

# SAFE AT HOME: REIMAGINING ADDRESS CONFIDENTIALITY

## INTRODUCTION

On her fourth attempt to escape, a Michigan survivor<sup>1</sup> hoped that her abuser would not find her this time.<sup>2</sup> But, as in her previous attempts, he was able to locate her new address: In the survivor’s words, “It is so easy to just look up some of that information.”<sup>3</sup> Whether it be through free and easily accessible public records—such as online voter registration<sup>4</sup>—or private service providers that maintain location information—like utility companies<sup>5</sup>—one’s address is often readily retrievable, and sometimes in unexpected ways.<sup>6</sup>

This is especially so in our information age, which has transformed society as we know it, leading to ubiquitous connectivity and phenomena such as e-government.<sup>7</sup> This digital revolution breeds new privacy concerns,<sup>8</sup> intensifying threats to survivors of domestic violence, sexual

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1. Importantly, some individuals prefer the term “victim” to “survivor” to describe a person who has been subject to domestic or sexual violence. See, e.g., Kate Harding, *I’ve Been Told I’m a Survivor, Not a Victim. But What’s Wrong with Being a Victim?*, TIME (Feb. 27, 2020, 8:20 AM), <https://time.com/5789032/victim-survivor-sexual-assault/> [https://perma.cc/42Q5-B2ZA]; Elena LeVan, Note, *Fruit of the Poisonous Tree: Potential Eighth Amendment Protections for Inmates Subject to Sexual Victimization in the Post-Dobbs World*, 101 WASH. U. L. REV. 589, 591 n.16 (2023). Given the restorative purpose of this Note and the use of the term by many services-based organizations to convey empowerment, this Note, to remain consistent, uses the term “survivor” wherever possible. *Id.* (citing *The Language We Use*, WOMEN AGAINST ABUSE, <https://www.womenagainstabuse.org/education-resources/the-language-we-use> [https://perma.cc/C9EU-977J]).

2. Anna Liz Nichols, *Michigan Launches Address Confidentiality Program to Protect Violence Survivors*, MICH. ADVANCE (Sept. 13, 2023, 12:01 AM), <https://michiganadvance.com/2023/09/13/michigan-launches-address-confidentiality-program-to-protect-violence-survivors/> [https://perma.cc/8XUT-Y6LE].

3. *Id.*

4. See, e.g., Scottie Andrew, *For Abuse Victims, Registering to Vote Brings a Dangerous Tradeoff*, CNN (Oct. 27, 2020, 3:57 PM), <https://www.cnn.com/2020/10/27/us/domestic-violence-voting-election-privacy-trnd/index.html> [https://perma.cc/PXK2-Z7ND] (reporting story of a man who used public voter registration rolls to stalk a Louisiana resident).

5. See, e.g., Nichols, *supra* note 2.

6. *See id.*

7. “E-government” refers to the “application of [i]nformation and [c]ommunication [t]echnologies . . . to government functions and procedures . . . .” *About e-Government*, ORG. AM. STATES, <http://portal.oas.org/portal/sector/sap/departamentoparalagesti%C3%B3n%C3%BCblicaefectiva/npa/sobreprogramadeegobierno/tabid/811/default.aspx?language=en-us> [https://perma.cc/C2S5-YUCB]. See also Margaret Ann Irving, *Managing Information Privacy in the Information Age*, 53 ADMIN. L. REV. 659 (2001), for a discussion on how “[d]evelopments in technology have resulted in the ability to communicate and obtain information electronically at unparalleled levels,” *id.* at 660, or *The Impact of Digital Technologies*, UNITED NATIONS, <https://www.un.org/en/un75/impact-digital-technologies> [https://perma.cc/PV8H-TW7R] for a discussion on how today’s data-powered technology has potential to do good, “depending on the type of protections put in place.” *Id.*

8. See, e.g., NEIL RICHARDS, *WHY PRIVACY MATTERS* 4 (2022).

assault, and other crimes. Where there was once a certain expectation of privacy in one's location,<sup>9</sup> location information is now much more readily available, and this enables abusers to easily locate their victims using digital resources.<sup>10</sup>

To address this issue in part, some states have enacted address confidentiality programs (ACPs). At a high level, ACPs provide survivors with a fictitious address that certain entities, such as state and local agencies, are required to use as a substitute for the survivor's true address when creating records.<sup>11</sup> Abusers are thereby prevented from finding their victim's home address when accessing such records.<sup>12</sup> Participating in an ACP can thus help smooth the way for making a very difficult escape from an abuser.<sup>13</sup> For instance, if the aforementioned survivor from Michigan would have had access to an ACP, she could have used it to conceal her new address; all that her abuser would have found through voter registration or the utility company's records would have been the fictitious address, designated to her through the ACP.

But not every state offers an ACP, and the ACPs that are in place vary in important respects from state to state.<sup>14</sup> For instance, where victims of a certain crime qualify for ACP protection in one state, they may be ineligible in the next. Or, where any person or private business must accept and use an ACP participant's fictitious address in one state, a neighboring state may only impose that requirement on state and local agencies.

Part I of this Note begins by examining the current system of ACPs—exploring the legislative purpose behind the statutes and how they operate. The examination also covers states that have not enacted an ACP, their efforts to provide any comparable protections, and a proposed federal law that would require executive agencies and federal courts to accept ACP participants' fictitious addresses. Next, Part II describes the crucial nature

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9. See, e.g., Andrew J. Blumberg & Peter Eckersley, *On Locational Privacy, and How to Avoid Losing it Forever*, ELEC. FRONTIER FOUND. (Aug. 3, 2009), <https://www.eff.org/wp/locational-privacy> [https://perma.cc/6KR4-JB4M].

10. The focus of this Note is a harm caused by increased data collection and sharing. See generally *Why Privacy and Confidentiality Matters for Victims of Domestic & Sexual Violence*, SAFETY NET PROJECT (2016), <https://www.techsafety.org/privacymatters> [https://perma.cc/TTZ9-URVP] (describing how modern data practices make it difficult for survivors to maintain privacy). For reading on harms specifically stemming from new technologies, see, for example, Mélissa Godin, *How Domestic Abusers Have Exploited Technology During the Pandemic*, TIME (Dec. 31, 2020, 11:54 AM), <https://time.com/5922566/technology-domestic-abuse-coronavirus-pandemic/> [https://perma.cc/7QUF-BQUY], or Rachel Williams, *Spyware and Smartphones: How Abusive Men Track Their Partners*, THE GUARDIAN (Jan. 25, 2015, 12:30 PM), <https://www.theguardian.com/lifeandstyle/2015/jan/25/spyware-smartphone-abusive-men-track-partners-domestic-violence> [https://perma.cc/BC4Q-H6NV].

11. See, e.g., *Address Confidentiality Program*, ARIZ. SEC'Y STATE, <https://azsos.gov/services/acp> [https://perma.cc/H2KR-YMJU] (summarizing Arizona's ACP).

12. See *id.*

13. See *infra* Section II.A.

14. See *infra* Section I.B.

of ACP protection, as evidenced by increased rates of domestic violence, the well-documented risk of increased violence upon a survivor's escape, and the growing ease with which abusers can locate their victims. Part II goes on to argue that the current system of address confidentiality is inadequate because particular inconsistencies amongst ACP statutes (or some states' total lack thereof) create unacceptable gaps in protection, leaving some survivors without a critical tool for preserving their safety. Finally, Part III proposes a solution whereby Congress combines its current proposal with a conditional grant to secure state participation in an ideal ACP statute.

## I. UNDERSTANDING THE CURRENT LANDSCAPE OF ADDRESS CONFIDENTIALITY

### A. Legislative Purpose

ACPs are created by state law to protect survivors of domestic violence, sexual assault, and other offenses designated by statute.<sup>15</sup> Although some states offer broader protections,<sup>16</sup> all ACPs provide survivors with a "designated address" that state and local agencies must accept to use as a substitute for their true address when creating public records.<sup>17</sup> Abusers are thereby prevented from finding their victim's true address when viewing those records.<sup>18</sup> Indeed, a significant motivating force behind the first ACP statute, enacted by the state of Washington, was "concern about the potential use of public records as a means by which an assailant could locate a domestic violence victim."<sup>19</sup> Many state legislatures followed Washington's lead, frequently stating within their legislative findings that the ACP will allow state and local agencies to respond to public records requests without disclosing the location of a survivor.<sup>20</sup>

An associated motivation has been ensuring that survivors can participate in democracy and government without being put at risk of further abuse. For instance, given that "[s]o much of a person's life is intertwined

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15. E.g., IDAHO CODE § 19-5701 (2024); 750 ILL. COMP. STAT. 61/5 (2024); IOWA CODE § 9E.1 (2024).

16. See *infra* Section I.B.

17. See Erin Jane Illman & Leah M. Campbell, *What You Need to Know About Address Confidentiality Programs*, BRADLEY (Mar. 16, 2020), <https://www.financialservicesperspectives.com/2020/03/what-you-need-to-know-about-address-confidentiality-programs/> [https://perma.cc/GQS9-Y2LL].

18. See *id.*

19. Jeffrey T. Even, *Washington's Address Confidentiality Program: Relocation Assistance for Victims of Domestic Violence*, 31 GONZ. L. REV. 523, 525 (1995) (explaining how "[p]ublic records alone afford numerous opportunities for locating an individual").

20. E.g., CAL. GOV'T CODE § 6205 (West 2024); 750 ILL. COMP. STAT. 61/5 (2024).

with the government,” Michigan’s Attorney General remarked that its ACP would help survivors participate in essential functions of the state government.<sup>21</sup> As one Michigan survivor testified, it is challenging to do things like vote or get a new driver’s license, activities that produce public records containing one’s address,<sup>22</sup> without risking the possibility that their abuser will locate them.<sup>23</sup> Participating in an ACP not only reduces this risk but also helps survivors take their power back and gain a sense of freedom by giving them control over their private address.<sup>24</sup>

For survivors who can escape their abuser,<sup>25</sup> ACPs can thus be a crucial tool that preserves their safety.<sup>26</sup> It is important to emphasize that ACP statutes are designed to address the specific situation wherein a survivor flees their abuser and moves to a location unknown to their abuser. State legislatures commonly cite in their findings that “persons attempting to escape from actual or threatened domestic violence” and other offenses “frequently find it necessary to establish a new address in order to prevent their assailants or probable assailants from finding them.”<sup>27</sup> Many ACP

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21. Nichols, *supra* note 2 (statement of Att’y Gen. Dana Nessel) (“We don’t want the state government to be the reason why you’re unsafe. We want state government to protect you, not to put you at risk.”).

22. See, e.g., N.C. GEN. STAT. § 163-82.10(c) (2023) (providing that a list of registered voters shall be available upon request); ARK. CODE ANN. § 27-14-412 (2024) (providing that “[a]ll records of the Office of Motor Vehicle, other than those declared by law to be confidential . . . shall be open to public inspection”). For a summary of the treatment of voter registration data, see *Frequently Asked Questions (FAQ): Public Voter Registration Information and Security of State Voter Registration Databases*, NAT’L ASS’N SEC’YS STATE (Aug. 2022), [https://www.nass.org/sites/default/files/Election%20Cybersecurity/NASS-briefing-FAQ-info-security-2022\\_8.25.22.pdf](https://www.nass.org/sites/default/files/Election%20Cybersecurity/NASS-briefing-FAQ-info-security-2022_8.25.22.pdf) [https://perma.cc/S6M7-3ZME]. See also Quinn Raymond, *Why Is Voter Registration Data Public?*, PROTECT DEMOCRACY (June 26, 2024), <https://protectdemocracy.org/work/why-is-voter-registration-data-public/> [https://perma.cc/SC47-JHWA] (explaining how and why voter registration information is publicly available but describing certain safeguards).

23. See Nichols, *supra* note 2.

24. See Nichols, *supra* note 2; see also Press Release, Off. of the Governor of Rhode Island, Governor McKee Signs Legislation Protecting Confidentiality of Survivors of Domestic Violence (Oct. 25, 2022), <https://governor.ri.gov/press-releases/governor-mckee-signs-legislation-protecting-confidentiality-survivors-domestic> [https://perma.cc/XNW6-USPB] (explaining that the ACP “will keep victims of domestic violence and their families safe from their abusers while also allowing them to build back and live their lives as normally and safely as possible”).

25. See *infra* Section II.A.

26. E.g., Gina Joseph, *Victims Can Now Apply for the Address Confidentiality Program*, MACOMB DAILY (Sept. 18, 2023, 10:48 AM), <https://www.macombdaily.com/2023/09/18/victims-can-now-apply-for-the-address-confidentiality-program/> [https://perma.cc/ZR6C-2TN2] (reporting the availability of an ACP in Michigan, which the state attorney general called “an important component of a survivor’s overall safety plan”).

27. W. VA. CODE § 48-28A-101 (2024); see also *Address Confidentiality Program*, R.I. DEP’T STATE, <https://www.sos.ri.gov/AddressConfidentialityProgram> [https://perma.cc/AAV9-YEX5] (“The goal of the Address Confidentiality Program . . . is to help victims of domestic violence, stalking, sexual assault, and trafficking and/or abuse as defined by RI Gen. Laws § 42-164-2 who have relocated or are about to relocate, in their effort to keep persons who have committed domestic violence or abuse or who threaten the applicant or the applicant’s child or ward with domestic violence or abuse from finding them.”).

statutes therefore explicitly require that the survivor live at an address that is unknown to the abuser.<sup>28</sup>

### *B. Operation of ACPs*

While forty-two states and the District of Columbia have enacted an ACP,<sup>29</sup> consistency between these regimes is erratic. The programs are commonly administered by a state's secretary of state,<sup>30</sup> office of the attorney general,<sup>31</sup> or department of justice.<sup>32</sup> To obtain the protection of an ACP, eligible applicants must fill out an application to the ACP administrator, who will approve the application if it is filed in the manner and form required by the statute.<sup>33</sup> Most commonly, potential participants must meet with an application assistant to complete the ACP application form.<sup>34</sup> Application assistants are individuals who have been trained and registered by the ACP administrator to help potential participants through the process of applying to the program and developing an overall safety plan.<sup>35</sup> States that offer ACPs often have application assistants available throughout the area.<sup>36</sup>

Eligibility criteria vary by state. Some states design their ACPs exclusively for domestic violence or abuse victims who fear for their safety

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28. *E.g.*, 42 R.I. GEN. LAWS § 42-164-3(b)(1)(iii) (2024); TEX. CODE CRIM. PROC. ANN. art. 58.054(2)(d) (West 2023). The issue of barriers to safe housing is outside the scope of this Note. For a more detailed treatment of this important problem, see, for example, Rasheedah Phillips, *Addressing Barriers to Housing for Women Survivors of Domestic Violence and Sexual Assault*, 24 TEMP. POL. & C.R. L. REV. 323 (2015).

29. *State Directory*, ADDRESS CONFIDENTIALITY PROGRAMS (Aug. 12, 2022), <https://www.addressconfidentiality.com/states> [https://perma.cc/AZ25-6XHK]. Note that this directory has not been updated to reflect the fact that Hawaii and Georgia have enacted ACPs. HAW. REV. STAT. § 801G-2 (2024); GA. CODE ANN. § 50-18-153 (2024) (effective July 1, 2026).

30. *See, e.g.*, ARIZ. REV. STAT. ANN. § 41-162 (2024); VT. STAT. ANN. tit. 15, § 1152 (2023); W. VA. CODE § 48-28A-103 (2024).

31. *See, e.g.*, OR. REV. STAT. § 192.822 (2023); TEX. CODE CRIM. PROC. ANN. art. 58.052 (West 2023); VA. CODE ANN. § 2.2-515.2 (2024).

32. *See, e.g.*, DEL. CODE ANN. tit. 11, § 9614 (2024); MONT. CODE ANN. §§ 40-15-116(2), -117 (2023); WIS. STAT. § 165.68(1)(d), .68(3) (2024).

33. *See, e.g.*, DEL. CODE ANN. tit. 11, §§ 9613–9614 (2024); KAN. STAT. ANN. § 75-453 (2023).

34. Compare HAW. REV. STAT. § 801G-3(a) (2024) (providing that an applicant “shall be” assisted by an application assistant), and OHIO REV. CODE ANN. § 111.42 (West 2024) (requiring ACP applications be made with the assistance of application assistants), with VT. STAT. ANN. tit. 15, § 1152(b) (2024) (allowing applications to be filed directly with the ACP administrator or through an application assistant).

35. *See, e.g.*, D.C. CODE § 4-555.01(3) (2024); *Application Assistants*, MO. SEC'Y STATE, <https://www.sos.mo.gov/business/SafeAtHome/ApplicationAssistantResponsibilities> [https://perma.cc/H72M-HABN] (explaining application assistant responsibilities in Missouri).

36. *See, e.g.*, *Application Center Locations*, COLO. DIV. CENT. SERVS., <https://dcs.colorado.gov/acp/enroll-in-the-acp/application-center-locations> [https://perma.cc/4XLF-N3NJ]; *Address Confidentiality Program*, NEB. SEC'Y STATE, <https://sos.nebraska.gov/business-services/address-confidentiality-program> [https://perma.cc/ZQY3-DXCX].

or for their children's safety.<sup>37</sup> Other states expand eligibility to include persons who are victims of some variation of the following crimes: invasion of privacy, intimidation, harassment, malicious harassment, stalking, sexual assault, rape, other sex crimes as defined by statute, human trafficking, and child abduction.<sup>38</sup> Some states have extended their eligibility to reproductive health care service providers, employees, volunteers, and patients.<sup>39</sup> Some states also provide protection for persons providing, assisting another person in obtaining, or obtaining for themselves gender-affirming health care services.<sup>40</sup> Many states also make members of the same household as a program participant eligible to apply.<sup>41</sup>

While some states merely require a statement from the applicant that they are a victim of a crime enumerated by the statute,<sup>42</sup> some states require the applicant to include with their application evidence that they are a victim of such crime.<sup>43</sup> These states vary on the type of evidence they accept. For instance, Arizona requires at least one of the following forms of evidence: law enforcement, court, or other state or local government entity or federal agency records or files; documentation from a domestic violence program or facility; documentation from a sexual assault program; or documentation from a religious, medical, or other professional from whom the applicant has sought assistance.<sup>44</sup> On the other hand, Kansas requires applicants to submit evidence, which *may* include law enforcement, court, or other government records or files; documentation from an entity that provides assistance to victims of domestic violence, sexual assault, human trafficking, or stalking; documentation from an entity that provides assistance to victims of domestic violence, sexual assault, human trafficking, or stalking; or other forms of evidence as determined by the attorney general.<sup>45</sup>

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37. See, e.g., FLA. STAT. § 741.403(1)(a) (2024); 42 R.I. GEN. LAWS § 42-164-3(b)(1)(i) (2024).

38. See, e.g., 750 ILL. COMP. STAT. 61/15(a)(1) (2024); IND. CODE § 5-26.5-2-2(A) (2024); KY. REV. STAT. ANN. § 14.302(2) (West 2024); TEX. CODE CRIM. PROC. ANN. art. 58.054(1)(A) (West 2023).

39. See, e.g., CAL. GOV'T CODE § 6215.2(a)(1) (West 2024); DEL. CODE ANN. tit. 11, § 9613 (2024); VT. STAT. ANN. tit. 15, § 1152(a)(1)(A)(ii) (2024).

40. See, e.g., VT. STAT. ANN. tit. 15, § 1152(a)(1)(A)(ii) (2024); WASH. REV. CODE §§ 40.24.030(1)(d), 7.115.010(3) (2024).

41. See, e.g., HAW. REV. STAT. § 801G-3(b)(10) (2024); 23 PA. CONS. STAT. § 6704(4) (2024); TENN. CODE ANN. § 40-38-602(a) (2024).

42. Compare 42 R.I. GEN. LAWS § 42-164-3(b)(1) (2024) (requiring statement to be under oath and penalty of perjury), with MD. CODE ANN., STATE GOV'T § 7-304(b)(1) (West 2024) (omitting requirement that the requisite statement be made under oath or penalty of perjury).

43. Compare KAN. STAT. ANN. § 75-453(a)(5) (2023) (requiring applicant to submit evidence of crime victimization), with MASS. GEN. LAWS ch. 9A, § 2(2) (2024) (lacking such a requirement).

44. ARIZ. REV. STAT. ANN. § 41-163(C)(3) (2024).

45. KAN. STAT. ANN. § 75-453(a)(5) (2023). Connecticut similarly requires documentation to support an applicant's statement that they are a victim of an enumerated crime, but its statute does not specify what forms of such documentation are acceptable. CONN. GEN. STAT. § 54-240c(2) (2024).

If the application is approved, the administrator issues a designated address that the program participant can use instead of their true address for purposes prescribed by their state's statute.<sup>46</sup> In all states that have enacted an ACP, state and local government agencies and courts must accept and use a program participant's substitute address when creating a new public record or updating an existing record.<sup>47</sup> Therefore, for example, state courts must use a participant's designated address in lieu of their actual address when creating public court records. This way, perpetrators are obstructed from finding their victim's true address if they view the public court record. Some states go beyond requiring state and local government agencies and courts to use a participant's designated address by requiring additional actors such as federal government agencies,<sup>48</sup> public schools<sup>49</sup> or school districts,<sup>50</sup> registrars of voters for purposes related to voter registration,<sup>51</sup> or providers of a utility service<sup>52</sup> to use a participant's substitute address. The ACP statutes of Indiana,<sup>53</sup> Iowa,<sup>54</sup> Maryland,<sup>55</sup> Minnesota,<sup>56</sup> and Wisconsin<sup>57</sup> go further by providing that *any* person or entity must accept the participant's designated address. Lastly, the section in which an ACP outlines permissible use of a designated address usually also provides that mail received at the designated address shall be forwarded by the administrator to the participant's true address.<sup>58</sup>

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46. See, e.g., ARIZ. REV. STAT. ANN. § 41-162(B)(1) (2024).

47. See, e.g., ME. STAT. tit. 5, § 90-B(4) (2024); TENN. CODE ANN. § 40-38-606 (2024).

48. See, e.g., DEL. CODE ANN. tit. 11, § 9615 (2024).

49. See, e.g., ARIZ. REV. STAT. ANN. § 41-166(L) (2024); TENN. CODE ANN. § 40-38-606(d) (2024).

50. Compare N.M. STAT. ANN. § 40-13B-5(C) (2024) (requiring school districts to use participants' substitute address as participants' address of record), with N.C. GEN. STAT. § 15C-8(i) (2023) (prohibiting “[a] local school administrative unit” from using a participant's substitute address for admission or assignment purposes but requiring such units to keep the participant's true address confidential from the public).

51. Compare LA. STAT. ANN. § 44:54(B) (2024) (requiring the registrars of voters to use a participant's substitute address for all purposes related to voter registration), with MD. CODE ANN., STATE GOV'T § 7-309 (West 2024) (prohibiting participants from being able to use their substitute address for voter registration purposes but preventing a local board of elections from making a participant's address contained in their voter registration records available for public inspection or copying unless an exception applies).

52. See, e.g., NEV. REV. STAT. § 217.464(2)(a) (2023); TENN. CODE ANN. § 40-38-606(e) (2024).

53. IND. CODE § 5-26.5-5-2.5 (2024).

54. IOWA CODE § 9E.5(1) (2024).

55. MD. CODE ANN., STATE GOV'T § 7-308(b)(1)(i) (West 2024).

56. MINN. STAT. § 5B.05(a) (2023).

57. WIS. STAT. § 165.68(5)(a)-(c) (2024).

58. Compare MONT. CODE ANN. § 40-15-118(1) (2023) (providing that the administrator shall forward mail to the participant that it receives on their behalf), with W. VA. CODE § 48-28A-103(e) (2024) (specifying that the administrator shall forward all *first-class* mail that it receives at the substitute address to the program participant).

There are exemptions under each ACP statute, allowing the administrator to make a participant's true address or mailing address available to state and local government agencies and courts.<sup>59</sup> Common exemptions include the following: where the program participant is required to disclose their actual address as part of a registration for sex offenders;<sup>60</sup> where law enforcement officers need the actual address for law enforcement purposes;<sup>61</sup> and where state agencies need the actual address for bona fide statutory or administrative purposes and take precautions to protect the confidentiality of the program participant.<sup>62</sup>

Applicants are certified as participants for three<sup>63</sup> to five<sup>64</sup> years following approval of their application.<sup>65</sup> Certification can be withdrawn by the participant or canceled by the program administrator before expiration.<sup>66</sup> Each ACP statute usually provides the procedure for withdrawal, which generally involves submitting a written notice or request to the program administrator.<sup>67</sup> Common grounds for cancellation by the administrator include the following: the participant is no longer eligible for the program;<sup>68</sup> the participant failed to renew their application;<sup>69</sup> the participant's application contained false statements;<sup>70</sup> the participant obtained a legal change of identity;<sup>71</sup> the mail forwarded by the administrator to the address provided by the participant is returned as undeliverable;<sup>72</sup> and the participant changed their true address and did not notify the administrator of the change.<sup>73</sup> Some states require the program administrator to attempt to

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59. See, e.g., MONT. CODE ANN. § 40-15-118(2) (2023); W. VA. CODE § 48-28A-106 (2024).

60. See, e.g., N.C. GEN. STAT. §§ 15C-9(a)(5), 14-208.7(b)(1) (2023); OR. REV. STAT. § 192.848(1)(b) (2023).

61. See, e.g., KY. REV. STAT. ANN. § 14.308(2) (West 2024); TENN. CODE ANN. § 40-38-609(a)(2) (2024).

62. See, e.g., IDAHO CODE § 19-5705 (2024); ME. STAT. tit. 5, § 90-B(5-A)(B) (2024).

63. See, e.g., D.C. CODE § 4-555.03(h)(1) (2024); DEL. CODE ANN. tit. 11, § 9614 (2024).

64. See, e.g., ARIZ. REV. STAT. ANN. § 41-163(E) (2024).

65. Many states certify their ACP participants for four years. See, e.g., LA. STAT. ANN. § 44:52(B)(2) (2024); MD. CODE ANN., STATE GOV'T § 7-304(c)(1)(ii) (West 2024).

66. See, e.g., KY. REV. STAT. ANN. § 14.306 (West 2024); MASS. GEN. LAWS ch. 9A, § 2(3) (2024).

67. See, e.g., ARIZ. REV. STAT. ANN. § 41-163(E) (2024); CONN. GEN. STAT. § 54-240k(e) (2024).

68. See, e.g., KY. REV. STAT. ANN. § 14.306(4) (West 2024); TENN. CODE ANN. § 40-38-608(a)(6) (2024).

69. See, e.g., MICH. COMP. LAWS § 780.859(c) (2024); CONN. GEN. STAT. § 54-240k(a)(4) (2024).

70. See, e.g., 23 PA. CONS. STAT. § 6706(a)(1) (2024); TENN. CODE ANN. § 40-38-608(a)(1) (2024).

71. See, e.g., MINN. STAT. § 5B.04(a) (2023); WASH. REV. CODE § 40.24.040(1) (2024).

72. See, e.g., VA. CODE ANN. § 2.2-515.2(E)(4) (2024); VT. STAT. ANN. tit. 15, § 1153(a)(3) (2024).

73. Compare TEX. CODE CRIM. PROC. ANN. art. 58.058(a)(2) (West 2024) (giving participants ten days to notify program administrator of true address change before cancellation), with 42 R.I. GEN. LAWS § 42-164-4(b)(2) (2023) (lacking such a cushion period).

notify the participant in writing prior to canceling their certification.<sup>74</sup> In states that have the notification of cancellation requirement, the ACP statute requires that the notice specify the reason or reasons for cancellation.<sup>75</sup> These statutes typically provide a mechanism for participants to appeal any cancellation decision, usually by filing with the program administrator within thirty days after the date of notice of the cancellation.<sup>76</sup>

Some ACP statutes confer rulemaking authority upon the program administrator to establish a renewal procedure.<sup>77</sup> Others provide that certification can be renewed by filing a renewal application with the program administrator, commonly within thirty days of expiration of the participant's current certification.<sup>78</sup>

### *C. Protections in States without ACPs*

The following states have not enacted an ACP: Alabama, Alaska, Arkansas, North Dakota, South Carolina, South Dakota, and Wyoming.<sup>79</sup> Although these states have not enacted ACPs, some have programs that provide confidentiality for persons affected by domestic violence in more narrow contexts. For example, an Alabama law provides individuals who are victims of domestic violence the opportunity to have all information except their name omitted "on any generally available list of registered

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74. Compare LA. STAT. ANN. § 44:53(B) (2024) (requiring the program administrator to notify program participants in writing before canceling their certification in the program), with 750 ILL. COMP. STAT. 61/20 (2024) (lacking such a notification requirement).

75. See, e.g., CONN. GEN. STAT. § 54-240k(b) (2024); KY. REV. STAT. ANN. § 14.306(5) (West 2024).

76. See, e.g., MD. CODE ANN., STATE GOV'T § 7-307(c) (West 2024); TENN. CODE ANN. § 40-38-608(b) (2024).

77. See, e.g., CAL. GOV'T CODE § 6206(d) (West 2024); FLA. STAT. § 741.403(3) (2024). Recall that a state's secretary of state, office of the attorney general, or department of justice, depending on the ACP statute, houses the ACP administrator. *See supra* notes 30–32 and accompanying text.

78. See, e.g., ARIZ. REV. STAT. ANN. § 41-163(E) (2024); COLO. REV. STAT. § 24-30-2105(5) (2024). Under some ACPs, renewal applications must contain any statement or information that is required by the initial application that has changed from the original application or a prior renewal, as well as a statement by the applicant, under the penalty of perjury, that to the best of their knowledge, the information contained in the renewal application and a prior application is true. *See, e.g.*, ARIZ. REV. STAT. ANN. § 41-163(E)(1)–(2) (2024); COLO. REV. STAT. § 24-30-2105(5)(a)–(b) (2024). For other states, the requirements of a renewal application are the same as those for the initial application. *See, e.g.*, IND. CODE § 5-26.5-2-7(c) (2024).

79. See *Address Confidentiality Programs by State*, NAT'L ASS'N CONFIDENTIAL ADDRESS PROGRAMS, [https://azsos.gov/sites/default/files/docs/ACP\\_Throughout\\_the\\_United\\_States.pdf](https://azsos.gov/sites/default/files/docs/ACP_Throughout_the_United_States.pdf) [https://perma.cc/SYT8-6M3L], for a list containing information about each state's ACP. Notably, this list reflects the fact that Alabama, Alaska, North Dakota, South Carolina, South Dakota, and Wyoming do not have ACPs. *Id.* The list refers to an Arkansas program that provides participants with a driver's license that discloses a post office box address instead of their residential address. ARK. CODE ANN. § 27-16-811(c)(1) (2024). Because this program is limited to that one context, this Note treats Arkansas as a state that lacks an ACP.

voters, except for those lists provided to federal and state agencies.”<sup>80</sup> Another example includes a program administered by the Arkansas Office of Driver Services that provides participants “a driver’s license or identification card that displays a post office box in lieu of a residential address.”<sup>81</sup> The notable defect of these programs, in comparison to ACPs, is that the participants’ substitute address may only be used in one context, leaving other sources of their home address unprotected.

There have been some legislative efforts in these states to enact ACPs. For example, the Alaska Senate unanimously passed an ACP bill, but the bill must still pass the House of Representatives.<sup>82</sup> Similarly, an ACP bill passed the South Carolina Senate, but the bill has not yet passed the House of Representatives.<sup>83</sup>

#### *D. Federal Involvement*

There is no federal ACP law. However, a bill sponsored by Senator Amy Klobuchar was introduced to the Senate on July 27, 2023, that would require executive agencies and federal courts to “accept, for any purpose for which an individual is required to provide an address to the agency or court, an address designated to that individual pursuant to an address confidentiality program.”<sup>84</sup> Like state ACPs, the proposed law provides exemptions for law enforcement purposes<sup>85</sup> and executive agencies that require a participant’s true address to carry out requirements of federal law.<sup>86</sup> Unlike state ACPs, the proposed law would require individuals whose participation in an ACP has been terminated to notify each federal agency or court currently using the substitute address of the necessary reversion to use of the individual’s true address.<sup>87</sup> This is not the first time that such a bill has been introduced

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80. ALA. CODE § 17-4-33(b)(1) (2024). A similar Wyoming rule provides that a registered voter that demonstrates a threat to their safety may request that their residence or mailing address “be concealed from public inspection on the voter registration list.” 002-0005-17 WYO. CODE R. § 4 (LexisNexis 2024).

81. *Address Confidentiality Program*, ARK. DEP’T FIN. & ADMIN., <https://www.dfa.arkansas.gov/driver-services/address-confidentiality-program> [https://perma.cc/Y9LC-G5Z6].

82. Noah Hanson, *Legislation Creating an Address Confidentiality Program to Protect Survivors of Sexual Assault and Domestic Violence Passes Senate*, ALASKA NATIVE NEWS (Apr. 25, 2023), <https://alaska-native-news.com/legislation-creating-an-address-confidentiality-program-to-protect-survivors-of-sexual-assault-and-domestic-violence-passes-senate/67483/> [https://perma.cc/8H8L-N6KY]; S. 12, 33d Leg., 1st Reg. Sess. (Alaska 2023).

83. S. 0147, 2023 Gen. Assemb., 125th Sess. (S.C. 2023), <https://www.scstatehouse.gov/billsearch.php?billnumbers=147&session125&summary=B> [https://perma.cc/V9K9-FELE].

84. Safe at Home Act, S. 2676, 118th Cong. § 2(b) (2023).

85. *Id.* § 2(e)(3) (limiting the exemption so that the party who obtains a participant’s true address “shall keep the physical address confidential” and “may only use the physical address for the purpose for which the Federal court orders the disclosure”).

86. *Id.* § 2(e)(4).

87. *Id.* § 2(f).

to the Senate—in September 2017, a very similar bill was introduced by Senator Roy Blunt.<sup>88</sup>

## II. THE CURRENT STATE SYSTEM OF ADDRESS CONFIDENTIALITY IS FAILING TO PROVIDE CRUCIAL PROTECTIONS

This Part pursues a critical examination of the current system of ACPs, drawing from the discussion in Section I.B, to ultimately reveal its inadequacy. Section II.A begins by describing the great utility and need for address confidentiality, as evidenced by increased rates of domestic violence, the increased risk of violence upon a survivor's escape, and the growing ease with which abusers can locate their victims as governments move public records online. The subsequent Sections draw attention to particular gaps and inconsistencies in today's structure of ACPs that allow the persistence of an unacceptable potential for harm.

### *A. ACPs Provide Necessary Protections for Survivors*

Protections for survivors are necessary now more than ever: The National Crime Victimization Survey found that “the rate of domestic violence (violent victimizations that were committed by current or former intimate partners or family members) increased from 2021 to 2022” and “was not statistically different from 2018.”<sup>89</sup> Like the 2018 rate, the 2022 rate<sup>90</sup> represented an increase from years 2014 to 2017.<sup>91</sup> The Center for Disease Control and Prevention’s (CDC) most recent National Intimate Partner and Sexual Violence Survey (Survey),<sup>92</sup> administered between 2016

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88. SAFE at Home Act, S. 1889, 115th Cong. § 3(a) (2017).

89. ALEXANDRA THOMPSON & SUSANNAH N. TAPP, U.S. DEP’T OF JUST., CRIMINAL VICTIMIZATION, 2022, at 2 (2023), <https://bjs.ojp.gov/document/cv22.pdf> [<https://perma.cc/ZX85-XJKE>].

90. *Id.*

91. See RACHEL E. MORGAN & BARBARA A. OUDEKERK, U.S. DEP’T OF JUST., CRIMINAL VICTIMIZATION, 2018, at 4 (2019), <https://bjs.ojp.gov/content/pub/pdf/cv18.pdf> [<https://perma.cc/8XWW-9B3A>].

92. The Survey explains that “[t]he term, intimate partner violence, refers to any physical or sexual violence, stalking, and/or psychological aggression by a current or former dating partner or spouse.” RUTH W. LEEMIS ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON INTIMATE PARTNER VIOLENCE 1 (2022), [https://www.cdc.gov/nisvs/documentation/nisvsreportonipv\\_2022.pdf](https://www.cdc.gov/nisvs/documentation/nisvsreportonipv_2022.pdf) [<https://perma.cc/ENZ2-AA96>]. “Domestic violence” and “intimate partner violence” are often used interchangeably even though the former term refers to “violence that takes place within a household and can be between any two people within that household” whereas the latter “can only occur between romantic partners who may or may not be living together in the same household.” *Intimate Partner Violence vs. Domestic Violence*, YWCA SPOKANE (Jan. 5, 2021), <https://ywcasokane.org/what-is-intimate-partner-domestic-violence/> [<https://perma.cc/F89L-RRVU>]. As many advocacy organizations acknowledge, this is a nuanced issue, and this Note uses both terms where possible as individuals

and 2017, found that almost one in two women and more than forty percent of men in the United States reported at some point in their lifetime contact sexual violence,<sup>93</sup> physical violence, or stalking victimization by an intimate partner.<sup>94</sup> Notably, the Survey affirmed the consensus of previous studies that “racial and ethnic minority groups are disproportionately affected by intimate partner violence.”<sup>95</sup>

Although they “might pale in comparison to an individual’s traumatic experience, [it is] important to note that the effects of domestic violence extend far beyond the homes in which it occurs.”<sup>96</sup> According to the CDC, the lifetime cost associated with medical services for injuries related to intimate partner violence, lost productivity from paid work, criminal justice, and other costs is \$3.6 trillion.<sup>97</sup> For individual victims of intimate partner violence, the cost was \$103,767 for women and \$23,414 for men.<sup>98</sup> The pervasive and disproportionate incidence and impact of domestic and intimate partner violence has prompted legislative response, which includes the enactment of ACPs in some states.

Studies and statistics underscore the legislative findings which states cite in support of their enactment of ACP statutes<sup>99</sup> by showing that leaving an abusive relationship exposes survivors to increased risk of violence<sup>100</sup>:

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affected by both types of violence could benefit from ACP protection. See, e.g., *The Language We Use*, WOMEN AGAINST ABUSE, <https://www.womenagainstabuse.org/education-resources/the-language-we-use> [https://perma.cc/C9EU-977J].

93. The Survey defines “contact sexual violence” as “a combined measure that includes rape, being made to penetrate someone else (males only), sexual coercion, and/or unwanted sexual contact.” LEEMIS ET AL., *supra* note 92, at 2.

94. *Id.* at 4.

95. *Id.* at 14. “In the 12 months prior to the survey, 17.4% of non-Hispanic multiracial women, 12.3% of non-Hispanic [B]lack women, 7.2% of Hispanic women, and 6.0% of non-Hispanic white women reported any contact sexual violence, physical violence, and/or stalking by an intimate partner.” *Id.* at 7; *see also* Jamila K. Stockman, Hitomi Hayashi & Jacquelyn C. Campbell, *Intimate Partner Violence and Its Health Impact on Disproportionately Affected Populations, Including Minorities and Impoverished Groups*, 24 J. WOMEN’S HEALTH 62 (2015) (presenting evidence that minority women who are subject to intimate partner violence face inequities that exacerbate health consequences).

96. *Societal Impacts of Domestic Violence*, ILL. COAL. AGAINST DOMESTIC VIOLENCE, <https://www.ilcadv.org/societal-impacts-of-domestic-violence/> [https://perma.cc/BY2E-XWSG].

97. *About Intimate Partner Violence*, CTRS. FOR DISEASE CONTROL & PREVENTION (citing Cora Peterson et al., *Lifetime Economic Burden of Intimate Partner Violence Among U.S. Adults*, 55 AM. J. PREVENTIVE MED. 433, 433–44), <https://www.cdc.gov/intimate-partner-violence/about/> [https://perma.cc/4VHB-NVF2] *see also* Rasmane Ouedraogo & David Stenzel, *How Domestic Violence Is a Threat to Economic Development*, IMF BLOG (Nov. 24, 2021), <https://www.imf.org/en/Blogs/Articles/2021/11/24/how-domestic-violence-is-a-threat-to-economic-development> [https://perma.cc/RGF9-JDM9] (describing how violence against women negatively affects the economy’s overall health).

98. *About Intimate Partner Violence*, *supra* note 97.

99. *See supra* Section I.A.

100. Jenna Yauch, *When Home Is Where the Hurt Is: Minnesota’s Address Confidentiality Program Keeps Battered Women Safer*, 6 DARTMOUTH L.J. 217, 220 (2008) (citing Joan Zorza, *Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women*, 29 FAM. L.Q.

Nearly seventy-seven percent of homicides related to domestic violence take place upon separation, and for at least two years after separation, there is a seventy-five percent increase of violence.<sup>101</sup> Therefore, the safety of a survivor “hinges on the confidentiality of her location and keeping her batterer from locating her.”<sup>102</sup>

The National Domestic Violence Hotline explains that because abusive relationships are about power and control, an abuser might retaliate in harmful ways when a survivor leaves, threatening “the power and control their partner has established over the survivor’s agency.”<sup>103</sup> Indeed, there is no guarantee that a survivor will leave their abuser as there are many other barriers that prevent them from leaving. Such barriers include “fear of being charged with desertion, losing custody of children, or joint assets;” inability to support oneself or one’s children financially; various religious and cultural practices and reinforcement that stress “saving” a relationship; isolation from the support of friends or family; limited shelter space and fear of homelessness; and lack of support from police officers and law enforcement.<sup>104</sup> Where disability is a factor and a survivor “depends on other people for physical support, they may feel that their well-being is directly tied to their relationship.”<sup>105</sup> Survivors who are undocumented may be deterred from reporting abuse by fear that speaking up will affect their immigration status.<sup>106</sup>

ACPs are not an all-encompassing solution to the difficulties of leaving an abuser, but they can play a crucial role in facilitating this end. This is especially so given that public records today are “an essential part of life”<sup>107</sup> and more easily accessible than ever as governments increasingly make them available online.<sup>108</sup> This modern development not only poses serious

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273, 274 (1995)) (explaining that domestic violence tends to “escalate when the batterer senses or discovers that he is about to be left by his partner”); *id.* (citing Dana Harrington Conner, *To Protect or to Serve: Confidentiality, Client Protection, and Domestic Violence*, 79 TEMP. L. REV. 877, 879 (2006)) (“A battered woman is 75 percent more likely to be killed by her abuser when she attempts to leave or has left her partner, than if she had stayed in the relationship.”).

101. NURSING: MENTAL HEALTH AND COMMUNITY CONCEPTS 895 (Kimberly Ernstmeyer & Elizabeth Christman eds., 2022) (ebook), <https://www.ncbi.nlm.nih.gov/books/NBK590028/> [https://perma.cc/W9KD-6Y3Z].

102. Yauch, *supra* note 100, at 221.

103. *Why People Stay*, NAT’L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/support-others/why-people-stay-in-an-abusive-relationship/> [https://perma.cc/THS2-5ACR].

104. *Why Victims Stay*, SAY YOUR NAME! INC., <https://www.sayyournameinc.org/copy-of-dynamics-of-abuse> [https://perma.cc/8T8C-9DND].

105. *Why People Stay*, *supra* note 103.

106. *Id.*

107. Yauch, *supra* note 100, at 223 (describing how an ACP cures the problem of public record access making it easy for abusers to locate their partner).

108. See, e.g., Amy Harmon, *As Public Records Go Online, Some Say They’re Too Public*, N.Y. TIMES (Aug. 24, 2001), <https://www.nytimes.com/2001/08/24/nyregion/as-public-records-go-online>

safety risks to survivors but also undermines the many efforts to encourage reporting of abuse<sup>109</sup>: Many victims of domestic violence and stalking do not file cases in court due to fear of their private information being accessed by their abuser to locate and harm them.<sup>110</sup> When such location information is so easily available online, it loses important “de facto privacy protection” inherent to physical court documents which are only accessible by going to the courthouse and asking a clerk to produce them.<sup>111</sup> Availability of an adequately protective ACP statute, therefore, is crucial for survivors in their effort to preserve their safety following escape.

### *B. Key Inconsistencies Across State ACP Statutes Create Unacceptable Potential for Harm*

It quickly becomes clear that whether and to what extent ACP protection is available varies state-by-state.<sup>112</sup> Given the discussed importance of address confidentiality for survivors, such variation renders the current system inadequate by depriving individuals of consistent protection. Specifically, key differences in availability, eligibility, and permitted use of the designated address between the ACP statutes result in gaps in protection that ultimately fail to sufficiently protect survivors.

#### *1. Availability and Eligibility*

Residents of seven states lack access to ACPs altogether. Among these states, Alaska has the third highest rate of intimate partner violence against women and “the highest homicide rate for female victims killed by a male

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-some-say-they-re-too-public.html [https://perma.cc/Z6CR-EGKD]; *Everything You Need to Know About Court Documents and Privacy*, LAW PRAC., LTD (May 13, 2020), https://www.lawpracticeltd.com/blog/2020/may/everything-you-need-to-know-about-court-document/ [https://perma.cc/H6WW-L8WE].

109. See, e.g., Rebecca L. Heron & Maarten C. Eisma, *Barriers and Facilitators of Disclosing Domestic Violence to the Healthcare Service: A Systematic Review of Qualitative Research*, 29 HEALTH & SOC. CARE CMTY. 612, 613 (2021) (“International guidelines exist to facilitate disclosure in healthcare settings.”); Claire Meyer, *Breaking the Silence: Encouraging Domestic Abuse Reporting*, ASIS INT'L: SEC. MGMT. (May 1, 2020), https://www.asisonline.org/security-management-magazine/articles/2020/05/breaking-the-silence-encouraging-domestic-abuse-reporting/ [https://perma.cc/TN4G-BGX2] (describing new workplace violence prevention and intervention standard to encourage employees to report domestic abuse).

110. *Public Records on the Internet: The Privacy Dilemma*, PRIV. RTS. CLEARINGHOUSE (July 23, 2002), https://privacyrights.org/resources/public-records-internet-privacy-dilemma [https://perma.cc/M9KG-WLUB] (“Witnesses to crimes could also be put in harm’s way because of retribution from the perpetrators and other parties to the crimes.”).

111. *Id.*

112. See *supra* Section I.B.

perpetrator in the nation.”<sup>113</sup> The rates at which women are subject to any contact sexual violence, physical violence, or stalking by an intimate partner in Alabama, Arkansas, and Wyoming also exceed the country’s average rate.<sup>114</sup> With such violence rampant in these states, there is a clear need for additional protection and prevention tools, such as ACPs.

The unavailability of address confidentiality burdens not only individuals living in states that have not enacted an ACP statute but also all survivors, regardless of their home state. This is because the inconsistency of ACP protection hinders one’s ability to relocate safely when that means moving out of state. Consider, for example, the following hypothetical: If a survivor flees from Minnesota, a state which offers an ACP, to neighboring North Dakota, a state which does *not* offer an ACP, their expectation of ACP protection is frustrated merely because of the state lines within which they could find safety.

Differences in the way states define eligibility to participate in their ACP have a similar exclusionary effect. For instance, while Idaho makes it so that victims of malicious harassment are eligible to participate,<sup>115</sup> victims of malicious harassment are not eligible to participate in neighboring Nevada’s ACP.<sup>116</sup> Again, if such a victim must flee from Idaho to Nevada, they can no longer be assured that ACP protection will be available.

This hypothetical is the very real concern that Congress had in mind when enacting the Violence Against Women Act of 2000 (VAWA II).<sup>117</sup> Under VAWA II, a survivor leaving the jurisdiction which issued a protective order against their batterer “can register the protection order in the new jurisdiction without notifying the batterer, thereby avoiding disclosure of [their] new location when [they] either desire[] to relocate or feel[] it is necessary to avoid the batterer.”<sup>118</sup> As it stands today, the state-led system of ACPs fails to achieve this level of protection for a survivor’s

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113. *Domestic Violence in Alaska*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE (2020), [https://assets.speakcdn.com/assets/2497/ncadv\\_alaska\\_fact\\_sheet\\_2020.pdf](https://assets.speakcdn.com/assets/2497/ncadv_alaska_fact_sheet_2020.pdf) [https://perma.cc/V96J-E4Z6] (citing *When Men Murder Women*, VIOLENCE POL’Y CTR., Sept. 2019, at 4, <https://www.vpc.org/studies/wmmw2019.pdf> [https://perma.cc/K5H6-2CRN]).

114. SHARON G. SMITH ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 STATE REPORT 74–75 (2023), <https://www.cdc.gov/nisvs/documentation/NISVS-2016-2017-State-Report-508.pdf> [https://perma.cc/E26C-AT95].

115. IDAHO CODE § 19-5703(1)(a)(i) (2024).

116. See NEV. REV. STAT. § 217.462(2)(a) (2023).

117. Pub. L. No. 106-386, 114 Stat. 1464. VAWA II expanded and improved the first iteration of the Violence Against Women Act (VAWA), the Violence Against Women Act of 1994 (VAWA I), Pub. L. No. 103-322, 108 Stat. 1796, 1902. *History of the Violence Against Women Act*, LEGAL MOMENTUM, <https://www.legalmomentum.org/history-vawa> [https://perma.cc/SL9N-Y5KG]. VAWA I was “a triumph for women’s groups that lobbied hard to persuade Congress to legislate federal protections for women on the grounds that states were failing in their efforts to address this violence.” *Id.*

118. *Federal Domestic Violence Law*, 9 GEO. J. GENDER & L. 661, 683–84 (2008).

location which Congress endorsed with VAWA II because of the inconsistency in program availability and eligibility throughout the country.<sup>119</sup>

## 2. Permitted Use of the Designated Address

Another variation between ACP statutes that effectively deprives certain participants of needed protection is how they define permitted use of the fictitious address designated to them through the program. For instance, it is common for states to only require that state and local agencies accept a participant's designated address.<sup>120</sup> By so limiting this requirement, many states fail to address the numerous other sources that an abuser could use to find their victim's new address: Private entities such as utility companies, for one, may unknowingly expose a survivor's new address when an abuser contacts them under false pretenses.<sup>121</sup>

This is a problem in "a society that constantly generates vast quantities of human information . . . [which is] tracked, screened, and sorted by corporations . . . and shared exponentially to others."<sup>122</sup> Abusers can turn to a growing number of sources that could potentially disclose a victim's new address.<sup>123</sup> An especially concerning example involves the decades-long practice of abusers purchasing dossiers of information on individuals from data brokers and using them "to hunt down and stalk, harass, intimidate, assault, and even murder other[s]."<sup>124</sup> These data brokers, which are commercial entities that purchase and sell data, frequently acquire their information not only from public records, but also from retail databases.<sup>125</sup> Data brokers sell their findings for as low as ninety-five cents per record.<sup>126</sup>

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119. In her article *Toward a National Putative Father Registry Database*, Mary Beck relies in part on similar reasoning to argue for a national putative father registry, rather than the existing inconsistent state system of such registries. Mary Beck, *Toward a National Putative Father Registry Database*, 25 HARV. J.L. & PUB. POL'Y 1031, 1037–38 (2002) (describing how "individual [state] registries cannot cure contests arising where [an] adoption is filed in a State unknown to the father," which illustrates how enacting a national registry database could address the interstate effect of adoptions).

120. See, e.g., OKLA. STAT. tit. 22, § 60.14 (2023); 23 PA. CONS. STAT. § 6707 (2024); VA. CODE ANN. § 2.2-515.2 (2024).

121. See Nichols, *supra* note 2.

122. RICHARDS, *supra* note 8, at 1.

123. See, e.g., Cindy Southworth & Sarah Tucker, *Technology, Stalking and Domestic Violence Victims*, 76 MISS. L.J. 667, 670 (2007); *Why Privacy and Confidentiality Matters for Victims of Domestic & Sexual Violence*, *supra* note 10.

124. Justin Sherman, *People Search Data Brokers, Stalking, and 'Publicly Available Information' Carve-Outs*, LAWFARE (Oct. 30, 2023, 3:03 PM), <https://www.lawfaremedia.org/article/people-search-data-brokers-stalking-and-publicly-available-information-carve-outs> [https://perma.cc/4H94-HU59].

125. Southworth & Tucker, *supra* note 123, at 670.

126. Sherman, *supra* note 124. A specific example involves a New Hampshire man placing an order with Docusearch, an Internet-based investigation and information service, for another resident's work address. *Id.* (citing *Remsburg v. Docusearch, Inc.*, 816 A.2d 1001, 1006 (N.H. 2003)). The man

Not only are there these fee-based services, there are many *free* websites which “provide a wealth of private contact information that can be used to track survivors nationwide as they attempt to relocate.”<sup>127</sup>

Although some states have recognized this growing issue by extending the requirement beyond just government agencies,<sup>128</sup> a large number of states have failed to respond.<sup>129</sup> This troubling aspect of the current state system of ACPs further contributes to its overall inadequacy.

### *3. Onus of Participation*

Some states with ACP statutes make it more difficult than others for survivors to obtain and maintain protection. One such difficulty is requiring survivors to provide proof of victimization, such as law enforcement records or court orders, with their application to the ACP.<sup>130</sup> These states also often permit as permissible evidence documentation from a domestic violence or sexual assault program and documentation from a religious, medical, or other professional from whom the applicant has sought assistance in dealing with the alleged violence.<sup>131</sup>

This requirement can act as a barrier to obtaining protection because speaking out and reporting abuse, a step necessary to obtaining the requisite proof, is not always an option for survivors. A U.S. Department of Justice report reflects this fact in finding that only about fifty-four percent of domestic violence and fifty-two percent of intimate partner violence victimizations were reported to police in 2022.<sup>132</sup> There is a host of underlying issues contributing to these statistics, including police inaction,

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thereafter obtained the work address for just thirty dollars. *Id.* (citing *Remsburg*, 816 A.2d at 1006). One week later, the man drove to the resident’s place of work and fatally shot the resident as she left work. *Id.*

127. Southworth & Tucker, *supra* note 123, at 670.

128. See, e.g., IOWA CODE § 9E.5(1) (2024); MD. CODE ANN., STATE GOV’T § 7-308(b)(1)(i) (West 2024); MINN. STAT. § 5B.05(a) (2023); WIS. STAT. § 165.68(5)(c) (2024).

129. See, e.g., CAL. GOV’T CODE § 6215.5 (West 2024); CONN. GEN. STAT. § 54-240h (2024); DEL. CODE ANN. tit. 11, § 9615 (2024); FLA. STAT. § 741.405 (2024); HAW. REV. STAT. § 801G-2 (2024); IDAHO CODE § 19-5703 (2024).

130. See, e.g., ARIZ. REV. STAT. ANN. § 41-163(C)(3)(a) (2024); HAW. REV. STAT. § 801G-3(b)(3)(A) (2024); N.C. GEN. STAT. § 15C-4(c)(2)(a) (2023).

131. See *supra* note 130.

132. THOMPSON & TAPP, *supra* note 89, at 6.

hostility, and bias against survivors;<sup>133</sup> fear that an abuser will retaliate;<sup>134</sup> and belief that abuse is too trivial to report.<sup>135</sup>

Studies also show that survivors often do not seek help from resources other than police: for instance, a study examining “the help-seeking choices of abused women” in the Chicago-area found that eighty-two percent of the women did not contact an agency or counselor and seventy-four percent did not seek medical care.<sup>136</sup> The study distilled major themes from the women’s responses for not using these resources, which included facing logistical and other barriers, believing the abuse was not serious enough, and wanting to preserve the relationship.<sup>137</sup> Given the foregoing, it is clear that parts of the state ACP system, which require proof of victimization to apply,<sup>138</sup> do not adequately take into account the well-documented barriers to seeking abuse intervention.

A second difficulty posed by certain ACP statutes is that they allow the program administrator to unilaterally cancel a participant’s certification, without having to provide notice, when a participant fails to renew their application or when mail that was forwarded to the participant’s true address is returned to the administrator as undeliverable.<sup>139</sup> Although there is no data to show exactly how many participants are disenrolled from their ACP on these grounds, one can easily look to other contexts to see how procedural issues such as these can cause devastating impacts on program enrollment.

For example, when a pandemic requirement to provide continuous Medicaid coverage was lifted, seventy-two percent of people who had their coverage terminated experienced procedural disenrollments, which are cases “where people are disenrolled because they did not complete the renewal process . . . [which] can occur when the state has outdated contact information or because the enrollee does not understand or otherwise does

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133. Press Release, ACLU, New Report Examines Why Victims of Domestic and Sexual Violence Don’t Call the Police (Oct. 27, 2015, 3:30 PM), <https://www.aclu.org/press-releases/new-report-examines-why-victims-domestic-and-sexual-violence-dont-call-police> [https://perma.cc/8VBE-D4NJ].

134. Balbir Gurm & Jennifer Marchbank, *Chapter 8: Why Survivors Don’t Report*, in *MAKING SENSE OF A GLOBAL PANDEMIC: RELATIONSHIP VIOLENCE & WORKING TOGETHER TOWARDS A VIOLENCE FREE SOCIETY* (2020) (ebook), <https://kpu.pressbooks.pub/nevr/chapter/why-do-survivors-not-report-to-police/> [https://perma.cc/5S9C-4RYX]. Other concerns include fear that the government will take children away, fear of losing a home, and fear of the legal system. *Id.*

135. THOMPSON & TAPP, *supra* note 89, at 6.

136. Michelle Fugate, Leslie Landis, Kim Riordan, Sara Naureckas & Barbara Engel, *Barriers to Domestic Violence Help Seeking: Implications for Intervention*, 11 *VIOLENCE AGAINST WOMEN* 290, 292, 295 (2005).

137. *Id.* at 296.

138. E.g., MISS. CODE ANN. § 99-47-1(2)(viii) (2024).

139. *See supra* Section I.B.

not complete renewal packets within a specific timeframe.”<sup>140</sup> The Kaiser Family Foundation explained that “[h]igh procedural disenrollment rates are concerning because many people who are disenrolled for these paperwork reasons may still be eligible for Medicaid coverage.”<sup>141</sup> States which permit ACP administrators to unilaterally cancel program participants’ certification run this same risk—and in this context, cancellation of eligibility means taking away the confidentiality of a survivor’s address, putting them in greater danger of being located by their abuser.

### III. FEDERAL INVOLVEMENT IS NEEDED TO ENSURE THAT ACPs PROVIDE ADEQUATE AND RELIABLE PROTECTIONS

#### *A. Policymakers Must Consider a Federal Approach to Address Confidentiality*

Existing scholarship on the topic takes a state system of ACPs as a given, without contemplating the possibility of federal involvement or justifying why a state system is better.<sup>142</sup> Perhaps the area of law concerning domestic violence suffers from a similar misconception prevalent in the overlapping area of family law: that because law governing domestic relations is inherently local, any federal intervention is inappropriate.<sup>143</sup> In fact, the Supreme Court has perpetuated this view by frequently announcing that “the regulation of domestic relations is traditionally the domain of state law,”<sup>144</sup> and that “domestic relations [is] an area that has long been regarded as a virtually exclusive province of the States.”<sup>145</sup> Likewise, in the area of domestic violence, the Supreme Court held in *United States v. Morrison* that Congress lacked authority to enact a federal civil remedy for the victims of gender-motivated violence,<sup>146</sup> making clear its concern regarding the “‘slippery slope’ of allowing Congress to regulate an area of ‘family’ law that might interfere with traditional notions of federalism.”<sup>147</sup>

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140. *Medicaid Enrollment and Unwinding Tracker - Overview*, KAISER FAM. FOUND. (Sept. 13, 2023), <https://www.kff.org/report-section/medicaid-enrollment-and-unwinding-tracker-overview-2/> [<https://perma.cc/PTA2-A89T>].

141. *Id.*

142. See, e.g., Yauch, *supra* note 100, at 232–33.

143. JILL ELAINE HASDAY, FAMILY LAW REIMAGINED 5 (2014).

144. *Id.* at 19 (citing *Hillman v. Maretta*, 569 U.S. 483, 490 (2013)).

145. *Id.* (citing *Sosna v. Iowa*, 419 U.S. 393, 404 (1975)).

146. *United States v. Morrison*, 529 U.S. 598, 617–18, 627 (2000). The statute at issue in *Morrison* was VAWA I. *Id.* at 605. Note that the Court only considered and struck down one aspect of VAWA I: the section providing a civil remedy. *Id.* at 627. Courts have affirmed the constitutionality of VAWA I’s surviving criminal provisions when they were challenged following *Morrison*’s holding. *Federal Domestic Violence Law*, *supra* note 118, at 667.

147. *Federal Domestic Violence Law*, *supra* note 118, at 669.

But despite this traditional narrative, there is extensive federal family law that coexists alongside such state law.<sup>148</sup> An example that covers domestic violence includes the Safe Homes for Women Act, which criminalizes spousal violence and interstate travel with intent to cause spousal violence.<sup>149</sup> Additionally, there are numerous other laws that have been passed by Congress to protect against domestic violence, including the Gun Control Act,<sup>150</sup> VAWA,<sup>151</sup> and the Victims of Crime Act (VOCA).<sup>152</sup>

As Jill Elaine Hasday advised in her book *Family Law Reimagined*, “federal involvement is neither categorically inappropriate nor always well-advised” in any area of law where both federal and state action are possible.<sup>153</sup> Lawmakers and judges should always “consider which level (or levels) of government is best situated to carry out” existing or proposed policy.<sup>154</sup> Given the inadequacy of the current state system of ACPs,<sup>155</sup> consideration of federal intervention is especially warranted.

#### *B. Congress Should Use Its Spending Power to Secure State Participation in an Ideal ACP Statute*

Only a federal solution can solve the gaps in ACP protection that arise where survivors must cross state lines for their safety.<sup>156</sup> Additionally, federal involvement can efficiently achieve uniformity, curing the current issues which arise from the inconsistencies amongst state ACP statutes.<sup>157</sup> But Congress’s proposed law (Safe at Home Act),<sup>158</sup> standing alone, perpetuates the same problems as the current state system and is insufficient to accomplish its stated goal of ensuring that ACP “protections are guaranteed at the federal level.”<sup>159</sup> In requiring federal agencies and courts

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148. HASDAY, *supra* note 143, at 39.

149. *Id.* at 58.

150. Pub. L. No. 90-618, 82 Stat. 1213 (1968); *see* Lauren E. Crais, *Domestic Violence and the Federal Government*, 6 GEO. J. GENDER & L. 405, 406 (2005). The Gun Control Act, enacted in 1968, was “the first federal statute with an impact on domestic violence, as it prohibits convicted felons from buying, owning, or possessing a firearm.” Crais, *supra*, at 406.

151. Pub. L. No. 103-322, 108 Stat. 1796, 1902 (1994). *See generally* Leila Abolfazli, *Violence Against Women Act (VAWA)*, 7 GEO. J. GENDER & L. 863 (2006) (summarizing VAWA).

152. Pub. L. No. 98-473, 98 Stat. 1837, 2170 (1984). *See generally* Victims of Crime Act, NAT’L NETWORK TO END DOMESTIC VIOLENCE, <https://nnedv.org/content/victims-of-crime-act/> [https://perma.cc/M9MW-WWX3] (summarizing VOCA).

153. HASDAY, *supra* note 143, at 60.

154. *Id.*

155. *See supra* Section II.B.

156. *See supra* Section II.B.

157. *See supra* Section II.B.

158. S. 2676, 118th Cong. (2023); *see supra* Section I.D.

159. Press Release, Amy Klobuchar, U.S. Sen., Klobuchar, Blunt Introduce Bipartisan Legislation to Protect Address Confidentiality of Victims of Domestic Violence (Oct. 4, 2017), <https://www.klobuchar.senate.gov/public/index.cfm/2017/10/klobuchar-blunt-introduce-bipartisan>

to accept an individual's substitute address, designated to them through their state ACP, the Safe at Home Act would do nothing to protect individuals who cannot obtain a substitute address because they live in a state that has not enacted an ACP.

However, this proposed law could be instrumental to improving the current system if Congress, using its spending power, also conditioned certain grant funds<sup>160</sup> on the states' adoption of an ideal ACP statute.<sup>161</sup> Such a conditional grant would address the blind spot in the Safe at Home Act by addressing the need to ameliorate the gaps in ACP protection offered by the states.<sup>162</sup> This approach would establish more complete state protection, thereby allowing federal agencies and courts to reinforce a stronger, more consistent landscape of state protections.

The Spending Clause empowers Congress "to pay the Debts and provide for the . . . general Welfare of the United States."<sup>163</sup> The Supreme Court has "long recognized that Congress may use this power to grant federal funds to the States," and Congress may place conditions on such funds to ensure their use for "the . . . general Welfare" as it intended.<sup>164</sup> Although federal conditional funding laws do not strictly require states to implement their conditions—given that states are free to forgo such funds—this strategy has proved highly successful in similar contexts.<sup>165</sup> For example, Title II of the Child Abuse Prevention and Treatment Act (CAPTA) supplies grants in all fifty states to fund services such as "[c]oordination and connection with mental health, substance use, and domestic violence services."<sup>166</sup>

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-legislation-to-protect-address-confidentiality-of-victims-of-domestic-violence [https://perma.cc/P8F4-XDUJ].

160. This Note does not seek to prescribe a specific amount of funds that should be available through the grant. Further, it does not seek to specify the type of grant that should be offered. Such determinations should be made through Congress's process for authorizing new grant programs. *See generally* NATALIE KEEGAN, CONG. RSCH. SERV., R47928, CONSIDERATIONS FOR CREATING A NEW FEDERAL GRANT PROGRAM: IN BRIEF (2024) (summarizing Congress's grant authorization process); *Federal Funding and Financing: Grants*, U.S. DEP'T TRANSP. (Nov. 20, 2023), <https://www.transportation.gov/rural/grant-toolkit/funding-and-financing/grants-overview> [https://perma.cc/Y93Y-PRGV] (summarizing different forms of grants).

161. *See infra* Section III.C.

162. *See supra* Section II.B.

163. U.S. CONST. art. I, § 8, cl. 1.

164. Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 576 (2012).

165. *See* HASDAY, *supra* note 143, at 59. One example that relates to violence and abuse is the Keeping Children and Families Safe Act, which provides that states receiving federal funds must operate programs with specific provisions and procedures to implement a requirement that healthcare providers alert child protective authorities when a newborn shows signs of prenatal exposure to illegal drugs. *Id.* (citing Keeping Children and Families Safe Act of 2003, Pub. L. No. 108-36, § 114(b)(1)(B), 117 Stat. 800, 809–11 (codified at 42 U.S.C. § 5106a(b)(2)(a)(ii))).

166. *The Child Abuse Prevention and Treatment Act*, PREVENT CHILD ABUSE AM., [https://preventchildabuse.org/wp-content/uploads/2021/08/CAPTA\\_CBCAP-August-2021-1.pdf](https://preventchildabuse.org/wp-content/uploads/2021/08/CAPTA_CBCAP-August-2021-1.pdf) [https://perma.cc/L9SG-W2AZ]; 42 U.S.C. §§ 5116–5116i.

Importantly, using the Spending Clause to accomplish adoption of an ideal ACP statute would retain the benefits stemming from state administration of ACPs.<sup>167</sup> States have been administering ACP protection since as far back as 1991.<sup>168</sup> Through years of experience, many states have become very skilled at running these programs.<sup>169</sup> In addition to preserving this expertise, keeping administration with the states will help survivors access other relevant services that are often housed within the same entity as the ACP administrator. Illinois's ACP, for example, is administered by the state's office of attorney general, which provides other helpful resources such as financial assistance and victim advocacy programs.<sup>170</sup> Lastly, states could greatly benefit from federal grant dollars, which would bolster their ACPs with more supports. For instance, more funding could allow states to better equip application assistants or increase their presence throughout the state.<sup>171</sup>

There are important limits on Congress's spending power. For one, the spending must provide for the nation's general welfare.<sup>172</sup> The Supreme Court defers "substantially to the judgment of Congress" when considering whether an expenditure is intended to serve the general welfare.<sup>173</sup> A statute authorizing a federal grant conditioned on the adoption of an ideal ACP statute would clearly serve the general welfare, as the discussion in Section II.A demonstrates—differences in ACP statutes between the states creates gaps in crucial protection, and interstate travel of survivors requires a national solution. Importantly, Congress has already seen success in using its spending power to achieve general welfare goals similar to those of ACPs. For instance, Congress's use of its spending power to promote "a legal system that responds to and protects domestic violence victims"<sup>174</sup> under VAWA have remained in force.<sup>175</sup> To give just one example, VAWA

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167. Although Congress could very likely pass a federal ACP statute with its power to pass criminal laws plus those laws that are "necessary and proper" to their execution, a strategy that *would* strictly require every state's compliance, this approach would not retain the crucial benefits of state administration. U.S. CONST. art. I, § 8, cl. 18.

168. *See* Even, *supra* note 19, at 525.

169. *See, e.g.*, *Address Confidentiality Program (ACP)*, WASH. SEC'Y STATE, <https://www.sos.wa.gov/address-confidentiality-program-acp> [https://perma.cc/J4E5-K7ZR] (offering detailed guidance and helpful resources for ACP applicants).

170. *Supporting Victims of Crime*, ILL. ATT'Y GEN., <https://illinoisattorneygeneral.gov/safer-communities/supporting-victims-of-crime/> [https://perma.cc/XT8M-P54F].

171. *Cf. supra* Section I.B.

172. VICTORIA L. KILLION, CONG. RSCH. SERV., R46827, FUNDING CONDITIONS: CONSTITUTIONAL LIMITS ON CONGRESS'S SPENDING POWER 1–2 (2021).

173. *South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (citing *Helvering v. Davis*, 301 U.S. 619, 640, 645 (1937)).

174. Abolfazli, *supra* note 151, at 874.

175. Although VAWA has faced other constitutional challenges, they were not to its grant programs. *See generally History of the Violence Against Women Act*, *supra* note 117 (summarizing the history of VAWA and its grant programs).

authorizes the Office on Violence Against Women (OVW) to issue grants to states “to encourage partnerships among state, local, and tribal governments, courts, victim service providers, coalitions, and rape crisis centers to improve the criminal justice response to domestic violence, sexual assault, dating violence, and stalking as serious violations of criminal law.”<sup>176</sup> The stated subject of this grant is plainly consistent with the legislative purpose listed in many state ACP statutes of enabling “interagency cooperation” to essentially improve response to such violence, specifically at the point of a survivor’s escape.<sup>177</sup>

There is another important limit on Congress’s spending power.<sup>178</sup> The Court will strike down legislation that uses “financial inducements to exert a ‘power akin to undue influence.’”<sup>179</sup> This was a concern in *National Federation of Independent Business v. Sebelius*, where the Court refused to uphold the Medicaid provisions of the Affordable Care Act under the Spending Clause because a state would lose all of its Medicaid funding if it chose to opt out.<sup>180</sup> On the other hand, where financial inducement is not impermissibly coercive, legislation has been upheld.<sup>181</sup> For instance, in *South Dakota v. Dole*, the Court upheld a contested law in part because the state stood to lose five percent of funds that were otherwise available through certain grant programs, which was “a relatively small percentage” in its view.<sup>182</sup> The Court later pointed out that “the federal funds at stake constituted less than half of one percent of South Dakota’s budget at the time.”<sup>183</sup> This proposal would resemble *Dole* more than *Sebelius* because the law would not threaten “to terminate other significant independent grants.”<sup>184</sup> Instead, adoption of the statute would be conditioned on a small

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176. *Improving Criminal Justice Responses Program*, U.S. DEP’T JUST., OFF. ON VIOLENCE AGAINST WOMEN, <https://www.justice.gov/ovw/improving-criminal-justice-responses-program> [https://perma.cc/5GM8-TAHW]; 34 U.S.C. §§ 10461–10465.

177. See, e.g., CAL. GOV’T CODE § 6205 (West 2024); MD. CODE ANN., STATE GOV’T § 7-302(2) (West 2024); NEB. REV. STAT. § 42-1202 (2024).

178. There are other limits on Congress’s spending power, but these limits do not raise issues for the proposal of this Note. Another factor that is relevant to the constitutionality of conditional funding is the level of relatedness between the condition and the purposes for which the funds at issue are spent. *KILLION*, *supra* note 172, at 13–15. The Court in *Dole*, for instance, found sufficient relatedness between the condition, setting the state’s minimum drinking age to twenty-one, and the main purpose of the highway funds to which the condition attached, promoting safe interstate travel. *Id.* at 13 (discussing *Dole*, 483 U.S. at 208). This Note’s proposal would have a similar level of relatedness, if not *more* than that found in *Dole*, given that the grant funds would specifically support states’ administration of the ideal ACP that conditions the funds.

179. Nat’l Fed’n of Indep. Bus. v. Sebelius, 567 U.S. 519, 577 (2012) (quoting *Steward Mach. Co. v. Davis*, 301 U.S. 548, 590 (1937)).

180. *Id.* at 575–85.

181. *Id.* at 580 (citing *Dole*, 483 U.S. at 211).

182. *Dole*, 483 U.S. at 211.

183. *Sebelius*, 567 U.S. at 581.

184. *Id.* at 580.

percentage of states' budgets, much like those which are already available through the OVW.<sup>185</sup>

### C. The Model ACP Statute

The drafting of the ideal ACP statute on which Congress should condition its grant can benefit from the insights of experimentation that has already taken place in the states. This Section begins that process by identifying key features that should be included in the statute.<sup>186</sup>

#### 1. Define Eligibility Broadly

To begin, the ideal statute should define eligibility for participation broadly. States like Minnesota and Wisconsin define eligibility for their ACPs broadly, permitting anyone who fears for their physical safety to apply.<sup>187</sup> This approach is more permissive than that of many other states: for example, Arizona's ACP requires that applications include a statement that the applicant is a victim of domestic violence, a sexual offense, or stalking *and* that they fear for their safety.<sup>188</sup> One advantage of the permissive approach is that it can account for people who could benefit from an ACP despite the fact that they are not a victim of a specifically enumerated crime<sup>189</sup>: for example, a victim of intimidation or malicious harassment is not clearly eligible under an ACP like Arizona's, even though they might fear for their physical safety, because its statute does not specifically spell out those offenses.<sup>190</sup>

Relatedly, a benefit of the broad eligibility of Minnesota's and Wisconsin's ACPs is that they can adapt to new contexts where there are individuals, like survivors of domestic violence and sexual offenses, that would benefit from keeping their locations confidential. A recent example concerns public health officials: According to a study published by the American Journal of Public Health, during the first eleven months of the

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185. See *Grant Programs*, U.S. DEP'T JUST., OFF. ON VIOLENCE AGAINST WOMEN, <https://www.justice.gov/ovw/grant-programs> [<https://perma.cc/NCY7-C37J>].

186. This Note does not purport to offer an exhaustive list of features that the ideal ACP statute should include. Instead, it provides a starting point by highlighting some of the more important provisions.

187. MINN. STAT. § 5B.02(e) (2023); WIS. STAT. § 165.68(2) (2024).

188. ARIZ. REV. STAT. ANN. § 41-163(C)(2) (2024); *see also* CONN. GEN. STAT. § 54-240c(1) (2024) (requiring applicant to be a victim of an enumerated crime *and* fear for their safety).

189. Interestingly, when the first ACP was being enacted in the state of Washington, a Secretary of State report to the legislature found the same: "several categories of people, other than domestic violence victims, might be possible candidates for program extension." Even, *supra* note 19, at 528 n.27. Still, the Washington legislature limited the program to victims of domestic violence, as opposed to opening eligibility to other categories of people who fear for their safety. *Id.* at 528.

190. ARIZ. REV. STAT. ANN. § 41-163(C)(2) (2024).

COVID-19 pandemic, “public health officials found themselves thrust into the limelight as often-unpopular public health measures were instituted to quell the pandemic . . . . By June 2020, media reports of social media insults, public distribution of personal information (doxing), protests, and threats of violence against public health officials began to emerge.”<sup>191</sup> Second, abortion providers in the United States have faced increased exposure to violence, harassment, and stalking over the past couple of years.<sup>192</sup> The relatively recent handing down of *Dobbs v. Jackson Women’s Health Organization* has increased concern for the privacy and security of reproductive healthcare providers and patients: According to the National Abortion Federation, the clinics that remained open after *Dobbs* experienced a higher level of disruption in the year following the decision.<sup>193</sup>

With such violence resulting from relatively abrupt societal changes, like a rapidly spreading virus or a Supreme Court decision overruling fifty years of settled precedent, legislative response may not be quick enough to shield the targets of violence. Still, some legislatures have recognized the applicability of address confidentiality to new circumstances and have amended their ACPs accordingly. California, for instance, amended its ACP in 2022 to make reproductive health care service providers, employees, or volunteers who fear for their safety “or the safety of their family because of their affiliation with a reproductive health care services facility” eligible to apply.<sup>194</sup> The California legislature also expanded its ACP in September of 2022 to cover individuals facing violence, harassment, or threats of violence from the public because of their work for a public entity.<sup>195</sup> Vermont expanded its ACP eligibility to persons that provide, assist others in obtaining, or obtain for themselves gender-affirming health care services.<sup>196</sup>

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191. Mary Van Beusekom, *Harassment of Public Health Officials All Too Common in Pandemic*, CTR. FOR INFECTIOUS DISEASE RSCH. & POL’Y (Mar. 18, 2022), <https://www.cidrap.umn.edu/harassment-public-health-officials-all-too-common-pandemic> [https://perma.cc/GLA4-NCJJ] (citing Julie A. Ward, Elizabeth M. Stone, Paulani Mui & Beth Resnick, *Pandemic-Related Workplace Violence and Its Impact on Public Health Officials, March 2020–January 2021*, 112 AM. J. PUB. HEALTH 736 (2022)).

192. E.g., NAT’L ABORTION FED’N, 2021 VIOLENCE & DISRUPTION STATISTICS 2, [https://prochoice.org/wp-content/uploads/2021\\_NAF\\_VD\\_Stats\\_Final.pdf](https://prochoice.org/wp-content/uploads/2021_NAF_VD_Stats_Final.pdf) [https://perma.cc/334C-K4QQ].

193. Press Release, Nat’l Abortion Fed’n, Violence Against Abortion Providers Continues to Rise Following Roe Reversal, New Report Finds (May 11, 2023, 6:00 AM), <https://prochoice.org/violence-against-abortion-providers-continues-to-rise-following-roes-reversal-new-report-finds/> [https://perma.cc/9LSZ-JNHA].

194. S.B. 1131, 2022 Leg., Reg. Sess. (Cal. 2022); CAL. GOV’T CODE § 6215.2(a)(1) (West 2024); see also note 39.

195. Act of Sept. 26, 2022, 2022 Cal. Stat. 6429, 6432–37 (codified at CAL. GOV’T CODE § 6215.2(b)(1) (West 2024)).

196. Act of May 10, 2023, 2023 Vt. Acts & Resolves 191 (codified at VT. STAT. ANN. tit. 15, § 1152(a)(1)(A)(ii) (2024)). See generally *Online Harassment, Offline Violence*, HUM. RTS. CAMPAIGN

While these amendments in response to changing societal circumstances are undoubtedly fruitful, Minnesota and Wisconsin's approach is ultimately stronger in that it effectively encompasses such amendments without requiring specific enumeration by legislative action. The flexibility of this approach, unlike that of the states with specific enumerations, allows victims of violence to obtain immediate protection in response to future, unknown circumstances. Lastly, this permissive design still requires applicants to attest that they fear for their safety.<sup>197</sup> This requirement would prevent the ideal ACP statute from being unreasonably overinclusive.

## *2. Require Both Public and Private Entities to Accept Addresses Designated to Program Participants*

Indiana, Iowa, Maryland, Minnesota, and Wisconsin provide the model statutory provisions with respect to permitted use of the fictitious address designated to ACP participants. Under Minnesota's statute, any person or entity must accept a designated address when presented by a program participant.<sup>198</sup> It further stipulates that a person:

must not require the program participant to submit any address that could be used to physically locate the participant either as a substitute or in addition to the designated address, or as a condition of receiving a service or benefit, unless the service or benefit would be impossible to provide without knowledge of the program participant's physical location.<sup>199</sup>

The advantage of requiring *any* person or entity to accept a program participant's designated address, as opposed to imposing this requirement on state or local agencies only,<sup>200</sup> is that it allows survivors to block the many other potentially available sources of their new address. This approach adequately addresses the previously discussed realities of our information age and the troubling practice of certain abusers to turn to data brokers, who accumulate information from non-governmental sources, to

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FOUND. 1 (Dec. 8, 2022), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/HRCF-OnlineHarassmentOfflineViolence.pdf> [<https://perma.cc/7HM7-VGGN>] (summarizing a coordinated campaign of hate targeted at hospitals and medical providers who offer gender-affirming care).

197. *See supra* notes 37–42 and accompanying text.

198. MINN. STAT. § 5B.05(a) (2023). The ACP statutes of Indiana, Iowa, and Wisconsin are quite similar. For instance, Iowa's ACP statute provides that “[w]hen a program participant presents the program participant's designated address to any person, that designated address shall be accepted as the address of the program participant.” IOWA CODE § 9E.5(1) (2024).

199. MINN. STAT. § 5B.05(a) (2023). Iowa's statute contains the same requirement. IOWA CODE § 9E.5(1) (2024).

200. E.g., TEX. CODE CRIM. PROC. ANN. art. 58.053 (West 2023).

locate their victims.<sup>201</sup> In crafting the ideal statute, Congress should therefore follow the lead of the above-listed states when spelling out who must accept an ACP participant's designated address.

### *3. Limit the Burdens of Participation*

Congress should strive to limit the burdens that the ideal ACP statute places on participants who need protection. For one, Congress should look to states like Illinois, which do not require a victim to provide proof of victimization in order to apply to its ACP.<sup>202</sup> As previously discussed, many states require that applicants submit certain forms of proof which they may not be able to obtain.<sup>203</sup> States like Illinois adequately address this barrier by permitting survivors to file applications without such proof.<sup>204</sup>

Lastly, the ideal ACP statute should place more responsibility, where possible, on the ACP administrator, rather than the individual participant, to ensure that the program is running properly. For instance, Congress should emulate states like Tennessee that require that program administrators send notice of certification cancellation to program participants setting out the reasons for cancellation.<sup>205</sup> This would help ensure that affected participants can make a timely appeal, if protection is still needed.<sup>206</sup> By so requiring, the ideal statute would better avoid the problem of procedural disenrollment that is so prevalent in the Medicaid context.<sup>207</sup>

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201. *See supra* Section II.B.2.

202. 750 ILL. COMP. STAT. 61/15 (2024).

203. *See supra* Section I.B.

204. Illinois's ACP statute has other application requirements, but they do not present the same concerns as a requirement of proof of victimization. For example, the statute requires basic information such as "proof of a State residential street address where the applicant resides or a signed statement affirming the applicant's status as homeless in this State." 750 ILL. COMP. STAT. 61/15(a)(3.5) (2024).

205. TENN. CODE ANN. § 40-38-608(b) (2024).

206. *See supra* note 76 and accompanying text.

207. *See supra* Section II.B.3.

### CONCLUSION

Rates of domestic and intimate partner violence are rising, and modern data practices aggravate the situation by providing an easy way for abusers to locate their victims. ACPs are crucial for survivors in this respect, but the current system of address confidentiality contains major gaps in protection. Congress must recognize that greater federal involvement is needed to adequately resolve this problem. In addition, address confidentiality has not reached its full potential. There is an opportunity to maximize this tool by extending its protections to others in need. The time is overdue that ACPs play their part in ensuring that every person is safe at home.

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