

FOR IMMEDIATE RELEASE

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**SEXUAL ASSAULT VICTIMS FILE IMPORTANT, PRECEDENT-SETTING PETITION  
IN UTAH SUPREME COURT SEEKING APPOINTMENT OF A PROSECUTOR TO  
PURSUE THEIR CASES**

Today four sexual assault victims – Jane Doe 1, Jane Doe 2, Jane Doe 3, and Jane Doe 4 – filed a petition in the Utah Supreme Court, asking the Court to appoint a prosecutor to file criminal charges in their cases. The National Crime Victim Law Institute joined Professor Paul Cassell of the Utah Appellate Clinic (of the S.J. Quinney College of Law at the University of Utah) and four other attorneys to bring the case. The Jane Does are challenging the decision by local prosecutors not to file charges in their cases. This action, brought under a new state constitutional theory, represents an important effort to provide an avenue for crime victims in general – and sexual assault victims in particular – to obtain review of prosecutors’ decisions not to file charges in criminal cases.

A copy of the petition can be downloaded [here](#).

The 150-page petition relies on a largely overlooked provision in the Utah Constitution, article VIII, section 16, which provides that “if a public prosecutor fails or refuses to prosecute, the Supreme Court shall have power to appoint a prosecutor pro tempore.” Local prosecutors refused to file sexual assault charges for each of the four Jane Does. In their petition, the Jane Does explain to the Court that there is strong evidence supporting filing of criminal charges in their cases and that it would be in the interests of justice for the Court to appoint a prosecutor to pursue their case. The petition describes the argument as follows:

The framers of Utah’s Constitution anticipated cases in which public prosecutors would fail or refuse to prosecute well-founded criminal cases and provided a mechanism for the courts to permit victim-initiated prosecution. And yet, for the more than 120 years of this State’s history, it appears that Utah’s judiciary has seldom (if ever) employed that mechanism. This has effectively transformed a system constitutionally designed to give prosecutors only “primary responsibility” for deciding whether a prosecution should begin, Utah Const., art. VIII, § 16, into one where they effectively exercise exclusive and unreviewable control.

The time for this Court to invoke its constitutionally conferred power has now arrived. At a point in this country's history where throughout the nation intense concern exists about the criminal justice system's treatment of sexual assault victims, four women have suffered sexual violence in clear violation of Utah's criminal laws. And yet prosecutors have failed and refused to enforce those laws. Under the Utah Constitution (and federal constitution), this Court can redress that injustice – and should do so.

The case is believed to be the first time crime victims have attempted to use article VIII, section 16 to secure appointment of a prosecutor. Professor Cassell explained the importance of this effort: "Today prosecutors' decisions not to file sexual assault charges are, as practical matter, entirely unreviewable. This petition represents an important effort to establish a precedent for providing a way for victims to obtain judicial review of a prosecutorial inaction. By reviewing such decisions, the Utah Supreme Court can ensure that, if a mistake is made, it can be remedied and a criminal case can proceed. And many other states have similar mechanisms that can be used in the same way."

NCVLI Executive Director Meg Garvin said, "Sexual assault victims are all too often not only without a voice in the criminal justice system but in essence without even any way to access justice; this case is an effort to ensure change."

Jane Doe 1 stated: "It is a difficult moment as the petition including my sexual assault goes forward. I know the devastation I felt as I heard that even though law enforcement believed my disclosure they were not going to to prosecute. I was raised to trust that the criminal justice system would protect me, but after disclosing I found myself alone as my community reacted to the lack of prosecution with blaming me for disclosing and my community offering no support. I appreciate the opportunity to ask for justice again." The Jane Does are represented by:

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*Founded in 2000, the [National Crime Victim Law Institute](#) is a national resource for crime victim lawyers and advocates to support the assertion and enforcement of victims' rights in criminal and civil processes. NCVLI continues to be the only national organization whose mission is focused on enforcement of victims' rights in the courts.*

## **STATEMENTS OF SUPPORT**

Various national and local anti-sexual violence organizations support the petition of the Jane Does, including:

### **National Sexual Violence Resource Center**

The National Sexual Violence Resource Center (NSVRC) is the leading nonprofit in providing information and tools to prevent and respond to sexual violence. NSVRC translates research and trends into best practices that help individuals, communities and service providers achieve real and lasting change. The center also works with the media to promote informed reporting. Every April, NSVRC leads Sexual Assault Awareness Month (SAAM), a campaign to educate and engage the public in addressing this widespread issue. NSVRC is also one of the three founding organizations of Raliance, a national, collaborative initiative dedicated to ending sexual violence in one generation.

NSVRC supports the petition for a prosecutor to look into the cases identified in this brief. Throughout the United States, there is a very low rate of prosecution of sexual assault cases. This denies victims of these life-altering and devastating crimes from having any type of justice; likely contributes to a public perception of a prevalence of false reports; and prevents other victims from reporting similar crimes. As a result, public safety is compromised, perpetrators continue to victimize people, and victims are further silenced and traumatized.

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**Joyful Heart Foundation**

The Joyful Heart Foundation is a leading national organization with a mission to transform society's response to sexual assault, domestic violence and child abuse, support survivors' healing, and end this violence forever. Joyful Heart's work is paving the way for innovative approaches to treating trauma, igniting shifts in the way the public views and responds to sexual and domestic violence, and reforming legislation and policies to ensure justice for survivors.

The Joyful Heart Foundation supports this petition for the Supreme Court to appoint a special prosecutor, as allowed by the Utah constitution, for sexual assaults committed against Jane Doe 1, Jane Doe 2, Jane Doe 3, and Jane Doe 4. Our criminal justice system does not take sexual assault seriously enough, and does not prioritize it as the violent crime it is. Out of 1000 perpetrators, only six will ever spend a day in jail. Many reported rapes are not fully investigated or investigated at all. In those cases that are referred to a prosecutor, all too often the prosecutor refuses to take a case to court. This sends a powerful message to survivors that they and their cases don't matter, and to perpetrators that they will not be held accountable for their crimes. Most sexual assaults are not reported to the police because victims are afraid to they will be blamed and their cases will not be taken seriously. Refusing to prosecute sexual assault cases compromises public safety—because many rapists are also serial criminals who will continue to victimize, again and again—and perpetuates the conditions that keep victims silent.

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**End Violence Against Women International:**

End Violence Against Women International (EVAWI) is a nonprofit organization working to improve criminal justice and community responses to gender-based violence. We work to pursue our vision of a world where gender-based violence is unacceptable; where perpetrators are held accountable, and victims receive the compassion, support, and justice they deserve. We promote victim-centered, multidisciplinary collaboration, which strengthens the response of the criminal justice system, other professionals,

allies, and the general public – making communities safer. By bringing together the many diverse professionals who respond to victims of gender-based violence – to communicate, share, and learn – our objective is to ultimately strengthen the whole community response system.

EVAWI supports the Jane Does’ petition for the Utah Supreme Court to appoint a prosecutor to conduct a review of their sexual assault investigations and consider the potential for prosecution. This process may potentially lead to a prosecution of the named suspects if the facts and evidence warrant. We believe this process can serve the interests of justice, not just for these individuals, but for the community as a whole. At EVAWI, we are acutely aware of the many barriers victim of sexual assault face when reporting to law enforcement and navigating the criminal justice system. We also recognize the need for systemic change to address historic failures in the criminal justice system’s response to sexual assault. This includes a pattern of attrition where fewer than 3% of the forcible rapes committed in the U.S. result in a law enforcement investigation, prosecution, conviction, and incarceration. It also includes the tens of thousands of evidence kits from sexual assault medical forensic exams that remain untested nationwide, and the larger number of sexual assault cases that remain uninvestigated in any meaningful way.

Given the fact that girls and women are disproportionately impacted by these national failures in sexual assault response, investigation, and prosecution, this can be seen as a form of institutional gender bias.

Part of the solution is to increase the options available for sexual assault victims to engage the criminal justice system and pursue justice under the law. Working together, responding professionals can help to “open doors” for sexual assault victims to more effectively participate in the criminal justice process, obtain a medical forensic examination, and access victim advocacy and other supportive services.

EVAWI stands ready to assist. Our mission is to provide training and support for criminal justice professionals who conduct sexual assault investigations and prosecutions, so they have the tools they need to be successful. We know there are thousands of dedicated professionals across the country who share our goal of ameliorating the systemic problem of under-reporting, under-investigation, and under-prosecution of sexual assaults, the vast majority of which involve female victims. But we must remain creative in our efforts; we will not solve these problems by simply repeating what is “tried and true.”

The petition of the Jane Does’ requesting a court-appointed prosecutor is one such creative effort, making use of a well-established but long-dormant legal tool. We support this innovative approach. These women have exhibited remarkable courage by

seeking to participate in the criminal justice process; they should have access to all available options that the law provides to pursue justice in their cases.

Statement from Sergeant Joanne Archambault (Retired, San Diego Police Department), Founder and Chief Executive Officer, End Violence Against Women International:

“EVAWI supports the Jane Does’ petition for the Utah Supreme Court to appoint a prosecutor to conduct a review of their sexual assault investigations and consider the potential for prosecution. These women have exhibited remarkable courage by seeking to participate in the criminal justice process; they should have access to all available options that the law provides to pursue justice in their cases.”

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**Legal Momentum:**

Legal Momentum, the Women’s Legal Defense and Education Fund, has stood at the forefront of advancing the rights of women and girls—particularly victims of sexual and domestic violence—for nearly 50 years. Through targeted litigation, innovative public policy, and education, Legal Momentum makes strides towards a society in which survivors of sexual violence are believed and supported, have open and reliable avenues to report their victimization, and receive justice and offender accountability. Our award-winning National Judicial Education Program (NJEP) has, for more than 35 years, educated the judiciary and justice-system professionals on the myths and misconceptions about sexual assault that are deeply held in our society and which lead to under-investigation, under-prosecution, and flawed adjudications in sexual violence cases.

Today a petition was filed in the Utah Supreme Court on behalf of four women: four survivors of sexual assault whose victimization was diminished and who have been denied the opportunity to seek justice. From almost five decades of this work, we know that across the country victims and survivors are living this reality, chilled into silence by systems that minimize the violence to which they have been subjected. We know too well that the analysis that leads prosecutors to the decision that a sexual assault case is “unlikely to succeed”, despite sufficient evidence, is rooted in the myths and misconceptions which decades of research has debunked. Legal Momentum stands with these four survivors, who represent so many others, and supports their pursuit of justice.

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