to be a major national problem and the number one cause of injury to women in the United States. The VAWA Reauthorization Act takes a multi-pronged approach to domestic and sexual violence, strengthening policies and providing funding for numerous programs aimed at ending violence. The Committee would like to express particular support for the provisions of the bill that relate to housing and immigration benefits for survivors, regardless of gender, sexual orientation, or gender identity, as these sections are of special importance to victims in New York City.

**PROTECTIONS REGARDLESS OF GENDER OR SEXUAL ORIENTATION**

The VAWA Reauthorization Act enumerates protections for victims of domestic violence and sexual assault regardless of gender, sexual orientation or gender identity. Specifically, the bill expands non-discrimination language prohibiting VAWA grantees from discriminating on the basis of protected categories - which currently include race, color, religion, national origin, sex, and disability - to also include gender identity or sexual orientation. In addition, the bill provides funding for programs supporting victims who have had difficulty accessing traditional services because of their sexual orientation or gender identity. These provisions recognize that victims of domestic violence in same-sex relationships can face discrimination when seeking

assistance. Given New York City's significant LGBTQ population, these provisions are of special importance to domestic violence victims in New York City and the attorneys representing these clients.

## **HOUSING PROTECTIONS**

The Violence Against Women Act of 2005 created new housing protections for victims of domestic violence, dating violence, or stalking. The law now prohibits eviction or denial of housing because a tenant has experienced these forms of abuse. However, VAWA's current protections apply only to public and Section 8 housing, and do not extend to victims of sexual assault.

Title VI of the VAWA Reauthorization Act would improve the law by: (1) including victims of sexual assault among those covered under the housing protections; and (2) extending VAWA's housing protections to the following subsidized housing programs: the Low-Income Housing Tax Credit program; Section 811 supportive housing for persons with disabilities; Section 202 supportive housing for the elderly; the McKinney-Vento homelessness programs; Section 236 low-income housing; Section 221(d)(3) low-income housing; the HOME Investment Partnership Program; the Housing Opportunities for Persons with AIDS (HOPWA) program; and the rural housing assistance programs provided under sections 514, 515, 516, 533 and 538 of the Housing Act of 1949. Extending VAWA's protections to these supported housing programs will promote consistency across programs and provide many more survivors with the protections they deserve.

The VAWA Reauthorization Act would also address the significant problem of victims who need to move when threatened, by requiring that housing providers adopt an emergency transfer policy that allows survivors to transfer to another safe housing unit, where available, if the survivor expressly requests the transfer and the survivor reasonably believes that he or she is threatened with imminent harm if he or she remains at the current dwelling. The bill would also require the Department of Housing and Urban Development to establish policies and procedures under which a survivor seeking emergency relocation can receive, subject to availability, a Section 8 voucher.

## **PROTECTIONS FOR CERTAIN IMMIGRANTS**

Title VIII of the bill makes several key improvements to the immigration laws that currently apply to victims of domestic violence and sexual assault. Given New York City's significant immigrant population, these provisions are especially important to the victims we serve.

### Expansion of Enumerated Crimes for U Visa Eligibility

In order to encourage immigrant crime victims to report crimes to law enforcement without fear of negative immigration consequences, Congress previously created a type of visa – the U visa – that allows victims to obtain lawful immigration status. U nonimmigrant protection is currently available to victims of certain enumerated crimes, including domestic violence crimes and sexual assault. Section 801 of the VAWA Reauthorization Act adds dating violence and stalking to the list of enumerated crimes. This is consistent with the fact that domestic

violence can occur to anyone regardless of age, cultural background, or sexual orientation, and is not limited to spouses or people living together. Adding “dating violence” as an enumerated crime would extend immigration protection to, among others, young victims as well as LGBTQ victims.

### Secondary Evidence of Helpfulness to Law Enforcement

Currently, a victim of domestic violence is not eligible to apply for U nonimmigrant status unless they receive a certification from a law-enforcement entity that the victim has been or is likely to be helpful in the investigation or prosecution of the crime. Unfortunately, there is much confusion among law enforcement entities about what entails being “helpful” or how “helpful” a victim must be to receive a certification.

For example, in New York City, some Family Court judges believe they are not empowered to sign certifications after the victim brings a civil family offense action – thus bringing the criminal behavior to the attention of the government – even if an Order of Protection is entered in the case. In addition, some District Attorneys will not sign certifications if they are not able to reach the victim within a certain amount of time. Victims in these circumstances then lose their opportunity to receive immigration protection, even if they wanted to assist but did not know how to do so; for example, because they do not speak English and did not receive instructions from the police or D.A. in their language. These determinations not to sign certifications are especially troubling because there is no right to appeal from that discretionary decision.

The new legislation would allow USCIS to consider secondary evidence that the victim *attempted* to be helpful to the investigation and attempted to obtain a certification. This would protect victims from arbitrary denials based on factors beyond their control, while leaving the discretion to ultimately award a U visa where it belongs, with the Secretary for Homeland Security.

### Application Processing Times

Currently, processing of VAWA Self-Petitions, Battered Spouse Waivers and U and T visas can take many months. New York City attorneys representing battered immigrants report that they have clients who have been waiting a year or more for a decision on their applications. There are new provisions in the VAWA Reauthorization Act that would help to alleviate the burden on victims while they await the processing of their applications.

First, Section 807 of the VAWA Reauthorization Act would allow an I-765 Application for Employment Authorization to be approved on the *earlier* of a VAWA Self-Petition or U visa being approved, or 180 days after the self-petition or U visa application has been submitted. Currently, VAWA Self-Petitioners who are not married to a United States Citizen, and U visa applicants, must wait until their Self-Petitions or U visas are approved before they may apply for work authorization. Allowing these petitioners to work sooner allows them to begin supporting themselves free from the abusive relationship, and to become contributing members of society.

Second, Section 802 would require the Secretary of Homeland Security to submit annual reports on, among other things, (1) the mean and median amount of time to adjudicate U visa

applications, T visa applications and VAWA self-petitions; (2) the mean and median amount of time between the receipt of such an application and the issuance of work authorization to an eligible applicant; and (3) a description of any actions taken to reduce the adjudication and processing time of such applications. Requiring openness and accountability from the Department of Homeland Security would hopefully encourage DHS to strive to diminish processing times, while allowing solutions to be considered.

#### Protections for Children of VAWA Self-Petitioners

Currently, if a U.S. Citizen spouse dies after filing a family-based petition for a non-citizen spouse, that non-citizen spouse may continue his or her petition as a widow or widower of the sponsoring spouse. Until now, no such protections existed for derivatives (such as children) of a VAWA Self-Petitioner. Section 803 of the VAWA Reauthorization Act would allow the surviving children of a VAWA Self-Petitioner to continue their applications if their parent, the self-petitioner, dies. This fix is logically consistent with the “widow’s and widower’s fix,” and expands the VAWA protections to the victims’ children.

#### Public Charge Not a Ground for Inadmissibility

Victims of domestic violence often feel trapped in their abusive relationships because they are afraid they will not be able to support themselves and survive financially outside the relationship. This fear is especially dominant among immigrant victims who are not legally allowed to work to support themselves.

Many domestic violence victims need to avail themselves of public benefits for a short time after leaving their abusive relationship, to allow them to find safe homes, gain education and work skills, and become financially independent. However, the risk of becoming a “public charge” makes a non-citizen inadmissible to the United States. Section 804 of the VAWA Reauthorization Act would make clear that VAWA Self-Petitioners, U visa applicants and T visa applicants are deserving of protection in the United States, and are exempt from the public charge inadmissibility ground.

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VAWA has played a central role in responding to domestic and sexual violence in New York City and across the country. The VAWA Reauthorization Act would strengthen existing protections and bring us closer to our goal of ending violence. For the foregoing reasons, the New York City Bar Association recommends enactment of this legislation, and supports Resolution No. 1064.